

*State of Iowa*

**Iowa**  
**Administrative**  
**Code**  
**Supplement**

Biweekly  
November 2, 2011



**STEPHANIE A. HOFF**  
ADMINISTRATIVE CODE EDITOR

---

Published by the  
STATE OF IOWA  
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

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

### **Aging, Department on[17]**

Replace Analysis  
Replace Chapter 10

### **Agriculture and Land Stewardship Department[21]**

Replace Chapter 1  
Replace Chapters 13 to 16

### **Capital Investment Board, Iowa[123]**

Replace Analysis  
Replace Chapters 1 and 2

### **Utilities Division[199]**

Replace Analysis  
Replace Chapters 19 and 20

### **Iowa Finance Authority[265]**

Replace Chapters 41 and 42

### **Educational Examiners Board[282]**

Replace Chapter 13

### **Human Services Department[441]**

Replace Analysis  
Replace Chapter 78  
Replace Chapter 105

### **Public Safety Department[661]**

Replace Chapter 201  
Replace Chapter 301  
Replace Chapter 504

### **Revenue Department[701]**

Replace Analysis  
Replace Chapter 12  
Replace Chapter 38  
Replace Chapters 40 to 42  
Replace Chapter 44

Replace Chapters 52 and 53  
Replace Chapter 59  
Replace Chapter 67

**Transportation Department[761]**

Replace Analysis  
Replace Chapters 400 and 401

## **AGING, DEPARTMENT ON[17]**

Prior to 5/20/87, see Commission on the Aging[20]  
 Delay: Effective date (June 24, 1987) of Chapters 1 to 18 delayed 70 days pursuant to Iowa Code section 17A.4(5) by the  
 Administrative Rules Review Committee at their June 9, 1987, meeting.  
 [Prior to 1/27/10, see Elder Affairs Department[321]]

### CHAPTER 1

#### INTRODUCTION, ABBREVIATIONS AND DEFINITIONS

- 1.1(231) Authority and purpose
- 1.2(231) Other regulations and order of precedence
- 1.3(231) Applicability
- 1.4(231) Abbreviations
- 1.5(231) Definitions

### CHAPTER 2

#### DEPARTMENT ON AGING

- 2.1(231) Mission statement
- 2.2(231) Definitions
- 2.3(231) Department established
- 2.4(231) Director
- 2.5(231) Organizational units of the department
- 2.6(231) Staffing
- 2.7(231) Discrimination
- 2.8(231) Affirmative action plans
- 2.9(231) Department complaint and appeal procedures
- 2.10(231) Severability

### CHAPTER 3

#### COMMISSION ON AGING

- 3.1(231) Definitions
- 3.2(231) Purpose of the commission
- 3.3(21,231) Organization of the commission and proceedings
- 3.4(231) Commission duties and authority

### CHAPTER 4

#### DEPARTMENT PLANNING RESPONSIBILITIES

- 4.1(231) Definitions
- 4.2(231) State plan on aging
- 4.3(231) Designation of PSA
- 4.4(231) Designation of AAA
- 4.5(231) Types of entities that qualify as an AAA
- 4.6(231) Multipurpose entity
- 4.7(231) Request for waiver
- 4.8(231) Applicant qualification and preference
- 4.9(231) Procedure for designation of an AAA
- 4.10(231) Withdrawal of AAA designation
- 4.11(231) Procedures for withdrawal of AAA designation
- 4.12(231) Department action subsequent to withdrawal
- 4.13(231) Technical assistance
- 4.14(231) Severability

CHAPTER 5  
DEPARTMENT FISCAL POLICY

|           |   |
|-----------|---|
| 5.1(231)  | Definitions   |
| 5.2(231)  | Grants to area agencies on aging  |
| 5.3(231)  | Limitations on use  |
| 5.4(231)  | Expenditures in rural areas   |
| 5.5(231)  | Funding formulas  |
| 5.6(231)  | State allotments  |
| 5.7(231)  | Program allotment calculations  |
| 5.8(231)  | Funding estimates   |
| 5.9(231)  | Matching funds  |
| 5.10(231) | Allowable use of federal and state funds for multiyear area plan administration |
| 5.11(231) | Reallotment   |
| 5.12(231) | Restriction on delegation of authority to other agencies                        |
| 5.13(231) | Records and reports   |
| 5.14(231) | State reviews and audits  |
| 5.15(231) | Acquisition of goods and services   |
| 5.16(231) | Restrictions for multipurpose agencies designated as AAA                        |
| 5.17(231) | Records—contract administration   |
| 5.18(231) | Recapture of funds for facilities   |
| 5.19(231) | Property management   |

CHAPTER 6  
AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

|           |   |
|-----------|---|
| 6.1(231)  | Definitions                                       |
| 6.2(231)  | Area plan   |
| 6.3(231)  | Area agency administration                        |
| 6.4(231)  | Confidentiality and disclosure of AAA information |
| 6.5(231)  | AAA contact information                           |
| 6.6(231)  | Duties of AAA                                     |
| 6.7(231)  | AAA board of directors                            |
| 6.8(231)  | AAA advisory council                              |
| 6.9(231)  | Emergency situations                              |
| 6.10(231) | AAA procedures manual                             |
| 6.11(231) | Contracts and subgrants                           |
| 6.12(231) | Direct service                                    |
| 6.13(231) | Noncompliance                                     |
| 6.14(231) | Priority service expenditures                     |
| 6.15(231) | Waivers of priority service expenditures          |
| 6.16(231) | Requirements for service providers                |
| 6.17(231) | Entrepreneurial activities of AAA                 |
| 6.18(231) | Severability                                      |

CHAPTER 7  
AREA AGENCY ON AGING SERVICE DELIVERY

|          |  |
|----------|--|
| 7.1(231) | Definitions  |
| 7.2(231) | Service delivery   |
| 7.3(231) | Outreach for greatest need                                   |
| 7.4(231) | Delivery of service  |
| 7.5(231) | Funding for services and program facilities                  |
| 7.6(231) | Compliance with health, safety and construction requirements |
| 7.7(231) | Term of use of an acquired or constructed facility           |

|           |  |
|-----------|--|
| 7.8(231)  | Restrictions   |
| 7.9(231)  | Information and assistance services                                  |
| 7.10(231) | Legal assistance requirements  |
| 7.11(231) | Disease prevention and health promotion under Title III-D of the Act |
| 7.12(231) | Nutrition services   |
| 7.13(231) | AOA NSIP programs  |
| 7.14(231) | Nutrition performance standards                                      |
| 7.15(231) | Food standards   |
| 7.16(231) | Food-borne illness   |
| 7.17(231) | Menus  |
| 7.18(231) | Special dietary needs  |
| 7.19(231) | Congregate nutrition services  |
| 7.20(231) | Eligibility for meals at congregate nutrition sites                  |
| 7.21(231) | Home-delivered meals   |
| 7.22(231) | Noncompliance  |
| 7.23(231) | Requirements for opening or closing congregate nutrition sites       |
| 7.24(231) | Evaluation of sites  |

#### CHAPTER 8

##### LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

|          |  |
|----------|--|
| 8.1(231) | Purpose                                    |
| 8.2(231) | Definitions                                |
| 8.3(231) | Interference                               |
| 8.4(231) | Monetary civil penalties—basis             |
| 8.5(231) | Monetary civil penalties—notice of penalty |
| 8.6(231) | Monetary civil penalties—appeals           |
| 8.7(231) | Volunteer long-term care ombudsman program |

#### CHAPTER 9

##### RESIDENT ADVOCATE COMMITTEES

|           |  |
|-----------|--|
| 9.1(231)  | Definitions  |
| 9.2(231)  | Resident advocate committees established                                     |
| 9.3(231)  | Application for committee membership   |
| 9.4(231)  | Appointment to resident advocate committees                                  |
| 9.5(231)  | Objection to and termination of appointments to resident advocate committees |
| 9.6(231)  | Request for reconsideration of appointment or termination of appointment     |
| 9.7(231)  | Resident advocate committee structure and procedures                         |
| 9.8(231)  | Duties of the committee  |
| 9.9(231)  | Committee access and assistance  |
| 9.10(231) | Confidentiality  |
| 9.11(231) | Committee response to complaints and grievances                              |
| 9.12(231) | Complaints referred from the department of inspections and appeals           |
| 9.13(231) | Accountability measures  |
| 9.14(231) | Reporting statistics   |
| 9.15(231) | Severability   |

#### CHAPTER 10

##### SENIOR INTERNSHIP PROGRAM (SIP)

|           |                         |
|-----------|-------------------------|
| 10.1(231) | Scope and purpose       |
| 10.2(231) | Definitions             |
| 10.3(231) | Eligibility for service |
| 10.4(231) | Funding                 |
| 10.5(231) | Program requirements    |

- 10.6(231) Selection process to determine SIP subproject sponsors
- 10.7(231) Monitoring and record keeping
- 10.8(231) Severability

#### CHAPTER 11

##### WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

- 11.1(17A,231,ExecOrd11) Definitions
- 11.2(17A,231,ExecOrd11) Scope of chapter
- 11.3(17A,231,ExecOrd11) Applicability of chapter
- 11.4(17A,231,ExecOrd11) Criteria for waiver or variance
- 11.5(17A,231,ExecOrd11) Filing of petition
- 11.6(17A,231,ExecOrd11) Content of petition
- 11.7(17A,231,ExecOrd11) Additional information
- 11.8(17A,231,ExecOrd11) Notice
- 11.9(17A,231,ExecOrd11) Hearing procedures
- 11.10(17A,231,ExecOrd11) Ruling
- 11.11(17A,22,231,ExecOrd11) Public availability
- 11.12(17A,22,231,ExecOrd11) Summary reports
- 11.13(17A,231,ExecOrd11) Cancellation of a waiver
- 11.14(17A,231,ExecOrd11) Violations
- 11.15(17A,231,ExecOrd11) Defense
- 11.16(17A,231,ExecOrd11) Judicial review
- 11.17(17A,231,ExecOrd11) Severability

#### CHAPTER 12

Reserved

#### CHAPTER 13

##### RULES AND PRACTICES IN CONTESTED CASES

- 13.1(17A) Scope and applicability
- 13.2(17A) Definitions
- 13.3(17A) Time requirements
- 13.4(17A) Requests for contested case proceeding
- 13.5(17A) Notice of hearing
- 13.6(17A) Presiding officer
- 13.7(17A) Waiver of procedures
- 13.8(17A) Telephone proceedings
- 13.9(17A) Disqualification
- 13.10(17A) Consolidation—severance
- 13.11(17A) Pleadings
- 13.12(17A) Service and filing of pleadings and other papers
- 13.13(17A) Discovery
- 13.14(17A) Subpoenas
- 13.15(17A) Motions
- 13.16(17A) Prehearing conference
- 13.17(17A) Continuances
- 13.18(17A) Withdrawals
- 13.19(17A) Intervention
- 13.20(17A) Hearing procedures
- 13.21(17A) Evidence
- 13.22(17A) Default
- 13.23(17A) Ex parte communication
- 13.24(17A) Recording costs

|            |                                    |
|------------|------------------------------------|
| 13.25(17A) | Interlocutory appeals              |
| 13.26(17A) | Final decision                     |
| 13.27(17A) | Appeals and review                 |
| 13.28(17A) | Applications for rehearing         |
| 13.29(17A) | Stays of department actions        |
| 13.30(17A) | No factual dispute contested cases |
| 13.31(17A) | Emergency adjudicative proceedings |
| 13.32(17A) | Informal settlement                |

#### CHAPTER 14

##### IOWA FAMILY CAREGIVER SUPPORT PROGRAM

|                 |   |
|-----------------|---|
| 14.1(231,249H)  | Purpose   |
| 14.2(231,249H)  | Definitions   |
| 14.3(231,249H)  | Eligibility for services                                  |
| 14.4(231,249H)  | Priorities for service                                    |
| 14.5(231,249H)  | Coordination  |
| 14.6(231,249H)  | Service categories  |
| 14.7(231,249H)  | Conflict of interest                                      |
| 14.8(231,249H)  | Confidentiality   |
| 14.9(231,249H)  | Quality standards   |
| 14.10(231,249H) | Reports   |
| 14.11(231,249H) | Failure to meet program requirements; waiver of standards |
| 14.12(231,249H) | Severability  |

#### CHAPTER 15

##### ELDER ABUSE PREVENTION INITIATIVE AND DEPENDENT ADULT ABUSE MANDATORY REPORTER TRAINING

|             |   |
|-------------|---|
| 15.1(231)   | Purpose   |
| 15.2(231)   | Definitions                                       |
| 15.3(231)   | Project administration                            |
| 15.4(231)   | Contractor responsibilities                       |
| 15.5(231)   | Funding restrictions                              |
| 15.6(231)   | Reallocation of funds                             |
| 15.7(231)   | Eligibility                                       |
| 15.8(231)   | Assessment intake                                 |
| 15.9(231)   | Release of information                            |
| 15.10(231)  | Assessment  |
| 15.11(231)  | Monitoring and reassessment                       |
| 15.12(231)  | Purchase of service                               |
| 15.13(231)  | Case records                                      |
| 15.14(231)  | Refusal of assistance                             |
| 15.15(231)  | Termination or limitation                         |
| 15.16(231)  | Confidentiality and disclosure                    |
| 15.17(231)  | Legal representatives                             |
| 15.18(231)  | Appeals   |
| 15.19(231)  | Conflict of interest                              |
| 15.20(235B) | Dependent adult abuse mandatory reporter training |
| 15.21(231)  | Severability                                      |

#### CHAPTER 16

Reserved

CHAPTER 17  
PETITION FOR RULE MAKING  
(Uniform Rules)

- 17.1(17A) Petition for rule making  
17.3(17A) Inquiries

CHAPTER 18  
DECLARATORY ORDERS

- 18.1(17A) Petition for declaratory order  
18.2(17A) Notice of petition  
18.3(17A) Intervention  
18.4(17A) Briefs  
18.5(17A) Inquiries  
18.6(17A) Service and filing of petitions and other papers  
18.7(17A) Consideration  
18.8(17A) Action on petition  
18.9(17A) Refusal to issue order  
18.10(17A) Contents of declaratory order—effective date  
18.11(17A) Copies of orders  
18.12(17A) Effect of a declaratory order

CHAPTER 19  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
(Uniform Rules)

- 19.1(17A,22) Definitions  
19.3(17A,22) Requests for access to records  
19.9(17A,22) Disclosures without consent of the subject  
19.10(17A,22) Routine use  
19.11(17A,22) Consensual disclosure of confidential records  
19.12(17A,22) Release to subject  
19.13(17A,22) Availability of records  
19.14(17A,22) Personally identifiable information  
19.15(17A,22) Other groups of records  
19.16(17A,22) Data processing systems  
19.17(17A,22) Applicability

CHAPTER 20  
Reserved

CHAPTER 21  
CASE MANAGEMENT PROGRAM FOR FRAIL ELDERLY

- 21.1(231) Authority  
21.2(231) Purpose  
21.3(231) Definitions  
21.4(231) Program administration  
21.5(231) Eligibility for CMPFE services  
21.6(231) Admission into the case management program  
21.7(231) Discharge from CMPFE  
21.8(231) Organizational requirements  
21.9(231) Personnel qualifications  
21.10(231) Covered services  
21.11(231) Assessment of consumer needs  
21.12(231) Service plan development  
21.13(231) Monitoring

|            |  |
|------------|--|
| 21.14(231) | Reassessment                             |
| 21.15(231) | Confidentiality                          |
| 21.16(231) | Contracting for case management services |
| 21.17(231) | Severability                             |

## CHAPTER 22

## OFFICE OF SUBSTITUTE DECISION MAKER

|                 |  |
|-----------------|--|
| 22.1(231E,633)  | Purpose  |
| 22.2(231E,633)  | Definitions  |
| 22.3(231E,633)  | Substitute decision maker qualifications   |
| 22.4(231E,633)  | Ethics and standards of practice   |
| 22.5(231E,633)  | Staffing ratio   |
| 22.6(231E,633)  | Conflict of interest—state office  |
| 22.7(231E,633)  | Consumers eligible for services  |
| 22.8(231E,633)  | Application and intake process—guardianship, conservatorship, representative payee and personal representative |
| 22.9(231E,633)  | Application and intake process—power of attorney   |
| 22.10(231E,633) | Case records   |
| 22.11(231E,633) | Confidentiality  |
| 22.12(231E,633) | Termination or limitation  |
| 22.13(231E,633) | Service fees   |
| 22.14(231E,633) | Fee schedule   |
| 22.15(231E,633) | Denial of services—appeal  |
| 22.16(231E,633) | Contesting the actions of a guardian or conservator  |
| 22.17(231E,633) | Contesting the actions of an attorney-in-fact  |
| 22.18(231E,633) | Severability   |

## CHAPTERS 23 to 27

Reserved

## CHAPTER 28

## IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED SERVICES FOR SENIORS

|                 |   |
|-----------------|---|
| 28.1(231,249H)  | Purpose   |
| 28.2(231,249H)  | Use of funds                                      |
| 28.3(231,249H)  | Definitions                                       |
| 28.4(231,249H)  | Disbursement of funds                             |
| 28.5(231,249H)  | Eligible use of funds                             |
| 28.6(231,249H)  | Client participation                              |
| 28.7(231,249H)  | Reallotment of unobligated funds                  |
| 28.8(231,249H)  | Prohibited use of senior living trust fund moneys |
| 28.9(231,249H)  | Disbursement of SLTF funds to AAA subcontractors  |
| 28.10(231,249H) | Reporting requirements                            |
| 28.11(231,249H) | Severability                                      |



## CHAPTER 10

## SENIOR INTERNSHIP PROGRAM (SIP)

[Prior to 5/20/87, see Aging, Commission on the [20] rules 8.67 to 8.70]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch10]

**17—10.1(231) Scope and purpose.** The senior internship program (SIP) fosters individual economic self-sufficiency, promotes useful opportunities in community service activities for unemployed and low-income persons who are aged 55 or older, and increases the number of persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors. SIP is a grantee of the Community Service Employment Program, also known as Title V of the Older Americans Act. [ARC 9841B, IAB 11/2/11, effective 12/7/11]

**17—10.2(231) Definitions.** Words and phrases used in this chapter shall be as defined in 17—Chapter 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter.

*“Assessment of job skills”* means a process by which the senior internship program coordinator develops a written history of the work experience and related qualities that an individual possesses that would make the individual marketable as an employee.

*“Authorized position”* means an enrollment opportunity with the Community Service Employment Program, or Title V, allocated by the department during a program year.

*“Community service assignment”* means part-time, temporary training paid with grant funds in projects at host agencies through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment.

*“Equitable distribution”* means the ratio of the total Title V authorized positions operated by the department and national sponsors compared to the number of authorized positions established on the basis of the eligible population.

*“Host agency”* means a public agency, private nonprofit organization, or private sector employer, other than a political party, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, which provides a training site and supervision for a participant.

*“Individual employment plan”* or *“IEP”* means the plan developed in partnership with a participant to reflect the participant’s needs as indicated by the assessment, as well as the expressed interests and desires of the participant.

*“Low income”* means any person or persons whose actual individual or family income is not more than 125 percent of the poverty guidelines issued annually by the Department of Health and Human Services (DHHS) in accordance with Section 507(2) of the Older Americans Act.

*“National sponsor”* means Experience Works, AARP, Senior Services of America, Inc., or any other national organization which is allocated positions by the U.S. Department of Labor.

*“One-stop delivery system”* means a workforce system connecting employment, education, and training services into a coherent network of resources at the local, state, and national levels.

*“Participant”* means an individual who is determined to be eligible for the SCSEP, is given a community service assignment, or is receiving any services funded by the program.

*“Physical examination”* means a medical examination performed by a physician or a medical professional under the supervision of a physician to determine if a participant is capable of fulfilling the duties of a training assignment.

*“Physical examination waiver”* means a signed statement by a participant or an applicant which verifies that the participant or applicant was offered the opportunity to take a physical examination but refused.

*“Quarterly progress report”* means the report on participant activity and characteristics submitted to the U.S. Department of Labor from information gathered from the subproject sponsors at the end of every three-month period during the fiscal year.

*“Senior Community Services Employment Program”* or *“SCSEP”* means the U.S. Department of Labor’s commonly referred to name for the Title V program.

*“Senior internship program”* or *“SIP”* means the program established under Iowa Code section 231.52.

“*Senior internship program coordinator*” means a person employed by the subproject sponsor whose responsibility is to develop jobs, advocate for the employment of eligible individuals, and provide employment services for eligible individuals, including Title V participants.

“*Subproject sponsor*” means a public or private nonprofit organization that provides program services on behalf of the grantee. Subproject sponsors are required to follow all applicable laws, rules, regulations and policy advisories.

“*Supportive services*” means services to enable a participant to successfully participate in the community services employment program which may include the payment of reasonable cost of transportation, health and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services.

“*Termination*” means a separation from the program.

“*Title V*” means that portion of the federal Older Americans Act with that designation.

“*Training site*” means the actual location where participants perform their duties.

“*Unsubsidized employment*” means a position where wages, fringe benefits and other expenses for a terminated participant are not paid with SIP funds.

“*Workforce Investment Act of 1998*” means the law providing the framework for a national workforce preparation and employment system designed to meet both the needs of the nation’s businesses and the needs of job seekers and those who want to further their careers.

[ARC 9841B, IAB 11/2/11, effective 12/7/11]

#### **17—10.3(231) Eligibility for service.**

**10.3(1)** To be eligible for the SIP Title V subsidized employment program, participants shall meet the following criteria:

- a. Be aged 55 or older;
- b. Be unemployed; and
- c. Meet income guidelines established annually by the U.S. Department of Health and Human Services (DHHS) relating to Title V eligibility.

**10.3(2)** Priority eligibility. A person who is eligible for Title V and who has priority status as defined in the Older Americans Act, Section 518, will be given first consideration for a Title V position.

[ARC 9841B, IAB 11/2/11, effective 12/7/11]

#### **17—10.4(231) Funding.**

**10.4(1)** SIP shall be funded by:

- a. Title V of the Older Americans Act;
- b. SIP state appropriations; and
- c. Other nonfederal sources.

**10.4(2)** Title V funds and state funds shall be allotted among the SIP subproject sponsors according to the number of Title V slots designated for contracted projects.

**10.4(3)** If two or more subproject sponsors combine resources, the subproject sponsors shall be treated as one agency for funding purposes.

**10.4(4)** SIP state funds shall not be carried over.

**10.4(5)** Federal Title V funds and SIP state appropriations shall be allocated through a contractual agreement between the department and the subproject sponsor.

[ARC 9841B, IAB 11/2/11, effective 12/7/11]

#### **17—10.5(231) Program requirements.**

**10.5(1)** *Participating agencies.* Public, private and not-for-profit organizations are eligible to respond to a request for proposal (RFP). Agencies will be selected to operate SIP through the request for proposal process, and the selected agencies will become subproject sponsors.

**10.5(2)** *Subproject sponsor responsibilities.* Subproject sponsor responsibilities for SIP shall include the following:

- a. Implementation of recruitment methods that ensure that the maximum number of eligible individuals have access to and participate in employment opportunities and the Title V program;
- b. Designation of a member of the sponsor's staff as a senior internship program coordinator to ensure program performance;
- c. Establish procedures and rules in accordance with Title V of the Older Americans Act;
- d. List all vacant positions with the local workforce development center;
- e. Enroll individuals in the Title V program according to the priorities established by the U.S. Department of Labor;
- f. Ensure that recruitment and outreach efforts are targeted toward minority, limited-English-speaking eligible individuals and individuals with the greatest economic need;
- g. Meet the performance measures established in the request for proposal;
- h. Develop job opportunities for job-ready participants by the following methods:
  - (1) Coordinate with the local workforce development center in registering and placing older workers;
  - (2) Contact and educate private employers concerning the resources older workers bring to the labor force and assist the employer in developing job sharing, job restructuring and other techniques to increase opportunities for older workers;
  - (3) Encourage host agencies to employ the participant in their regular workforce; and
  - (4) Coordinate with other local employment and training programs in identifying jobs or training opportunities for participants;
- i. Follow up with each participant according to the U.S. Department of Labor's Data Collection Handbook and effectuate reenrollment for those participants found to be unemployed;
- j. Assist participants in accessing approved training sessions;
- k. Provide participants and host agencies with orientation to program purposes, goals and requirements;
- l. Provide access to supportive services to the participant during participation in the SIP and in the first 12 months of unsubsidized employment;
- m. Provide written training assignment descriptions to participants before the participants' assignment to a host agency;
- n. Provide each participant with a copy of the host agency grievance procedures, the subproject sponsor's grievance procedures, and the SIP's grievance procedures as outlined in this chapter;
- o. Complete an individual employment plan (IEP) for each participant based on an assessment conducted by the subproject sponsor and update both documents with the participant no less than twice in a 12-month period for use as an ongoing employment plan;
- p. Maintain the authorized enrollment level;
- q. Perform monitoring and safety evaluations of each host agency at least annually;
- r. Coordinate and cooperate with national sponsors in the establishment of authorized positions in each county in accordance with equitable distribution requirements as appropriate;
- s. Maintain records and reports required by the U.S. Department of Labor and the department;
- t. Comply with maintenance of effort (MOE) requirements; and
- u. Follow U.S. Department of Labor policy on match and program income.

**10.5(3) Failure to meet RFP performance measures.** A subproject sponsor who fails to meet the performance standards outlined in the RFP shall be subject to the following:

- a. The first year a subproject sponsor fails to meet required performance measures, technical assistance will be provided and a corrective action plan will be required.
- b. After the second consecutive year of failure to meet required performance measures, the funds and Title V positions will be reallocated.

**10.5(4) Program coordination with one-stop delivery system.**

- a. Subproject sponsors shall coordinate the SIP with the one-stop delivery system as established under Section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)) to ensure opportunities for unsubsidized employment.

b. Subproject sponsors shall enter into a memorandum of understanding with the local workforce investment board in accordance with Section 121(c) of the Workforce Investment Act of 1998.

c. Subproject sponsors shall provide a copy of the current memorandum of understanding to the department upon request.

**10.5(5) Department responsibilities.** The department shall:

- a. Issue a request for proposal for application for SIP funds;
- b. Monitor subproject sponsors at least annually as required in this chapter;
- c. Provide training and technical assistance to subproject sponsors;
- d. Provide training workshops for SIP coordinators and other subproject sponsor employment staff, subject to availability of funding;
- e. Coordinate the allocation of authorized positions with national sponsors according to equitable distribution requirements;
- f. Report to the U.S. Department of Labor annually on the status of equitable distribution efforts;
- g. When required by the U.S. Department of Labor, submit to the governor a state senior employment services coordination plan consistent with the provisions of the Older Americans Act, Title V;
- h. Report to the U.S. Department of Labor as required by Title V of the Older Americans Act;
- i. Coordinate the SIP with the department of workforce development, the department of education, the economic development authority, and other agencies which provide employment services to older Iowans; and
- j. Maintain records as required by 17—subrule 5.13(1).

**10.5(6) Grievance procedures.** The department shall resolve grievances of applicants, participants, subproject sponsors and host agencies by following these procedures:

- a. Any adverse action taken against a participant shall be issued to the participant in writing, stating the reasons for the determination, the participant's right to appeal, and the procedures to follow in the appeal process.
- b. Subproject sponsors shall develop complaint procedures and an appeal process to resolve any issue arising between the sponsor and a participant or applicant. Procedures shall provide the following as a minimum:
  - (1) An opportunity for an informal conference and immediate resolution at the lowest level possible;
  - (2) Formal procedures for filing the complaint in writing for review by the subproject sponsor or the designee of the subproject sponsor; and
  - (3) The right of the participant to appeal the subproject sponsor's final decision in writing to the department within 15 days of the date of the decision.
- c. All lower-level appeals provided by the subproject sponsor must be exhausted before appealing to the department.
- d. The department shall determine whether the complaint is of a nature to initiate an informal review or a contested case proceeding as set forth in rule 17—2.9(231) and 17—Chapter 13.
- e. Complaints may be appealed to the U.S. Department of Labor or the Office of Civil Rights at the U.S. Department of Labor according to the rules and policy established by the U.S. Department of Labor and procedures provided in 20 CFR Part 641.910.

[ARC 9841B, IAB 11/2/11, effective 12/7/11]

#### **17—10.6(231) Selection process to determine SIP subproject sponsors.**

**10.6(1) Request for proposal.** SIP funding shall be allocated through a request for proposal (RFP) process as mandated by the Iowa department of administrative services. The subproject sponsor shall be a public, private or nonprofit organization with proven management or administrative capabilities to provide employment and training services to older workers.

**10.6(2) Contract award.**

a. Contracts will be awarded following the request for proposal competition and may be renewed for a one-year budget period on a noncompetitive basis. Awards will be subject to availability of funds,

satisfactory progress of the project, and a determination that continued funding is in the best interest of the department and the project.

*b.* At the department's discretion, approved positions and funds may be reallocated from one subproject sponsor to another during the program year to further achieve the required performance levels.

**10.6(3) Appeal of decision.** An adversely affected party may appeal the proposed contract award. The appeal shall be filed within 30 calendar days of receipt of notice of nonaward. The letter of appeal shall be in writing and shall be delivered to the Director, Iowa Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

[ARC 9841B, IAB 11/2/11, effective 12/7/11]

**17—10.7(231) Monitoring and record keeping.**

**10.7(1) Subproject sponsor duties.** The subproject sponsor shall:

*a.* Submit performance, fiscal and program reports to the department in accordance with procedures established by the department;

*b.* Maintain files on each Title V participant containing the following: Immigration and Naturalization Service I-9 (Proof of Citizenship), application, enrollment form, recertifications (if applicable), skills assessments, training record, terms of employment agreement, waiver of physical examination, individual employment plan (IEP), job description, performance evaluations, disciplinary actions, payroll records, and termination forms (if applicable); and

*c.* Maintain documentation for each host agency, which shall include:

(1) The host agency or training site agreement containing relevant program requirements;

(2) The 501(c)(3) documentation from the Internal Revenue Service, if the host agency is not an agency of government;

(3) Evidence that the host agency or training site participant supervisor has received orientation; and

(4) Host agency or training site annual monitoring and safety evaluation reports.

**10.7(2) Department duties.** The department shall:

*a.* Conduct annual evaluations of the SIP through desk or on-site monitoring;

*b.* Inform the subproject sponsor, in writing, of findings and recommended corrective actions. Assessment reports and responses shall be kept on file at the department and shall be open to inspection by authorized state and federal officials;

*c.* Maintain files on Title V participants that include applications, eligibility recertifications, physical examination waivers, and termination forms (if applicable); and

*d.* Maintain financial records as required by statute, regulation, administrative rule, or technical bulletin.

[ARC 9841B, IAB 11/2/11, effective 12/7/11]

**17—10.8(231) Severability.** Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 9841B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 231.52.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

[Filed 5/1/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]<sup>1</sup>

[Filed 10/25/91, Notice 7/10/91—published 11/13/91, effective 12/18/91]

[Filed emergency 2/15/02 after Notice 1/9/02—published 3/6/02, effective 2/15/02]

[Filed 2/21/06, Notice 11/23/05—published 3/15/06, effective 5/1/06]

[Filed 12/28/07, Notice 9/12/07—published 1/30/08, effective 3/5/08]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

[Filed ARC 9841B (Notice ARC 9733B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

<sup>1</sup> Effective date of Chapter 10 delayed 70 days by the Administrative Rules Review Committee.



CHAPTER 1  
ADMINISTRATION

[Prior to 2/24/88, see Agriculture Department, 30—Chapter 1]

**21—1.1(159) Organization.**

**1.1(1)** “*Department*” means the department of agriculture and land stewardship.

**1.1(2)** “*Secretary*” means the secretary of agriculture who is the head of the department.

**1.1(3)** The deputy secretary of agriculture advises the secretary and has the statutory authority to perform any of the duties required or authorized of the secretary in the secretary’s absence or through explicit directions or tacit consent.

**1.1(4)** The department is organized into four branches known as the consumer protection and industry services division, the administration division, the soil conservation division, and the food safety and animal health division. The deputy secretary of agriculture heads the administration division, and division directors head the consumer protection and industry services division, the soil conservation division, and the food safety and animal health division. The directors assist the secretary in the implementation of the secretary’s policies within the various bureaus, laboratories, and units assigned to that division. The directors shall also assist the secretary in supervising the work of the various bureaus and units assigned to that division, provide the expertise of their division to other divisions where appropriate, and perform other duties as assigned by the secretary.

**1.1(5)** Rescinded IAB 2/25/09, effective 2/5/09.

**1.1(6)** The grain indemnity fund board is an autonomous agency of which the secretary is president. The board operates in conjunction with the grain warehouse bureau of the department, determining and providing for payment of claims which arise as a result of the failure of a grain dealer or warehouse operator and administering the Iowa grain depositors and sellers indemnity fund. The rules for the board’s organization and operations and its procedures for resolving claims appear in 21—Chapters 63 and 64, Iowa Administrative Code.

**1.1(7)** The Iowa board of veterinary medicine is an autonomous agency functioning within the department to provide for the licensing and disciplining of veterinarians and veterinary assistants. The powers of the Iowa board of veterinary medicine are vested in the board pursuant to Iowa Code chapter 169, and its rules appear at 811—Chapter 1, et seq., Iowa Administrative Code. The secretary appoints the state veterinarian who, pursuant to Iowa Code section 169.5, serves as secretary to the board.

[ARC 7587B, IAB 2/25/09, effective 2/5/09; ARC 8240B, IAB 10/21/09, effective 9/30/09]

**21—1.2(159) Consumer protection and industry services division.** In addition to the duties outlined in subrule 1.1(4), the director of the consumer protection and industry services division advises the secretary of activities and any impending or potential problems that have come to the attention of the division’s personnel. The bureaus and laboratories under the supervision of the consumer protection and industry services division are as follows:

**1.2(1)** *Grain warehouse bureau.* This bureau licenses, inspects and examines grain dealers and grain warehouse facilities and reviews financial statements of licensees to ensure compliance with requirements, including payment of fees into the grain indemnity fund. The bureau also reviews claims made against the fund and makes recommendations on those claims to the grain indemnity fund board, upon which the board takes action. This bureau includes the following unit:

*a. Audit.* This unit analyzes reports filed by feed and fertilizer companies for fees paid into the general fund of the state. The unit also makes audits to check for compliance with check-off law for the commodity promotion boards.

*b. Reserved.*

**1.2(2)** *Weights and measures bureau.* This bureau inspects and licenses for commercial use all weights and measures or weighing and measuring devices; conducts petroleum products sampling and testing, tests and certifies antifreeze, and conducts random package and labeling inspections of products offered for sale; registers and licenses all service agencies and persons who service or repair commercial weighing and measuring devices; approves or rejects all blueprints on new scale installations; and approves or rejects bonds for scale installation. The bureau maintains the state metrology laboratory

and, following the rules and regulations of the National Institute of Standards and Technology and using the weights and measures standards that are traceable to the National Institute of Standards and Technology, adjusts, certifies, and seals weights and measures used by state inspectors, commercial repairers and private industry. The bureau deals with renewable fuels and coproducts by facilitating increased production and consumption of products made from Iowa's agricultural commodities and by encouraging production and use of renewable fuels and coproducts.

**1.2(3) *Entomology and seed laboratory.*** This laboratory licenses establishments selling or distributing seeds that are sold for agricultural purposes; controls the movement of serious insect pests and plant diseases, including those under federal quarantine; and inspects nursery stock growers and dealers.

**1.2(4) *Agricultural diversification and market development bureau.*** This bureau processes applications for organic certification and works closely with the Iowa organic advisory council to ensure approval of those applications that meet state and federal regulations. This bureau provides marketing opportunities for diversified agricultural products throughout the state. This bureau includes the following units:

*a. Agricultural marketing.* This unit works with the various boards of Iowa agricultural organizations to assist and support their respective marketing efforts. The unit also seeks new opportunities to assist Iowa's private firms to find markets for their products. The unit provides Iowa livestock and grain producers with essential market information on a timely basis through the market news reporting service, a joint effort with the United States Department of Agriculture. Additionally, the unit assists the renewable fuel infrastructure board, provides for the administration of the renewable fuel infrastructure programs, and provides for the management of the renewable fuel infrastructure fund.

*b. Horticulture.* This unit lends direction, continuity, leadership, and administrative services and guidance to the Iowa horticulture industry. The unit identifies and helps determine the market potential for horticultural crops such as ornamental plants, fruits and vegetables, Christmas trees, herbs, mushrooms, grapes, nuts, and turf products. The horticulture unit monitors the conditions of the industry and identifies, collects, and distributes pertinent information concerning horticulture and related interests. The unit acts as a resource for horticultural producers and provides referrals for assistance in marketing, production, financial aid, disaster programs, and regulatory issues. The horticulture unit acts as a liaison between industry organizations, other state and federal agencies, universities, noncommercial horticultural groups, and the agricultural community.

*c. Farmers' markets.* This unit assists in the organization and improvement of farmers' markets throughout the state. The unit collects and distributes information pertinent to the markets and provides market managers assistance in vendor recruitment, market promotion, and regulatory issues.

*d. Farmers' market nutrition programs.* This unit administers programs designed to provide a supplemental source of fresh, locally grown fruits and vegetables for women, infants, and children, seniors, and other clients and to increase the production, distribution, and consumption of locally grown fruits and vegetables.

**1.2(5) *Horse and dog bureau.*** This bureau promotes the Iowa horse and dog breeding industry by registering qualified Iowa-foaled horses and Iowa-whelped dogs and working in cooperation with the racing industry. The bureau administers the payment of breeder awards to the breeders of qualified winning horses and dogs.

[ARC 7587B, IAB 2/25/09, effective 2/5/09; ARC 8240B, IAB 10/21/09, effective 9/30/09; ARC 9220B, IAB 11/17/10, effective 10/20/10; ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

**21—1.3(159) Administration division.** In addition to the duties outlined in subrule 1.1(4), the director of the administration division, who is the deputy secretary of agriculture, assists the secretary in the preparation and presentation of the department's budget to the governor and the general assembly. The division provides personnel services and works with the secretary and other divisions in the selection, hiring, and most phases of employment record keeping and processing relative to pay, benefits, and employee status changes in relation to the department. The director shall serve as a liaison between the

department and the department of management, the department of administrative services, and the state auditor. The bureaus and units under the supervision of the division are as follows:

**1.3(1) *Accounting bureau.*** The accounting bureau handles all accounting functions for the department, manages grants, formulates budget recommendations, performs various other business functions including the paying of bills and vouchers, and maintains adequate inventory of laboratory supplies.

**1.3(2) *Agricultural diversification and market development bureau.*** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(3) *Agricultural marketing bureau.*** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(4) *Agricultural statistics bureau.*** This bureau collects, prepares and publishes annual state farm census and other periodic research data, such as production figures, utilization of feed grains, grain stocks on hand, price variance, and marketing data on crops and livestock.

**1.3(5) *Audit bureau.*** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(6) *Climatology bureau.*** This bureau collects data and keeps records on rainfall, snowfall, snowmelt, frost and sun days, and prepares various reports including publishing maps showing data by region.

**1.3(7) *Horse and dog bureau.*** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(8) *Horticulture and farmers market bureau.*** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(9) *Information.*** This unit is staffed by information specialists who prepare informational material for the public benefit under the direction of the secretary. The information specialists prepare information for use through the media including newspapers, radio, television, and magazines. Information specialists are also responsible for drafting brochures and cooperating with other state agencies in disseminating agricultural information and education.

**1.3(10) *Renewable fuels and coproducts.*** Rescinded IAB 2/25/09, effective 2/5/09.  
[ARC 7587B, IAB 2/25/09, effective 2/5/09]

**21—1.4(159) *Soil conservation division.*** In addition to the duties outlined in subrule 1.1(4), the director of the soil conservation division advises the secretary on soil and water conservation matters and works with the state soil conservation committee in the adoption of rules relating to soil conservation, water resources, and mining. The division performs duties as designated in the Code of Iowa. The bureaus of the soil conservation division are as follows:

**1.4(1) *Field services bureau.*** This bureau works with elected soil and water conservation district commissioners and division of soil conservation personnel assigned to soil and water conservation districts. The bureau also coordinates water quality and watershed protection projects awarded to soil and water conservation districts.

**1.4(2) *Financial incentives bureau.*** This bureau works to control erosion on all agricultural land and administers incentive programs for the establishment of land treatment measures. The bureau also provides assistance and guidance to soil and water conservation districts.

**1.4(3) *Mining bureau.*** This bureau provides for the reclamation and conservation of land affected by surface mining. The bureau carries out coal regulatory and abandoned mine land programs and also regulates limestone and gypsum quarries, sand and gravel pits, and other mineral extraction operations.

**1.4(4) *Water resources bureau.*** This bureau coordinates water resources programs, including agricultural drainage well closures, watershed project development, and the conservation reserve enhancement program. The bureau also provides technical support on wetland issues, nutrient management, and other division programs.

**21—1.5(159) *Food safety and animal health.*** In addition to the duties outlined in subrule 1.1(4), the director of the food safety and animal health division advises the secretary of activities and any impending or potential problems that have come to the attention of the division's personnel. The bureaus and laboratories under the supervision of the food safety and animal health division are as follows:

**1.5(1) *Animal industry bureau.*** This bureau is under the direction of the state veterinarian and consists of the following units:

*a. Animal health.* This unit conducts brucellosis, pseudorabies, and tuberculosis control and eradication programs; issues quarantines and approves premises for receiving animals of unknown health status for feeding or isolation while under quarantine; monitors and investigates reports of foreign animal diseases; inspects and licenses cattle dealers, pig dealers, auction markets, hatcheries, and rendering plants; registers cattle brands; provides administrative support, supplies and facilities for the board of veterinary medicine; maintains the capability to react to emergency situations; and maintains liaisons with livestock producer groups.

*b. Animal welfare.* This unit licenses and regulates facilities that engage in commercial activities relating to animals in the pet industry including, but not limited to, pet stores, dog and cat breeders and dealers, animal shelters and pounds, and kennels.

**1.5(2) Commercial feed and fertilizer bureau.** This bureau licenses feed mills and commercial feed manufacturing facilities; registers feed and stock tonic products; collects commercial feed tonnage fees; inspects medicated feed in accordance with Food and Drug Administration (FDA) rules and regulations; licenses and registers fertilizer plants and products; collects, compiles, and distributes data on plant food consumption; collects commercial fertilizer tonnage fees and groundwater protection fees; approves, inspects and regulates all anhydrous ammonia installations; and licenses, samples, evaluates and certifies all limestone quarries.

**1.5(3) Dairy products control bureau.** This bureau conducts a statewide program of dairy products control and regulates all phases of production, processing, and manufacturing of Grade A and Grade B dairy foods (manufacturing milk), dairy food, milk and dairy products, and other by-products. The dairy program is a part of a national regulatory scheme which provides for the interstate shipment of raw milk, pasteurized milk, and dairy products.

**1.5(4) Meat and poultry inspection bureau.** This bureau enforces and administers Iowa Code chapter 189A, the meat and poultry inspection Act. It is a cooperative program with the United States Department of Agriculture. The program must maintain an “equal to” status with the federal Wholesome Meat and Poultry Products Inspection Acts. This bureau conducts inspections of facilities, animals, products, and labeling and exercises processing controls and reinspection of meat and poultry products for intrastate commerce.

**1.5(5) Pesticide bureau.** This bureau registers pesticide products, licenses and certifies pesticide applicators, establishes programs for best management practices of agricultural chemicals, monitors consumer products for pesticide residues, implements pesticide enforcement and certification programs of the Environmental Protection Agency, and cooperates with the department of natural resources and other agencies.

**1.5(6) Feed, fertilizer, vitamin and drug laboratory.** This laboratory analyzes feed and fertilizer samples to ensure that they comply with the guaranteed analysis. The laboratory analyzes medicated feed samples to ensure that they are manufactured and used in accordance with Food and Drug Administration (FDA) regulations. The laboratory also analyzes milk products for added vitamins A and D<sub>3</sub>.

**1.5(7) Food, meat, poultry and dairy laboratory.** This laboratory analyzes samples to detect bacterial contamination and determine the composition of the product and substances added to determine wholesomeness and safety; certifies private dairy laboratories in the state; and tests public and private water supplies for bacteria and nitrate content.

**1.5(8) Pesticide residue and formulation laboratory.** This laboratory analyzes samples collected from pesticide retail establishments, from pesticide manufacturers to determine if pesticides have been used and produced properly, and during use/misuse investigations.

[ARC 8240B, IAB 10/21/09, effective 9/30/09]

These rules are intended to implement Iowa Code sections 17A.3 and 17A.4 and Iowa Code chapter 159.

[Filed 12/8/75, Notice 11/3/75—published 12/29/75, effective 2/2/76]

[Filed 3/30/77, Notice 2/23/77—published 4/20/77, effective 5/26/77]

[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]

[Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]

[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]

[Filed 12/24/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]

[Filed 5/5/02, Notice 2/6/02—published 5/29/02, effective 7/3/02]

[Filed Emergency ARC 7587B, IAB 2/25/09, effective 2/5/09]

[Filed Emergency ARC 8240B, IAB 10/21/09, effective 9/30/09]

[Filed Emergency ARC 9220B, IAB 11/17/10, effective 10/20/10]

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]



CHAPTER 13  
RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

**21—13.1(84GA,SF531) Definitions.** As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15G.201 as amended by 2011 Iowa Acts, Senate File 531, shall apply to this chapter and to 21—Chapters 14, 15, and 16. The following definitions shall also apply:

“*Agreement*” means the cost-share agreement executed by the department after approval of the grant by the board.

“*Applicant*” means a person, as defined in this rule, who owns or operates a site.

“*Biodiesel*,” for the purpose of this rule, must be at least B99.

“*Biodiesel blended fuel*,” as defined in Iowa Code section 214A.1, means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 1 percent at a retail site.

“*Biofuel*” means ethanol or biodiesel as defined in Iowa Code section 214A.1.

“*Blender pump*,” for the purpose of these rules, means blending biofuel. When blending ethanol, the pump must dispense E-85 gasoline at all times.

“*Board*” means the renewable fuel infrastructure board established by Iowa Code section 15G.202 as amended by 2011 Iowa Acts, Senate File 531.

“*Checklist*” or “*IDNR checklist*” means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

“*Grant*” or “*cost-share grant*” means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code chapter 15G to help pay for a project.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Project*” means the installation of equipment for motor fuel storage, dispensing and distribution of E-85 gasoline, biodiesel or biodiesel blend.

“*Rack*” means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

“*Renewable fuel*,” as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2.

“*Retail*” means offered for sale to the public for final consumption.

“*Retail motor fuel site*” means a site at which motor fuel is offered for sale to the public for final consumption. A retail motor fuel site may include a tank vehicle or transport.

“*Tank vehicle*” means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

**21—13.2(84GA,SF531) Renewable fuel infrastructure board.**

**13.2(1) Duties.** The board shall make awards for renewable fuel infrastructure programs and perform other functions as necessary.

**13.2(2) Board structure.** The board shall consist of 11 voting members appointed for five-year terms by the governor. The board shall annually elect a chairperson, on a rotating basis, from among its members. Six voting members shall constitute a quorum. An affirmative vote of a majority of

voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

**13.2(3) Staff.** Staff assistance shall be provided through the department. The department will market the renewable fuel infrastructure program throughout the state.

**13.2(4) Meetings.** Board meetings will generally be held by telephone or at the department's offices. All meetings shall comply with Iowa Code chapter 21.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 15G.202 and 2011 Iowa Acts, Senate File 531.

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]

CHAPTER 14  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
RETAIL MOTOR FUEL SITES

**21—14.1(84GA,SF531) Purpose.** The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail fuel site.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

**21—14.2(84GA,SF531) Eligible applicants.** To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

**14.2(1)** Be an owner or operator of a retail motor fuel site.

**14.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**14.2(3)** Meet the following eligibility requirements established by the board:

*a.* The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

*b.* The fuel storage tank may be on a tank vehicle or transport if regularly parked overnight in Iowa.

*c.* The storage tank must, however, be used exclusively for retail delivery to the final consumer.

*d.* If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of E-85 gasoline, biodiesel or biodiesel blended fuel at retail. The compartment used exclusively for the storage of E-85 gasoline, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

*e.* The tank and ancillary equipment must be approved for E-85 gasoline, biodiesel or biodiesel blended fuel use by either the Iowa department of natural resources or the state fire marshal, as evidenced by the most recent IDNR checklist.

*f.* The dispenser must be described by type and model in a written statement by the manufacturer of the dispenser. The manufacturer's written statement must be signed by a responsible official on behalf of the manufacturer and must be provided either to the applicant or to the Iowa department of natural resources or the state fire marshal. If provided to the applicant, the statement must be kept on file on the premises of the applicant for the five-year term of the agreement. The written statement must state that:

(1) The dispenser is, in the opinion of the manufacturer, not incompatible with E-85 gasoline; and

(2) The manufacturer has initiated the process of applying to an independent testing laboratory for listing of the equipment used in dispensing E-85 gasoline.

*g.* Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the state fire marshal to be eligible for the E-85 grant.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 15G.203 and 2011 Iowa Acts, Senate File 531.

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]



CHAPTER 15  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
BIODIESEL TERMINAL GRANTS

**21—15.1(84GA,SF531) Purpose.** The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

**21—15.2(84GA,SF531) Eligible applicants.** To be eligible to receive a biodiesel terminal grant, an applicant shall:

**15.2(1)** Be an owner or operator of a biodiesel terminal.

**15.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**15.2(3)** Meet the following eligibility requirements established by the board:

- a. The terminal must not be a retail motor fuel site.
- b. The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.
- c. The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.
- d. The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 15G.204 and 2011 Iowa Acts, Senate File 531.

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]



CHAPTER 16  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

**21—16.1(84GA,SF531) Allocation of awards by congressional district.** The board shall use the boundaries of the state's congressional districts and shall prorate and equally distribute the amount available each fiscal year for each district. The board shall have at its discretion a prorated amount (up to \$500,000) to distribute to any congressional district. On April 1 of each year, if funds allocated to a district have not been committed, the unobligated balance shall revert to the reserve fund and be available for other projects approved by the board.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

**21—16.2(84GA,SF531) Form of award available; award amount.**

**16.2(1) Form of award.** Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

**16.2(2) Prospective grants for projects not yet commenced.** A grant may be awarded for an eligible project not yet commenced.

**16.2(3) Amount of award.**

*a. Retail award site.*

(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(2) Five-year cost-share agreement for a retail site. The maximum award amount is 70 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.

1. Supplemental award for Underwriters Laboratories upgrade. The purpose of an award for Underwriters Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation projects. The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or \$30,000, whichever is less. The dispenser can be listed by an independent certified testing laboratory or Underwriters Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher.

2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. To be eligible, the initial grant award must be awarded to the person on or after May 12, 2008. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

*b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.*

(1) Biodiesel fuel B2 through B98.

1. Duration. The duration of the cost-share agreement shall be five years.

2. Maximum award. The maximum award amount is 50 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(2) Biodiesel fuel B99/B100 for year-round distribution.

1. Duration. The duration of a cost-share agreement is five years.

2. Maximum award amount. The maximum award amount is 50 percent of the actual cost of making the improvements or \$100,000, whichever is less.

3. Application acceptance begins January 1, 2009. Grant applications for B99/B100 projects will be accepted beginning January 1, 2009.

4. Lifetime cap amount. The maximum or lifetime cap for B99/B100 biodiesel terminal grants is \$800,000 per person.

*c. Tank vehicle.*

(1) December 31, 2008, deadline. A tank vehicle application must be postmarked no later than December 31, 2008, to be eligible.

(2) Duration. The duration of the cost-share agreement is three years. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend. If a person received an award for a tank vehicle(s) prior to May 12, 2008, that person is eligible to apply for an additional tank vehicle.

**16.2(4) *Time of payment.*** The grant shall be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

*a.* The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

*b.* The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

*c.* The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

**16.2(5) *Deadline for completion.*** The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

**16.2(6) *Multiple awards for multiple fuel types.***

*a. At a single fuel site.* A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

*b. At multiple fuel sites.* A person may receive multiple grants as described in paragraph 16.2(6) "a" for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the board will make awards fairly and properly among applicants and geographic areas.

**16.2(7) *Exhaustion of funds.*** In the event funding is exhausted at the end of the fiscal year or June 30, 2012, the board shall approve remaining applications based on criteria implemented by the board.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

**21—16.3(84GA,SF531) Application process.**

**16.3(1) *Application procedures.***

*a.* Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

*b.* Applications shall be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Agriculture and Land Stewardship, 502 East Ninth Street, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

**16.3(2) *Contents of application.***

*a.* Statutory requirements. An application shall include the information required in Iowa Code section 15G.203.

*b.* Other information required by the board:

(1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.

(2) Assurance that all equipment funded by the grant is designed and will be used exclusively to store or dispense E-85 gasoline, biodiesel or biodiesel blended fuel, respectively, for the period specified in the agreement.

(3) An IDNR checklist indicating the current status of the site.

- (4) Assurance of compliance with any and all federal requirements for financial responsibility.
  - (5) Assurance of compliance with any and all state and federal laws and regulations.
  - (6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).
  - (7) Documentation of initiation of the process of applying to an independent laboratory and the manufacturer's written statement that the dispenser is "not incompatible."
- [ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

#### **21—16.4(84GA,SF531) Review process.**

**16.4(1)** The underground storage tank fund board has chosen not to review the applications. The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

**16.4(2)** Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. If the amount of funding requests exceeds available funds, the board shall evaluate applications based upon criteria that include, but are not limited to, the following:

- a. Submittal of a completed application, including supporting documentation.
- b. Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.
- c. Projected annual sales volume.
- d. Other sources of funding.
- e. Previous grants awarded.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

#### **21—16.5(84GA,SF531) Contract administration.**

**16.5(1)** *Notice of award.* The department shall notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

**16.5(2)** *Contract required.* The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement shall:

- a. Describe the project in sufficient detail to demonstrate the eligibility of the project.
- b. State the total cost of the project expressed in a project budget that contains sufficient detail to meet the requirements of the infrastructure board.
- c. State the project completion deadline.
- d. State the project completion requirements which are preconditions for payment of the grant by the board.
- e. Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.

(1) Awards for projects under construction or not yet started. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

**16.5(3)** *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

**16.5(4)** *Repayment or board waiver.* A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

**16.5(5) Waiver criteria.** The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

*a. Permanent waiver.*

(1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. “Good cause” includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a “good faith” effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds shall be repaid as follows:

1. Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.

2. Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.

*b. Temporary waiver (temporary suspension of repayment and 25 percent penalty).* A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board’s satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient’s request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient’s obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of three years or five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board’s action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the three-year or five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205 as amended by 2011 Iowa Acts, Senate File 531, and Iowa Code sections 15G.203 and 15G.204.

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]



**CAPITAL INVESTMENT BOARD, IOWA[123]**

[Created by 2002 Iowa Acts, chapter 1005, section 3]

## CHAPTER 1

## IOWA CAPITAL INVESTMENT BOARD – ADMINISTRATION

- 1.1(15E) Mission of the board
- 1.2(15E) Membership of the board
- 1.3(15E) Powers of the board
- 1.4(15E) Correspondence and communications
- 1.5(15E) Meetings of the board
- 1.6(15E) Duties of the board

## CHAPTER 2

TAX CREDIT FOR INVESTMENTS IN QUALIFYING BUSINESSES  
AND COMMUNITY-BASED SEED CAPITAL FUNDS

- 2.1(15E) Tax credit for investments in qualifying businesses and community-based seed capital funds
- 2.2(15E) Definitions
- 2.3(15E) Taxpayers eligible for the investment tax credit
- 2.4(15E) Application for the investment tax credit
- 2.5(15E) Verification of qualifying businesses and community-based seed capital funds
- 2.6(15E) Issuance and distribution of investment tax credits
- 2.7(15E) Claiming the tax credits
- 2.8(15E) Notification to the department of revenue
- 2.9(15E) Rescinding the tax credits
- 2.10(15E) Additional information
- 2.11(15E) Transfer of responsibilities for administration of the program

## CHAPTER 3

## TAX CREDIT FOR INVESTMENTS IN VENTURE CAPITAL FUNDS

- 3.1(15E) Tax credit for investments in venture capital funds
- 3.2(15E) Definitions
- 3.3(15E) Verification of venture capital funds
- 3.4(15E) Application for the investment tax credit
- 3.5(15E) Issuance and distribution of investment tax credits
- 3.6(15E) Claiming the tax credits
- 3.7(15E) Notification to the department of revenue
- 3.8(15E) Additional information
- 3.9(15E) Repeal of the tax credit

## CHAPTER 4

INVESTMENT TAX CREDITS RELATING TO INVESTMENTS IN A FUND OF FUNDS  
ORGANIZED BY THE IOWA CAPITAL INVESTMENT CORPORATION

- 4.1(15E) Contingent tax credits relating to investments in Iowa fund of funds
- 4.2(15E) Definitions
- 4.3(15E) Report of the Iowa capital investment corporation
- 4.4(15E) Allocation and issuance of certificates
- 4.5(15E) Procedures for verification of tax credits
- 4.6(15E) Contractual nature of certificates; irrevocability of tax credits
- 4.7(15E) Transfer of tax credit certificates
- 4.8(15E) Cancellation of tax credits upon receipt of scheduled return
- 4.9(15E) Lost or mutilated tax credit certificates
- 4.10(15E) Claiming the tax credits

|           |   |
|-----------|---|
| 4.11(15E) | Notification to the department of revenue |
| 4.12(15E) | Other provisions                          |

CHAPTER 1  
IOWA CAPITAL INVESTMENT BOARD – ADMINISTRATION

**123—1.1(15E) Mission of the board.** The Iowa capital investment board (board) was established by an Act of the general assembly (2002 Iowa Acts, House File 2078). The Iowa capital investment board is created as a state governmental board. The purpose of the board shall be to mobilize venture equity capital for investment that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state of Iowa.

**123—1.2(15E) Membership of the board.** The Iowa capital investment board shall consist of five voting members and two nonvoting advisory members. The five voting members shall be appointed by the governor and subject to confirmation by the senate. The five voting members shall be appointed to five-year staggered terms that shall be structured to allow the term of one member to expire each year.

One nonvoting member shall be appointed by the majority leader of the senate, and one nonvoting member shall be appointed by the speaker of the house. The nonvoting members shall be appointed for two-year terms which shall expire upon the convening of a new general assembly. Vacancies shall be filled in the same manner as the appointment of the original members.

**123—1.3(15E) Powers of the board.** The board shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose. However, the board shall not hire employees.

**123—1.4(15E) Correspondence and communications.** The office of the Iowa capital investment board is maintained in the office of the department of revenue. Correspondence and communications to the board shall be directed in care of the Iowa Department of Revenue, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319.

**123—1.5(15E) Meetings of the board.** Meetings of the board are subject to the open meetings provisions of Iowa Code section 21.3.

**123—1.6(15E) Duties of the board.** The primary duties of the board include the establishment of criteria and procedures for the issuance, transfer and redemption of contingent tax credits for investments made to the Iowa fund of funds as provided in Iowa Code section 15E.63.

[ARC 9832B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 15E.42 as amended by 2011 Iowa Acts, Senate File 517.

[Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]

[Filed 10/7/05, Notice 8/31/05—published 10/26/05, effective 11/30/05]

[Filed ARC 9832B (Notice ARC 9745B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]



CHAPTER 2  
TAX CREDIT FOR INVESTMENTS IN QUALIFYING BUSINESSES  
AND COMMUNITY-BASED SEED CAPITAL FUNDS

**123—2.1(15E) Tax credit for investments in qualifying businesses and community-based seed capital funds.** For tax years beginning on or after January 1, 2002, a taxpayer may claim a tax credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II, for a portion of the taxpayer's equity investment in a qualifying business. For tax years beginning on or after January 1, 2004, a taxpayer may claim a credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II; business tax on corporations imposed under Iowa Code chapter 422, division III; taxation of financial institutions imposed under Iowa Code chapter 422, division V; insurance companies tax imposed under Iowa Code chapter 432; or taxation of credit unions imposed pursuant to 2007 Iowa Acts, Senate File 557, section 60, for a portion of a taxpayer's equity investment in a qualifying business. For tax years beginning on or after January 1, 2002, a taxpayer may claim a credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II; business tax on corporations imposed under Iowa Code chapter 422, division III; taxation of financial institutions imposed under Iowa Code chapter 422, division V; insurance companies tax imposed under Iowa Code chapter 432; or taxation of credit unions imposed pursuant to 2007 Iowa Acts, Senate File 557, section 60, for a portion of a taxpayer's equity investment in a community-based seed capital fund. For investments made prior to January 1, 2004, only natural persons shall be eligible for the investment tax credit provided for an investment in a qualifying business. For investments made prior to January 1, 2004, a natural person includes an individual taxed on income from a revocable trust. Natural persons and various types of legal entities including, but not limited to, corporations, limited liability companies, partnerships (both general and limited), trusts and estates shall be eligible for the investment tax credit provided for an investment in a community-based seed capital fund and for investments made on or after January 1, 2004, in a qualifying business. If the taxpayer that is entitled to an investment tax credit for an investment in a community-based seed capital fund or a qualifying business is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns. For investments made prior to January 1, 2004, an individual shall not separately claim a tax credit for an investment in a qualifying business for any tax credit allocated to such individual by a pass-through entity as described in the immediately preceding sentence.

**123—2.2(15E) Definitions.** The following definitions are applicable to this chapter:

*"Affiliate"* means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control. For purposes of these rules, "controlling equity interest" means ownership of more than 50 percent of the outstanding equity interests of a corporation, partnership, limited liability company or trust. "Management control" means holding more than 50 percent voting power on any board of directors or trustees, any management committee or any other group managing a corporation, partnership, limited liability company or trust.

*"Board"* means the Iowa capital investment board created under 2002 Iowa Acts, House File 2078, section 3.

*"Community-based seed capital fund"* means a fund that meets the following criteria:

1. Is organized as a limited partnership or limited liability company;
2. Has, on or after January 1, 2002, a total of capital commitments from both investors and investments in qualifying businesses of at least \$125,000, but not more than \$3 million. If the fund is either a rural business investment company under the rural business investment program of the federal Farm Security and Rural Investment Act of 2002, or an Iowa-based seed capital fund with at least

40 percent of its committed capital subscribed by community-based seed capital funds, the fund may have more than \$3 million of capital commitments from both investors and investments in qualifying businesses; and

3. Has no fewer than five investors who are not affiliates, with no single investor and affiliates of that investor together owning a total of more than 25 percent of the ownership interests outstanding in the fund.

*“Investor”* means an individual making a cash investment in a qualifying business prior to January 1, 2004, or an individual taxed on income from a revocable trust’s cash investment in a qualifying business prior to January 1, 2004, or a person making a cash investment in a community-based seed capital fund or investments in a qualifying business made on or after January 1, 2004. “Investor” does not include a person who is a current or previous owner, member, partner (limited or general) or shareholder in a qualifying business for investments made prior to January 1, 2004. “Investor” does not include a person that holds at least a 70 percent ownership interest as an owner, member, or shareholder in a qualifying business for investments made on or after January 1, 2004.

*“Near equity”* means debt that may be converted to equity at the option of the debt holder, and royalty agreements.

*“Person”* means an individual, corporation, limited liability company, business trust, estate, trust, partnership or association, or any other legal entity.

*“Professional services”* include, but are not limited to, services provided by professions listed in Iowa Code section 496C.2(4).

*“Qualifying business”* means a business that meets the following criteria:

1. The principal business operations of the business are located in the state of Iowa;
2. The business has been in operation for three years or less from the date of the investment for which a credit is claimed for investments made prior to July 1, 2005, or the business has been in operation for six years or less from the date of the investment for which a credit is claimed for investments made on or after July 1, 2005;
3. The business has an owner who has successfully completed one of the following:
  - An entrepreneurial venture development curriculum, such as programs developed by a John Pappajohn Entrepreneurial Center, or a holistic training program recognized by the Iowa department of economic development which generally encompasses the following areas: entrepreneurial training, management team development, intellectual property management, market research and analysis, sales and distribution development, financial planning and management and strategic planning;
  - Three years of relevant business experience;
  - A four-year college degree in business management, business administration or a related field;
  - Other training or experience sufficient to increase the probability of success of the qualifying business;
4. The business is not a business engaged primarily in retail sales, real estate or the provision of health care or other professional services;
5. The business shall not have a net worth that exceeds \$3 million at the date of the investment for which the credit is claimed for investments made prior to July 1, 2005, or the business shall not have a net worth that exceeds \$10 million for which a credit is claimed for investments made on or after July 1, 2005; and
6. Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, the business shall have secured total equity or near equity financing equal to at least \$250,000.

**123—2.3(15E) Taxpayers eligible for the investment tax credit.** A taxpayer who is a natural person and an investor in a qualifying business or community-based seed capital fund is eligible to apply to the board for an investment tax credit applicable against such taxpayer’s personal net income tax liability imposed under Iowa Code chapter 422, division II. An individual receiving income from a revocable trust’s investment in a qualifying business may claim the tax credit against the taxes imposed under Iowa Code chapter 422, division II, for a portion of the revocable trust’s equity investment in a

qualifying business. A taxpayer that is a legal entity, such as a corporation, limited liability company, partnership (general or limited), trust or estate, and is an investor in a community-based seed capital fund or an investor in a qualifying business for investments made on or after January 1, 2004, is eligible to apply to the board for an investment tax credit applicable against such taxpayer's tax liability under the business tax on corporations imposed under Iowa Code chapter 422, division III; the taxation of financial institutions imposed under Iowa Code chapter 422, division V; the insurance companies tax imposed under Iowa Code chapter 432; or the taxation of credit unions imposed pursuant to 2007 Iowa Acts, Senate File 557, section 60. The taxpayer's investment must be made in the form of cash to purchase equity in a qualifying business or community-based seed capital fund.

**123—2.4(15E) Application for the investment tax credit.** A taxpayer that desires to receive an investment tax credit for an equity investment in a qualifying business or community-based seed capital fund must submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting the Iowa capital investment board at the Iowa Department of Revenue, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-3204. Application forms may also be obtained by contacting a Small Business Development Center in the applicant's geographic location. The board shall coordinate with Small Business Development Centers throughout the state to provide uniform application forms to Small Business Development Centers and to disseminate information regarding the investment tax credits. The board shall provide a summary of the investment tax credits to Small Business Development Centers by either supplying the Small Business Development Centers with a copy of these rules or delivering substantially similar information in any other format approved by the board. The board shall make itself accessible to Small Business Development Centers for assistance with questions concerning completion of applications or any other questions pertaining to the investment tax credits. Applications shall be submitted to the board in care of the department of revenue at the address identified above. Applications shall be date- and time-stamped by the department of revenue in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the board until March 31 of the year following the calendar year in which the taxpayer's equity investment was made.

EXAMPLE 1: A taxpayer makes an equity investment in a qualifying business on December 31, 2002. The taxpayer has until March 31, 2003, to apply to the board for an investment tax credit.

EXAMPLE 2: A taxpayer makes an equity investment in a qualifying business on July 1, 2003. The taxpayer has until March 31, 2004, to apply to the board for an investment tax credit.

**123—2.5(15E) Verification of qualifying businesses and community-based seed capital funds.**

**2.5(1) Qualifying businesses.** Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2002 calendar year, by the later of 120 days from the first date on which the investments have been made or March 31, 2003), a qualifying business shall provide to the board the following information as a prerequisite to the board's issuance of any investment tax credits to investors in such qualifying business:

*a.* A signed statement, from an officer, director, manager, member, or general partner of the qualifying business, that contains a description of the general nature of its business operations, the location of the principal business operations, the date on which the business was formed, and the date on which the business commenced operations;

*b.* A balance sheet, certified by the chief executive officer and the chief financial officer of the qualifying business, that reflects the qualifying business's assets, liabilities and owners' equity as of the close of the most recent month or quarter;

*c.* A signed statement, from an owner of the business, that describes the manner in which such owner satisfies one of the training requirements set forth in the definition of a qualifying business under rule 123—2.2(15E);

*d.* A signed statement, from an officer, director, manager, member or general partner of the qualifying business, that states the names, addresses, shares or equity interests issued, consideration

paid for the shares or equity interests, and the amounts of any tax credits, of all shareholders or equity-holders who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The statement shall contain a commitment by the qualifying business to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity-holders or as any other information on the list may change; and

*e.* A certificate of existence of a business plan for the qualifying business which details the business's growth strategy, management team, production/management plan, marketing plan, financial plan and other standard elements of a business plan.

Upon the board's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a business is a qualifying business. If the board verifies that the business is a qualifying business, the board shall register the qualifying business on a registry of such qualifying businesses. The board shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers who make equity investments in qualifying businesses registered with the board. The board shall issue written notification to the qualifying business and the applicant that such business has been registered as a qualifying business with the board for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 123—2.9(15E) for any failure of the business to continuously satisfy the requirements necessary for verification and registration as a qualifying business.

**2.5(2) Community-based seed capital funds.** Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2002 calendar year, by the later of 120 days from the first date on which the investments have been made or March 31, 2003), a community-based seed capital fund shall provide to the board information as a prerequisite to the board's issuance of investment tax credits to investors in such community-based seed capital fund. Funds which could not meet the threshold of \$500,000 in capital commitments but are able to meet the threshold of \$125,000 of capital commitments as set forth in 2004 Iowa Acts, chapter 1148, shall have until December 31, 2004, to provide information to the board. A community-based seed capital fund cannot invest in the Iowa fund of funds organized by the Iowa capital investment corporation under Iowa Code section 15E.65, but may invest up to 60 percent of its committed capital in an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds. The following information must be provided:

*a.* A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement or both certified by the chief executive officer of the community-based seed capital fund.

*b.* A signed statement, from an officer, director, manager, member or general partner of the fund, that states the total amount of capital contributions or capital commitments from investors and the total number of individual investors that are not affiliates and the ownership interest of each individual investor in the fund.

*c.* A signed statement, from an officer, director, manager, member or general partner of the fund, that states the names, addresses, equity interests issued, consideration paid for the interests and the amounts of any tax credits, of all limited partners or members who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The statement shall also contain a commitment by the fund to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity-holders or as any other information on the list may change.

Upon the board's receipt of the information and documentation necessary to demonstrate a community-based seed capital fund's satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a fund is a community-based seed capital fund. If the board verifies that the fund is a community-based seed capital fund, the board shall register the community-based seed capital fund on a registry of such community-based seed capital funds. The board shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers that make equity investments in the community-based seed capital funds registered with

the board. The board shall issue written notification to the community-based seed capital fund and the applicant that such fund has been registered as a community-based seed capital fund with the board for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 123—2.9(15E) for any failure of the community-based seed capital fund to continuously satisfy the requirements necessary for verification and registration as a community-based seed capital fund.

**123—2.6(15E) Issuance and distribution of investment tax credits.** Upon verification and registration by the board of a qualifying business or community-based seed capital fund and approval of the taxpayer's application, the board shall issue a tax credit certificate to the applicant, provided, however, that such tax credit certificate shall be subject to rescission by the board pursuant to rule 123—2.9(15E). The tax credit certificate shall be in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the qualifying business or community-based seed capital fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

The Iowa Capital Investment Board has not recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

A tax credit shall equal 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund. The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be \$50,000. Each year, an investor and all affiliates of the investor shall not claim tax credits under this rule for more than five different investments in five different qualifying businesses. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this rule only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund or in an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this rule with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

The aggregate amount of tax credits issued pursuant to this rule shall not exceed a total of \$10 million. The total amount of tax credits issued during the fiscal year beginning July 1, 2002, shall not exceed \$3 million. The total amount of tax credits issued during the fiscal year beginning July 1, 2003, shall not exceed \$3 million. The total amount of tax credits issued during the fiscal year beginning July 1, 2004, shall not exceed \$4 million. Any amount of the \$10 million of total tax credits that have not been issued by June 30, 2005, may be issued for a fiscal year beginning July 1, 2005, and for any other subsequent fiscal years until the \$10 million limitation is met. No more than \$3 million of tax credits may be issued for any one fiscal year beginning July 1, 2005, and for any subsequent fiscal year. If, during any fiscal year during which tax credits are to be issued under this rule, applications are approved for more than the amount of credits authorized by 2002 Iowa Acts, chapter 1006, section 3(4), the applicants shall receive tax credit certificates on a first-come, first-served basis, until the amount of credits authorized for issuance has been exhausted. Any tax credits approved but unissued shall be carried over to the next fiscal year, and the board shall, during the next fiscal year, give priority to applicants' tax credits carried over from a prior fiscal year by (1) issuing tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits; and (2) applying the aggregate amount of the credits carried over against the total amount of tax credits to be issued during such fiscal year before approving or issuing new tax credits.

**123—2.7(15E) Claiming the tax credits.** A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. An investment shall be deemed to have

been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. An investment made prior to January 1, 2002, shall not qualify for a tax credit under this rule. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. Notwithstanding the foregoing, any tax credit carried over pursuant to rule 123—2.6(15E) and issued for the tax year immediately following the tax year in which the investment was made may be claimed by the taxpayer and credited to the taxpayer's tax liability for the third tax year following the tax year in which the tax credit is issued. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. In the case of a tax credit allowed under Iowa Code chapter 422, division II, where the taxpayer died prior to redeeming the tax credit, the remaining credit can be redeemed on the decedent's final income tax return.

**123—2.8(15E) Notification to the department of revenue.** Upon the issuance and distribution of investment tax credits for each tax year, the board shall notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for such tax year.

**123—2.9(15E) Rescinding the tax credits.** Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall provide to the board information and documentation sufficient to demonstrate that the business has secured total equity or near equity financing equal to at least \$250,000. Examples of sufficient information and documentation include, but are not limited to, corporate, partnership or limited liability company-certified resolutions setting forth the names of individuals or entities making capital contributions and the amounts of such capital contributions or certified corporate, partnership, or limited liability company minutes reflecting the names of individuals or entities making capital contributions and the amounts of such capital contributions. On or by the last day of the 24-month period described herein, a qualifying business shall certify to the board, by a statement signed by an officer, director, member, manager, or general partner of the qualifying business, that it has secured the requisite amount of equity financing required by this rule within the time period prescribed by this rule and shall recertify to the board that the qualifying business continues to meet the requirements set forth in 123—subrule 2.5(1). In the event that a qualifying business fails to meet or maintain any requirement set forth in this rule, including, without limitation, timely filing of the certifications described in the preceding sentence of this rule, the board shall rescind any tax credit certificates issued to those taxpayers and shall notify the department of revenue that it has done so, and the tax credit certificates shall be null and void. In addition, the board shall remove such qualifying business from its registry and shall issue written notification of such removal to the qualifying business and the applicants.

A community-based seed capital fund shall have invested at least 33 percent of its invested capital in one or more separate qualifying businesses on or by the last day of the 48-month period that commences with the fund's investing activities. On or by the last day of the 48-month period described under this rule, a community-based seed capital fund shall certify to the board, by a statement signed by an officer, director, member, manager, or general partner of the community-based seed capital fund, that it has met the requirements of this rule within the time period prescribed by this rule and shall recertify to the board that the community-based seed capital fund continues to meet the requirements set forth in 123—subrule 2.5(2). In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this rule, including, without limitation, timely filing of the certifications described in the preceding sentence of this paragraph, the board shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so, and the tax credit certificates shall be null and void. In addition, the board shall remove such community-based seed capital fund from its registry and shall issue written notification of such removal to the community-based seed capital fund and the applicants. Notwithstanding the foregoing, a community-based seed capital fund

may apply to the board for a one-year waiver from the requirements of this rule. The board shall, upon review of a community-based seed capital fund's application for waiver, exercise reasonable discretion in granting or denying such waiver. In the event that the board grants to a community-based seed capital fund a one-year waiver from the requirements of this rule, the board shall defer any rescission of the tax credit certificates until the expiration of such one-year waiver period. If the community-based seed capital fund meets the requirements of this rule by the expiration of such one-year waiver period, the tax credit certificates shall not be rescinded, but the tax credit certificates shall be rescinded at the end of such one-year waiver period if such requirements have not been met.

In the event a taxpayer has claimed an investment tax credit for an investment in a qualifying business under 2002 Iowa Acts, chapter 1006, section 3(1) "a," or for an investment in a community-based seed capital fund under 2002 Iowa Acts, chapter 1006, section 3(1) "b," and such tax credit has been rescinded under the provisions of this rule, the department of revenue shall assess a deficiency against the taxpayer for the tax credit claimed upon receipt of written notice of the rescission of such tax credit by the board.

**123—2.10(15E) Additional information.** The board retains the authority to request additional information and documentation from a qualifying business or community-based seed capital fund regarding the operations, job creation and economic impact of such qualifying business or community-based seed capital fund, and the board may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

**123—2.11(15E) Transfer of responsibilities for administration of the program.** Effective for tax years beginning and investments made on or after January 1, 2011, the responsibility for administering the tax credits for investments in qualifying businesses and community-based seed capital funds has been transferred from the Iowa capital investment board to the economic development authority.

[ARC 9832B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 15E.42 as amended by 2011 Iowa Acts, Senate File 517.

[Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]

[Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]

[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]

[Filed 10/7/05, Notice 8/31/05—published 10/26/05, effective 11/30/05]

[Filed 8/22/07, Notice 7/18/07—published 9/12/07, effective 10/17/07]

[Filed ARC 9832B (Notice ARC 9745B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]



## UTILITIES DIVISION[199]

Former Commerce Commission[250] renamed Utilities Division[199]  
under the “umbrella” of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

### CHAPTER 1

#### ORGANIZATION AND OPERATION

- 1.1(17A,474) Purpose
- 1.2(17A,474) Scope of rules
- 1.3(17A,474,476,78GA,HF2206) Waivers
- 1.4(17A,474) Duties of the board
- 1.5(17A,474) Organization
- 1.6(68B) Consent for the sale or lease of goods and services
- 1.7 Reserved
- 1.8(17A,474) Matters applicable to all proceedings
- 1.9(22) Public information and inspection of records

### CHAPTER 2

#### FORMS

- 2.1(17A,474) Forms—general
- 2.2(17A,474) Specific forms
- 2.3 Reserved
- 2.4(17A,474) Forms

### CHAPTER 3

#### RULE MAKING

- 3.1(17A,474) Purpose and scope
- 3.2(17A,474) Notice of inquiry
- 3.3(17A,474) Petition for adoption of rules
- 3.4(17A,474) Commencement of proceedings
- 3.5(17A,474) Written statements of position
- 3.6(17A,474) Counterstatements of position
- 3.7(17A,474) Requests for oral presentation
- 3.8(17A,474) Rule-making oral presentation
- 3.9(17A,474) Rule-making decisions
- 3.10(17A,474) Regulatory analysis
- 3.11(17A,474) Review of rules

### CHAPTER 4

#### DECLARATORY ORDERS

- 4.1(17A) Petition for declaratory order
- 4.2(17A) Notice of petition
- 4.3(17A) Intervention
- 4.4(17A) Briefs
- 4.5(17A) Inquiries
- 4.6(17A) Service and filing of petitions and other papers
- 4.7(17A) Agency consideration
- 4.8(17A) Action on petition
- 4.9(17A) Refusal to issue order
- 4.10(17A) Contents of declaratory order—effective date
- 4.11(17A) Copies of orders
- 4.12(17A) Effect of a declaratory order

CHAPTER 5  
PROCEDURE FOR DETERMINING THE COMPETITIVENESS  
OF A COMMUNICATIONS SERVICE OR FACILITY

|          |                        |
|----------|------------------------|
| 5.1(476) | Purpose                |
| 5.2(476) | Petition               |
| 5.3(476) | Docketing              |
| 5.4(476) | Statement of position  |
| 5.5(476) | Oral presentation      |
| 5.6(476) | Decision               |
| 5.7(476) | Extent of deregulation |
| 5.8(476) | Hearing and order      |

CHAPTER 6  
COMPLAINT PROCEDURES

|          |  |
|----------|--|
| 6.1(476) | Inquiry  |
| 6.2(476) | Complaint  |
| 6.3(476) | Processing the complaint   |
| 6.4(476) | Proposed resolution  |
| 6.5(476) | Initiating formal complaint proceedings  |
| 6.6(476) | Applicable procedures  |
| 6.7(476) | Record   |
| 6.8(476) | Special procedures for complaints alleging unauthorized changes in telecommunications services |

CHAPTER 7  
PRACTICE AND PROCEDURE

|                  |  |
|------------------|--|
| 7.1(17A,474,476) | Scope and applicability  |
| 7.2(17A,476)     | Definitions  |
| 7.3(17A,476)     | Presiding officers   |
| 7.4(17A,474,476) | General information  |
| 7.5(17A,476)     | Time requirements  |
| 7.6(17A,476)     | Telephone proceedings  |
| 7.7(17A,476)     | Electronic information   |
| 7.8(17A,476)     | Delivery of notice of hearing                                    |
| 7.9(17A,476)     | Pleadings and answers  |
| 7.10(17A,476)    | Prefiled testimony and exhibits                                  |
| 7.11(17A,476)    | Documentary evidence in books and materials                      |
| 7.12(17A,476)    | Motions  |
| 7.13(17A,476)    | Intervention   |
| 7.14(17A,476)    | Consolidation and severance                                      |
| 7.15(17A,476)    | Discovery  |
| 7.16(17A,476)    | Subpoenas  |
| 7.17(17A,476)    | Prehearing conference  |
| 7.18(17A,476)    | Settlements  |
| 7.19(17A,476)    | Stipulations   |
| 7.20(17A,476)    | Investigations   |
| 7.21(17A,476)    | Withdrawals  |
| 7.22(17A,476)    | Ex parte communication   |
| 7.23(17A,476)    | Hearings   |
| 7.24(17A,476)    | Reopening record   |
| 7.25(17A,476)    | Interlocutory appeals  |
| 7.26(17A,476)    | Appeals to board from a proposed decision of a presiding officer |

- 7.27(17A,476) Rehearing and reconsideration
- 7.28(17A,476) Stay of agency decision
- 7.29(17A,476) Emergency adjudicative proceedings

#### CHAPTER 8 CIVIL PENALTIES

- 8.1(476) Civil penalty for willful violation
- 8.2(476) Procedure
- 8.3(476) Penalties assessed
- 8.4(476) Payment of penalty
- 8.5(476) Rate-regulated utilities

#### CHAPTER 9 RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

- 9.1(479,479B) General information
- 9.2(479,479B) Filing of land restoration plans
- 9.3(479,479B) Procedure for review of plan
- 9.4(479,479B) Restoration of agricultural lands
- 9.5(479,479B) Designation of a pipeline company point of contact for landowner inquiries or claims
- 9.6(479,479B) Separate agreements
- 9.7(479,479B) Enforcement

#### CHAPTER 10 INTRASTATE GAS AND UNDERGROUND GAS STORAGE

- 10.1(479) General information
- 10.2(479) Petition for permit
- 10.3(479) Informational meetings
- 10.4(479) Notice of hearing
- 10.5(479) Objections
- 10.6(479) Hearing
- 10.7(479) Pipeline permit
- 10.8(479) Renewal permits
- 10.9(479) Amendment of permits
- 10.10(479) Fees and expenses
- 10.11(479) Inspections
- 10.12(479) Standards for construction, operation and maintenance
- 10.13 Reserved
- 10.14(479) Crossings of highways, railroads, and rivers
- 10.15 Reserved
- 10.16(479) When a permit is required
- 10.17(479) Accidents and incidents
- 10.18(479) Reportable changes to pipelines under permit
- 10.19(479) Sale or transfer of permit

#### CHAPTER 11 ELECTRIC LINES

- 11.1(478) General information
- 11.2(478) Forms of petition for franchise, extension, or amendment of franchise
- 11.3(478) Additional filing instructions
- 11.4(478) Informational meetings
- 11.5(478) Notices

- 11.6(478) Common and joint use
- 11.7(478) Termination of franchise petition proceedings
- 11.8(478) Fees and expenses

CHAPTER 12  
INTERSTATE NATURAL GAS PIPELINES  
AND UNDERGROUND STORAGE

- 12.1(479A) Authority
- 12.2(479A) Inspections
- 12.3 to 12.5 Reserved
- 12.6(479A) Incident reporting

CHAPTER 13  
HAZARDOUS LIQUID PIPELINES AND UNDERGROUND STORAGE

- 13.1(479B) General information
- 13.2(479B) Petition for permit
- 13.3(479B) Informational meetings
- 13.4(479B) Notice of hearing
- 13.5(479B) Objections
- 13.6(479B) Hearing
- 13.7(479B) Pipeline permit
- 13.8(479B) Renewal permits
- 13.9(479B) Amendment of permits
- 13.10(479B) Fees and expenses
- 13.11 Reserved
- 13.12(479B) Land restoration
- 13.13 Reserved
- 13.14(479B) Crossings of highways, railroads, and rivers
- 13.15 to 13.17 Reserved
- 13.18(479B) Reportable changes to pipelines under permit
- 13.19(479B) Sale or transfer of permit

CHAPTER 14  
ELECTRONIC FILING

- 14.1(17A,476) Purpose
- 14.2(17A,476) Scope and applicability of electronic filing requirement
- 14.3(17A,476) Definitions
- 14.4(17A,476) Exceptions; number of paper copies required
- 14.5(17A,476) Electronic filing procedures and required formats
- 14.6(17A,476) Registration
- 14.7(17A,476) Electronic file
- 14.8(17A,476) Paper copies required
- 14.9(17A,476) When electronic filings can be made; official filing date
- 14.10(17A,476) Notice of system unavailability
- 14.11(17A,476) Technical difficulties
- 14.12(17A,476) Documents containing confidential material
- 14.13(17A,476) Signatures
- 14.14(17A,476) Original documents
- 14.15(17A,476) Transcripts
- 14.16(17A,476) Electronic service

*UTILITIES AND  
TRANSPORTATION DIVISIONS*

CHAPTER 15

COGENERATION AND SMALL POWER PRODUCTION

- 15.1(476) Definitions
- 15.2(476) Scope
- 15.3(476) Information to board
- 15.4(476) Rate-regulated electric utility obligations under this chapter regarding qualifying facilities
- 15.5(476) Rates for purchases from qualifying facilities by rate-regulated electric utilities
- 15.6(476) Rates for sales to qualifying facilities and AEP facilities by rate-regulated utilities
- 15.7(476) Additional services to be provided to qualifying facilities and AEP facilities by rate-regulated electric utilities
- 15.8(476) Interconnection costs
- 15.9(476) System emergencies
- 15.10(476) Standards for interconnection, safety, and operating reliability
- 15.11(476) Additional rate-regulated utility obligations regarding AEP facilities
- 15.12 to 15.16 Reserved
- 15.17(476) Alternate energy purchase programs
- 15.18(476B) Certification of eligibility for wind energy tax credits under Iowa Code chapter 476B
- 15.19(476C) Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C
- 15.20(476B) Applications for wind energy tax credits under Iowa Code chapter 476B
- 15.21(476C) Applications for renewable energy tax credits under Iowa Code chapter 476C
- 15.22(476) Small wind innovation zones

CHAPTER 16  
ACCOUNTING

- 16.1(476) Accounting—general information
- 16.2(476) Uniform systems of accounts—electric
- 16.3(476) Uniform systems of accounts—gas
- 16.4(476) Uniform systems of accounts—water
- 16.5(476) Uniform systems of accounts—telephone
- 16.6(476) Uniform systems of accounts—telegraph
- 16.7(476) Filing of present promotional practices
- 16.8(476) Compiling advertisements and expenses
- 16.9(476) Postemployment benefits other than pensions

CHAPTER 17  
ASSESSMENTS

- 17.1(475A,476,546) Purpose
- 17.2(475A,476) Definitions
- 17.3(476) Expenses to be included in direct assessments
- 17.4(476) Direct assessments under Iowa Code Supplement section 476.10
- 17.5(476) Reporting of operating revenues
- 17.6(475A,476) Compilation and billing of assessment
- 17.7(476) Funding of Iowa energy center and global warming center
- 17.8(476) Assessments under Iowa Code section 476.101(10)
- 17.9(478,479,479A,479B) Assessments under Iowa Code chapters 478, 479, 479A, and 479B

CHAPTER 18  
UTILITY RECORDS

|           |   |
|-----------|---|
| 18.1(476) | Definitions   |
| 18.2(476) | Location of records                                       |
| 18.3(476) | Availability of records                                   |
| 18.4(476) | Electric utilities other than rural electric cooperatives |
| 18.5(476) | Rural electric cooperatives                               |
| 18.6(476) | Gas utilities   |
| 18.7(476) | Water utilities   |
| 18.8(476) | Telephone utilities                                       |

CHAPTER 19  
SERVICE SUPPLIED BY GAS UTILITIES

|            |  |
|------------|--|
| 19.1(476)  | General information  |
| 19.2(476)  | Records, reports, and tariffs                                      |
| 19.3(476)  | General service requirements                                       |
| 19.4(476)  | Customer relations   |
| 19.5(476)  | Engineering practice   |
| 19.6(476)  | Metering   |
| 19.7(476)  | Standards of quality of service                                    |
| 19.8(476)  | Safety   |
| 19.9       | Reserved   |
| 19.10(476) | Purchased gas adjustment (PGA)                                     |
| 19.11(476) | Periodic review of gas procurement practices [476.6(15)]           |
| 19.12(476) | Flexible rates   |
| 19.13(476) | Transportation service   |
| 19.14(476) | Certification of competitive natural gas providers and aggregators |
| 19.15(476) | Customer contribution fund   |
| 19.16(476) | Reserve margin   |
| 19.17(476) | Incident notification and reports                                  |
| 19.18(476) | Capital infrastructure investment automatic adjustment mechanism   |

CHAPTER 20  
SERVICE SUPPLIED BY ELECTRIC UTILITIES

|            |   |
|------------|---|
| 20.1(476)  | General information   |
| 20.2(476)  | Records, reports, and tariffs                               |
| 20.3(476)  | General service requirements                                |
| 20.4(476)  | Customer relations  |
| 20.5(476)  | Engineering practice  |
| 20.6(476)  | Metering  |
| 20.7(476)  | Standards of quality of service                             |
| 20.8(476)  | Safety  |
| 20.9(476)  | Electric energy sliding scale or automatic adjustment       |
| 20.10(476) | Ratemaking standards  |
| 20.11(476) | Customer notification of peaks in electric energy demand    |
| 20.12      | Reserved  |
| 20.13(476) | Periodic electric energy supply and cost review [476.6(16)] |
| 20.14(476) | Flexible rates  |
| 20.15(476) | Customer contribution fund                                  |
| 20.16      | Reserved  |
| 20.17(476) | Ratemaking treatment of emission allowances                 |

- 20.18(476,478) Service reliability requirements for electric utilities
- 20.19(476,478) Notification of outages

#### CHAPTER 21

##### SERVICE SUPPLIED BY WATER UTILITIES

- 21.1(476) Application of rules
- 21.2(476) Records and reports
- 21.3(476) General service requirements
- 21.4(476) Customer relations
- 21.5(476) Engineering practice
- 21.6(476) Meter testing
- 21.7(476) Standards of quality of service
- 21.8(476) Applications for water costs for fire protection services
- 21.9(476) Incident reports

#### CHAPTER 22

##### RATES CHARGED AND SERVICE SUPPLIED BY TELEPHONE UTILITIES

- 22.1(476) General information
- 22.2(476) Records and reports
- 22.3(476) General service requirements
- 22.4(476) Customer relations
- 22.5(476) Telephone utility service standards
- 22.6(476) Standards of quality of service
- 22.7(476) Safety
- 22.8(476) Nontoll interexchange trunking service (EAS) survey procedure
- 22.9(476) Terminal equipment
- 22.10(476) Unfair practices
- 22.11(476) Inside station wiring standards
- 22.12(476) Contents of tariff filings proposing rates
- 22.13 Reserved
- 22.14(476) Intrastate access charge application, tariff procedures, and rates
- 22.15(476) Interexchange utility service and access
- 22.16(476) Discontinuance of service
- 22.17(476) Resale of service
- 22.18 Reserved
- 22.19(476) Alternative operator services
- 22.20(476) Service territories
- 22.21(476) Toll dialing patterns
- 22.22 Reserved
- 22.23(476) Unauthorized changes in telephone service
- 22.24(476) Applications for numbering resources

#### CHAPTER 23

##### ANNUAL REPORT

- 23.1(476) General information
- 23.2(476) Annual report requirements—rate-regulated utilities

- 23.3(476) Annual report requirements—non-rate-regulated utilities
- 23.4(476,476A)

CHAPTER 24  
LOCATION AND CONSTRUCTION OF ELECTRIC POWER  
GENERATING FACILITIES

- 24.1(476A) Authority, purpose, and policy
- 24.2(476A) Definitions
- 24.3(476A) Form of application, place of filing
- 24.4(476A) Application for a certificate—contents
- 24.5(476A) Initial board review: Application acceptance
- 24.6(476A) Procedural schedule
- 24.7(476A) Informational meeting
- 24.8(476A) Hearing procedure
- 24.9(476A) Separate hearings on separate issues
- 24.10(476A) Certification decision
- 24.11(476A) Site preparation
- 24.12(476A) Issuance of a certificate
- 24.13(476A) Exemptions from certification application; application for amendment for certificate: Contents
- 24.14(476A) Assessment of costs
- 24.15(476A) Waiver

CHAPTER 25  
IOWA ELECTRICAL SAFETY CODE

- 25.1(476,476A,478) General information
- 25.2(476,476A,478) Iowa electrical safety code defined
- 25.3(476,478) Inspection and maintenance plans
- 25.4(476,478) Correction of problems found during inspections
- 25.5(476,478) Accident reports

CHAPTER 26  
RATE CASES, TARIFFS, AND  
RATE REGULATION ELECTION PRACTICE AND PROCEDURE

- 26.1(17A,476) Scope and applicability
- 26.2(17A,476) Defective filings
- 26.3(17A,476) Proposal of settlements
- 26.4(476) Rate case expense
- 26.5(476) Applications and petitions
- 26.6(476) Answers
- 26.7(476) Rate investigation
- 26.8(476) Procedural schedule in Iowa Code sections 476.3 and 476.6 proceedings
- 26.9(476) Consumer comment hearing in docketed rate case of an investor-owned utility company
- 26.10(476) Appeal from administrative law judge's decision
- 26.11(476) Consideration of current information in rate regulatory proceedings
- 26.12(476) Rate regulation election—electric cooperative corporations and associations

CHAPTERS 27 and 28  
Reserved

## CHAPTER 29

## MANAGEMENT EFFICIENCY STANDARDS

- 29.1(476) Policy and purpose
- 29.2(476) Efficiency considered in rate case
- 29.3(476) Management efficiency standards
- 29.4(476) Rewards and penalties

## CHAPTER 30

## TAX REFORM REVENUE ADJUSTMENT

- 30.1(476) Applicability
- 30.2(476) General filing requirement
- 30.3(476) Revenue adjustment
- 30.4(476) Revised revenue requirement
- 30.5(476) Rate filing
- 30.6(476) Board approval

## CHAPTER 31

ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS,  
AND ASSET AND SERVICE TRANSFERS

- 31.1(476) Applicability and definition of terms
- 31.2(476) Availability of records
- 31.3(476) Annual filing
- 31.4(476) Additional filing requirements for affiliated telecommunications service providers
- 31.5(476) Verified copies and confidential treatment
- 31.6(476) Comparable information
- 31.7(476) Standards for costing service transfers between regulated operations and nonregulated affiliates
- 31.8(476) Standards for costing asset transfers between regulated operations and non-regulated affiliates valued at less than \$2 million
- 31.9(476) Waivers

## CHAPTER 32

## REORGANIZATION

- 32.1(476) Applicability and definition of terms
- 32.2(476) Substantial part of a public utility's assets
- 32.3(476) Declaratory rulings
- 32.4(476) Proposal for reorganization—filing requirements
- 32.5(476) Effective date
- 32.6(476) Insufficient filing
- 32.7(476) Additional information authorized
- 32.8(476) Waivers
- 32.9(476) Procedural matters

## CHAPTER 33

NONUTILITY ACTIVITIES—RECORD KEEPING  
AND COST ALLOCATIONS

- 33.1(476) Applicability
- 33.2(476) Definitions
- 33.3(476) Availability of records
- 33.4(476) Costing methodology
- 33.5(476) Cost allocation manuals
- 33.6(476) Standards for costing service transfers within a regulated subsidiary or utility
- 33.7(476) Standards for costing asset transfers within a regulated subsidiary or utility

CHAPTER 34  
NONUTILITY SERVICE

- 34.1(476) Statement of purpose
- 34.2(476) Definition—nonutility service
- 34.3(476) Definition—systematic marketing effort
- 34.4(476) Engaged primarily in providing the same competitive nonutility services in the area—defined
- 34.5(476) Charges permitted
- 34.6(476) Procedures for utilization of billing and collection system
- 34.7(476) Complaints

CHAPTER 35  
ENERGY EFFICIENCY PLANNING AND COST REVIEW

- 35.1(476) Policy and purpose
- 35.2(476) Definitions
- 35.3(476) Applicability
- 35.4(476) Schedule of filings
- 35.5 Reserved
- 35.6(476) Procedures
- 35.7(476) Waivers
- 35.8(476) Assessment of potential and energy efficiency plan requirements
- 35.9(476) Additional requirements for electric utilities
- 35.10(476) Additional requirements for gas utilities
- 35.11(476) Additional filing requirements
- 35.12(476) Energy efficiency cost recovery
- 35.13(476) Prudence review
- 35.14(476) New structure energy conservation standards
- 35.15(476) Exterior flood lighting

CHAPTER 36  
ENERGY EFFICIENCY PLANNING AND REPORTING  
FOR NON-RATE-REGULATED GAS AND ELECTRIC UTILITIES

- 36.1(476) Non-rate-regulated utilities
- 36.2(476) Definitions
- 36.3(476) Schedule of filings
- 36.4(476) Joint filing of plans
- 36.5(476) Energy efficiency plan requirements
- 36.6(476) Program selection criteria
- 36.7(476) New Structure energy conservation standards
- 36.8(476) Exterior flood lighting

CHAPTER 37  
EQUIPMENT DISTRIBUTION PROGRAM

- 37.1(477C) Policy and purpose
- 37.2(477C) Program structure
- 37.3(477C) Eligibility
- 37.4(477C) Equipment
- 37.5(477C) Complaints

CHAPTER 38  
LOCAL EXCHANGE COMPETITION

- 38.1(476) General information
- 38.2(476) Number portability

- 38.3(476) Interconnection requirements
- 38.4(476) Unbundled facilities, services, features, functions, and capabilities
- 38.5(476) Cost standards
- 38.6(476) Compensation for termination of telecommunications services
- 38.7(476) Mediation and arbitration

## CHAPTER 39

## UNIVERSAL SERVICE

- 39.1(476) Definition of terms
- 39.2(476) Eligible carrier requirements
- 39.3(476) Low-income connection assistance program (Link-Up) and low-income Lifeline assistance
- 39.4(476) Universal service support for schools and libraries
- 39.5(476) Quality of service reporting by eligible telecommunications carriers
- 39.6(476) Universal service certification

## CHAPTER 40

## COMPETITIVE BIDDING PROCESS

- 40.1(476) General information
- 40.2(476) Competitive resource acquisition procedure
- 40.3(476) Utility-build or lease cost estimates
- 40.4(476) Utility affiliate bids
- 40.5(476) Request for proposals (RFP)
- 40.6(476) Complaints

## CHAPTER 41

## Reserved

## CHAPTER 42

## CROSSING OF RAILROAD RIGHTS-OF-WAY

- 42.1(476) Definitions
- 42.2(476) Applicability and purpose
- 42.3(476) General notice and specification exhibit requirements and payment of fee
- 42.4(476) Emergency notice and repairs
- 42.5(476) Relocation of public utility facilities
- 42.6(476) Engineering standards for electric and communications lines
- 42.7(476) Engineering standards for pipelines
- 42.8(476) Liability
- 42.9(476) Insurance
- 42.10(476) Removal of equipment
- 42.11(476) Assignment
- 42.12(476) Prohibition against mechanic's liens
- 42.13(476) Taxes
- 42.14(476) Protection of signal systems
- 42.15(476) Safety regulations
- 42.16(476) Recording
- 42.17(17A,476) Complaints and petitions for relief—general information
- 42.18(17A,476) Filing of complaint or petition
- 42.19(17A,476) Presiding officer
- 42.20(17A,476) Answer
- 42.21(17A,476) Parties and appearances
- 42.22(17A,476) Procedural order and notice of hearing
- 42.23(17A,476) Discovery

- 42.24(17A,476) Hearing procedures
- 42.25(17A,476) Decision

## CHAPTER 43

## IOWA BROADBAND INITIATIVE

- 43.1(476) Authority and purpose
- 43.2(476) Definitions
- 43.3(476) Applicability
- 43.4(476) Procedures
- 43.5(476) Broadband initiative plan requirements
- 43.6(476) Upon completion of approved plan
- 43.7(17A) Confidentiality
- 43.8(476) Project reports

## CHAPTER 44

CERTIFICATES OF FRANCHISE AUTHORITY FOR  
CABLE AND VIDEO SERVICE

- 44.1(17A,476,477A) Authority and purpose
- 44.2(17A,476,477A) Definitions
- 44.3(17A,476,477A) Certificate of franchise authority
- 44.4(17A,476,477A) Notice to municipality and incumbent cable provider
- 44.5(17A,476,477A) Conversion of municipal franchise by incumbent cable provider
- 44.6(17A,476,477A) Revocation of certificates, termination of service, reinstatement of previously terminated municipal franchises
- 44.7(17A,476,477A) Assessment of board costs

## CHAPTER 45

## ELECTRIC INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES

- 45.1(476) Definitions
- 45.2(476) Scope
- 45.3(476) Technical standards
- 45.4(476) Interconnection requests
- 45.5(476) General requirements
- 45.6(476) Lab-certified equipment
- 45.7(476) Determining the review level
- 45.8(476) Level 1 expedited review
- 45.9(476) Level 2 expedited review
- 45.10(476) Level 3 expedited review
- 45.11(476) Level 4 review
- 45.12(476) Disputes
- 45.13(476) Records and reports
- 45.14(476) Appendix A – Level 1 standard application form and distributed generation interconnection agreement
- 45.15(476) Appendix B – Standard certificate of completion
- 45.16(476) Appendix C – Levels 2 to 4: standard application form
- 45.17(476) Appendix D – Levels 2 to 4: standard distributed generation interconnection agreement
- 45.18(476) Appendix E – Standard interconnection feasibility study agreement
- 45.19(476) Appendix F – Standard interconnection system impact study agreement
- 45.20(476) Appendix G – Standard interconnection facilities study agreement

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

**199—19.1(476) General information.**

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

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

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

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

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

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

Btu—British thermal unit

LP-Gas—Liquefied Petroleum Gas

psig—Pounds per Square Inch, Gauge

W.C.—Water Column

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

“*Board*” means the Iowa utilities board.

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

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

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

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

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

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

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

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

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

*“Heating and calorific values.”* The following values shall be used:

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

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

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

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

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

4. *“Therm”* means 100,000 British thermal units.

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

*“Interruption of service”* means any disturbance of the gas supply whereby gas service to a customer cannot be maintained.

*“Loss factor”* as used in rule 199—19.10(476) means test-year purchases less test-year sales. A five-year average of purchases less sales may be used if the test year is determined by the board to be abnormal.

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

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

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

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

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

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

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

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

*“Timely payment”* is a payment on a customer’s account made on or before the date shown on a current bill for service or on a form which records an agreement between the customer and a utility for

a series of partial payments to settle a delinquent account, as the date which determines application of a late payment charge to the current bill or future collection efforts.

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

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

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

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

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

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

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

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

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

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

(date)

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

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

Tariff No. \_\_\_\_\_  
Supersedes Tariff No. \_\_\_\_\_

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

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

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

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

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

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

(2) Issuing official and issue date.

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

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

|                          |   |
|--------------------------|---|
| (Company Name)           | (Part identification)                   |
| Gas Tariff               | (This sheet identification)             |
| Filed with board         | (Canceled sheet identification, if any) |
|                          | (Content of tariff)                     |
| Issued: (Date)           | Effective:                              |
| Issued by: (Name, title) | (Proposed Effective Date:)              |

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

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

The utility may propose an effective date.

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

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

b. All rates of utilities subject to rate regulation for service with indication of each rate for the type of gas and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands and consumptions, including the method of calculating or estimating loads or minimums, delivery pressure, and any special terms or conditions applicable. All rates should be separated into “gas” and “nongas” components, and books and records shall be maintained on this basis. Books and records shall be available to the board for audits upon request. The gas components will be the result of the utility’s periodic review of gas procurement practices rule (199—19.11(476)) and PGA (rule 199—19.10(476)) proceeding. The nongas components will be established through rate case proceedings under Iowa Code section 476.3 or 476.6. The period during which the net amount may be paid before the account becomes delinquent shall be specified. In any case where net and gross amounts are billed, the difference between net and gross is a late payment charge and shall be so specified.

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

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

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

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

- (3) General statement indicating the extent to which the utility will provide service in the adjustment of customer appliances at no additional customer charge.
- (4) General statement of the utility's policy in making adjustments for wastage of gas when such wastage occurs without the knowledge of the customer.
- (5) A statement indicating the minimum number of days allowed for payment after the due date of the customer's bill before service will be discontinued for nonpayment.
- (6) A statement indicating the volumetric measurement base to which all sales of gas at other than standard delivery pressure are corrected.
- (7) Forms of standard contracts required of customers for the various types of service available.
- (8) All tariffs must provide that, notwithstanding any other provision of this tariff or contract with reference thereto, all rates and charges contained in this tariff or contract with reference thereto may be modified at any time by a subsequent filing made pursuant to the provisions of Iowa Code chapter 476.
- (9) A copy of each type of customer bill.
- (10) Definitions of classes of customer.
- (11) Rules for extending service in accordance with 19.3(10).
- (12) Rules with which prospective customers must comply as a condition of receiving service, and the terms of contracts required.
- (13) Rules governing the establishment and maintenance of credit by customers for payment of service bills.
- (14) Rules governing disconnecting and reconnecting service.
- (15) Notice required from customer for having service discontinued.
- (16) Rules covering temporary, emergency, auxiliary, and stand-by service.
- (17) Rules shall show any limitations on loads and cover the type of equipment which may or may not be connected.
- (18) Rate-regulated utilities shall include a list of service areas and the applicable rates in such form as to facilitate ready determination of the rates available in each municipality and in such unincorporated communities as have service.
- (19) Rules on meter reading, billing periods, bill issuance, timely customer payment, notice of delinquency and service disconnection for nonpayment of bill.
- (20) Rules on how a customer or prospective customer should file a complaint with the utility, and how the complaint will be processed.
- (21) Rules on how a customer, disconnected customer or potential customer for residential service may negotiate for a payment agreement on amount due, determination of even payment amounts, and time allowed for payments.
- (22) If a sliding scale or automatic adjustment is applicable to regulated rates or charges of billed customers, the manner and method of such adjustment calculation shall be covered through a detailed explanation.

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

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

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

*b. Incident reports.* Rescinded IAB 1/30/08, effective 3/5/08.

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

*d. Reports of gas service.* Each utility shall compile a monthly record of gas service. The record shall be completed within 30 days after the end of the month covered. The compilation is to be kept

available, for inspection by the board or its staff, at the utility's principal office within the state of Iowa. Such record shall contain:

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

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

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

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

*g. Reports to federal agencies.* Copies of reports submitted pursuant to 49 CFR Part 191 as amended through June 22, 2011, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," shall be filed with the board. Utilities operating in other states shall provide to the board data for Iowa only.

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

*i. List of persons authorized to receive board inquiries.* Each utility shall file with the board in the annual report required by 199—subrule 23.1(2) a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) pipeline permits (gas). Each utility shall file with the board a telephone contact number or numbers where the board can obtain current information 24 hours a day about incidents and interruptions of service from a knowledgeable person. The contact information required by this paragraph shall be kept current as changes or corrections are made.

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

- (1) Number of accounts;
- (2) Number of accounts certified as eligible for energy assistance since the preceding October 1;
- (3) Number of accounts past due;
- (4) Number of accounts eligible for energy assistance and past due;
- (5) Total revenue owed on accounts past due;
- (6) Total revenue owed on accounts eligible for energy assistance and past due;
- (7) Number of disconnection notices issued;
- (8) Number of disconnection notices issued on accounts eligible for energy assistance;

- (9) Number of disconnections for nonpayment;
- (10) Number of reconnections;
- (11) Number of accounts determined uncollectible; and
- (12) Number of accounts eligible for energy assistance and determined uncollectible.

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

This rule is intended to implement Iowa Code section 476.2.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11]

### 199—19.3(476) General service requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

- a.* Customer's name, address, rate schedule, or identification of rate schedule.
- b.* Identifying number or description of the meter(s).
- c.* Meter readings.
- d.* If the reading has been estimated.
- e.* Any applicable multiplier or constant, or reference thereto.

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

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

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

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

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

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

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

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

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

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

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

**19.3(10) Plant additions, distribution main extensions, and service lines.**

*a. Definitions.* The following definitions shall apply to the terms as used in this subrule.

*"Advance for construction,"* as used in this subrule, means cash payments or equivalent surety made to the utility by an applicant for an extensive plant addition or a distribution main extension, portions of which may be refunded depending on any subsequent service line attached to the extensive plant addition or distribution main extension. Cash payments or equivalent surety 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.

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

*“Contribution in aid of construction,”* as used in this subrule, means a nonrefundable cash payment grossed-up for the income tax effect of such revenue covering the costs of a distribution main extension or service line that are in excess of costs paid by the utility. 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.

*“Distribution main extension,”* as used in this subrule, means a segment of pipeline installed to convey gas to individual service lines or other distribution mains.

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

*“Estimated base revenues,”* as used in this subrule, shall be calculated by subtracting the cost of purchased gas and energy efficiency charges from estimated annual revenues.

*“Estimated construction costs,”* as used in this subrule, shall be calculated using average current costs in accordance with good engineering practices and upon the following factors: amount of service required or desired by the customer requesting the distribution main extension or service line; size, location, and characteristics of the distribution main extension or service line, including appurtenances; and whether the ground is frozen or whether other adverse conditions exist. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility. The customer shall be charged actual permit fees in addition to estimated construction costs. Permit fees are to be paid regardless of whether the customer is required to pay an advance for construction or a nonrefundable contribution in aid of construction, and the cost of any permit fee is not refundable.

*“Plant addition,”* as used in this subrule, means any additional plant, other than a distribution main or service line, required to be constructed to provide service to a customer.

*“Service line,”* as used in this subrule, means the piping that extends from the distribution main to the meter set riser.

*“Similarly situated customer,”* as used in this subrule, means a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are approximately the same as the annual consumption or service requirements of other customers.

*“Utility,”* as used in this subrule, means a rate-regulated utility.

*b. Plant additions.* The utility shall provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served. A written contract between the utility and the customer which requires an advance for construction by the customer to make plant additions shall be available for board inspection.

*c. Distribution main extensions.* Where the customer will attach to the distribution main extension within the agreed-upon attachment period after completion of the distribution main extension, the following shall apply:

(1) The utility shall finance and make the distribution main extension for a customer without requiring an advance for construction if the estimated construction costs to provide a distribution main extension are less than or equal to three times estimated base revenue calculated on the basis of similarly situated customers. The utility may use a feasibility model, rather than three times estimated base revenue, to determine what, if any, advance for construction is required of the customer. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility’s tariff. Whether or not the construction of the distribution main extension would

otherwise require a payment from a customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(2) If the estimated construction cost to provide a distribution main extension is greater than three times estimated base revenue calculated on the basis of similarly situated customers, the applicant for a distribution main extension shall contract with the utility and make, no more than 30 days prior to commencement of construction, an advance for construction equal to the estimated construction cost less three times estimated base revenue to be produced by the customer. The utility may use a feasibility model to determine whether an advance for construction is required. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility's tariff. A written contract between the utility and the customer shall be available for board inspection upon request. Whether or not the construction of the distribution main extension would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(3) Where the customer will not attach within the agreed-upon attachment period after completion of the distribution main extension, the applicant for the distribution main extension shall contract with the utility and make, no more than 30 days prior to the commencement of construction, an advance for construction equal to the estimated construction cost. The utility may use a feasibility model to determine the amount of the advance for construction. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility's tariff. A written contract between the utility and the customer shall be available for board inspection upon request. Whether or not the construction of the distribution main extension would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(4) Advances for construction may be paid by cash or equivalent surety and shall be refundable for ten years. The customer has the option of providing an advance for construction by cash or equivalent surety unless the utility determines that the customer has failed to comply with the conditions of a surety in the past.

(5) Refunds. When the customer is required to make an advance for construction, the utility shall refund to the depositor for a period of ten years from the date of the original advance a pro-rata share for each service line attached to the distribution main extension. The pro-rata refund shall be computed in the following manner:

1. If the combined total of three times estimated base revenue, or the amount allowed by the feasibility model, for the distribution main extension and each service line attached to the distribution main extension exceeds the total estimated construction cost to provide the distribution main extension, the entire amount of the advance for construction shall be refunded.

2. If the combined total of three times estimated base revenue, or the amount allowed by the feasibility model, for the distribution main extension and each service line attached to the distribution main extension is less than the total estimated construction cost to provide the distribution main extension, the amount to be refunded shall equal three times estimated base revenue, or the amount allowed by the feasibility model, when a service line is attached to the distribution main extension.

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

(6) The utility shall keep a record of each work order under which the distribution main extension was installed, to include the estimated revenues, the estimated construction costs, the amount of any payment received, and any refunds paid.

*d. Service lines.*

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

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

(Estimated Construction Costs) ×

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

(3) A utility may adopt a tariff or rule that allows the utility to finance and construct a service line of more than 50 feet, or 100 feet if polyethylene plastic pipe is used, without requiring a nonrefundable contribution in aid of construction from the customer if the tariff or rule applies equally to all customers.

(4) Whether or not the construction of the service line would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees.

*e. Extensions not required.* Utilities shall not be required to make distribution main extensions or attach service lines as described in this subrule, unless the distribution main extension or service line shall be of a permanent nature.

*f. Different payment arrangement.* This subrule shall not be construed as prohibiting any utility from making a contract with a customer using a different payment arrangement, if the contract provides a more favorable payment arrangement to the customer, so long as no discrimination is practiced among customers.

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

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

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

This rule is intended to implement 42 U.S.C.A. §8372, 10 CFR 516.30, and Iowa Code section 476.8. [ARC 7584B, IAB 2/25/09, effective 4/1/09]

### **199—19.4(476) Customer relations.**

**19.4(1) Customer information.** Each utility shall:

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

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

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

*d.* Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for public inspection. If the utility provides access to its rate schedules and rules for service on its Web site, the notice should include the Web site address.

- e.* Upon request, inform its customers as to the method of reading meters.
- f.* State, on the bill form, that tariff and rate schedule information is available upon request at the utility's local business office.
- g.* Upon request, transmit a statement of either the customer's actual consumption, or degree day adjusted consumption, at the company's option, of natural gas for each billing period during the prior 12 months.
- h.* Furnish such additional information as the customer may reasonably request.
- i.* Promptly and courteously resolve inquiries for information or complaints. 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 that will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling (515)725-7321 or toll-free 1-877-565-4450, or by writing to 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail to [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov)."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling (515)725-7321, or toll-free 1-877-565-4450, by writing to 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail to [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov)."

The bill insert or notice on the bill shall be provided monthly by utilities serving more than 50,000 Iowa retail customers and no less than annually by all other natural gas utilities. Any utility which does not use the standard statement described in this paragraph shall file its proposed statement in its tariff for approval. A utility that bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

**19.4(2) *Customer deposits.***

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

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

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

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

**19.4(3) *Interest on customer deposits.*** Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. On or after April 21, 1994, rate-regulated utilities shall compute

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

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

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

**19.4(5) *Customer's receipt for a deposit.*** Each utility shall issue a receipt of deposit to each customer from whom a deposit is received, and shall provide means whereby a depositor may establish claim if the receipt is lost.

**19.4(6) *Deposit refund.*** A deposit shall be refunded after 12 consecutive months of prompt payment (which may be 11 timely payments and one automatic forgiveness of late payment), unless the utility is entitled to require a new or additional deposit. For refund purposes, the account shall be reviewed after 12 months of service following the making of the deposit and for each 12-month interval terminating on the anniversary of the deposit. However, deposits received from customers subject to the exemption provided by subrule 19.3(7), including surety deposits, may be retained by the utility until final billing. Upon termination of service, the deposit plus accumulated interest, less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

**19.4(7) *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.

**19.4(8) *Customer bill forms.*** Each customer shall be informed as promptly as possible following the reading of the customer's meter, on bill form or otherwise, the following:

- a. The reading of the meter at the beginning and at the end of the period for which the bill is rendered.
- b. The dates on which the meter was read at the beginning and end of the billing period.
- c. The number and kind of units metered.
- d. The applicable rate schedule or identification of the applicable rate schedule.
- e. The account balance brought forward and the amount of each net charge for rate-schedule-priced utility service, sales tax, other taxes, late payment charge, and total amount currently due. In the case of prepayment meters, the amount of money collected shall be shown.
- f. The last date for timely payment shall be clearly shown and shall be not less than 20 days after the bill is rendered.
- g. A distinct marking to identify an estimated bill.
- h. A distinct marking to identify a minimum bill.
- i. Any conversions from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors, such as sliding scale or automatic adjustment and amount of sales tax adjustments used in determining the bill.

**19.4(9) *Customer billing information alternate.*** A utility serving fewer than 5000 gas customers may provide the information in 19.4(8) on bill form or otherwise. If the utility elects not to provide the information of 19.4(8) on the bill form, it shall advise the customer, on the bill form or by bill insert, that such information can be obtained by contacting the utility's local office.

**19.4(10) *Payment agreements.***

- a. *Availability of a first payment agreement.* When a residential customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the utility for residential utility service and

is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement.

*b. Reasonableness.* Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the person to confirm financial difficulty with an acknowledgment from the department of human services or another agency.

*c. Terms of payment agreements.*

(1) *First payment agreement.* The utility shall offer customers who have received a disconnection notice or have been disconnected 120 days or less and who are not in default of a payment agreement the option of spreading payments evenly over at least 12 months by paying specific amounts at scheduled times. The utility shall offer customers who have been disconnected more than 120 days and who are not in default of a payment agreement the option of spreading payments evenly over at least 6 months by paying specific amounts at scheduled times.

1. The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules. The utility may also require the customer to enter into a level payment plan to pay the current bill.

2. When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer.

3. The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission. When the customer makes the agreement over the telephone or through electronic transmission, the utility shall render to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement or electronic agreement. The document will be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the document shall be considered rendered to the customer when delivered to the last-known address of the person responsible for payment for the service. The document shall state that unless the customer notifies the utility within ten days from the date the document is rendered, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free or collect telephone number where a qualified representative can be reached. By making the first payment, the customer confirms acceptance of the terms of the oral agreement or electronic agreement.

4. Each customer entering into a first payment agreement shall be granted at least one late payment that is made four days or less beyond the due date for payment and the first payment agreement shall remain in effect.

(2) *Second payment agreement.* The utility shall offer a second payment agreement to a customer who is in default of a first payment agreement if the customer has made at least two consecutive full payments under the first payment agreement. The second payment agreement shall be for the same term as or longer than the term of the first payment agreement. The customer shall be required to pay for current service in addition to the monthly payments under the second payment agreement and may be required to make the first payment up-front as a condition of entering into the second payment agreement. The utility may also require the customer to enter into a level payment plan to pay the current bill. The utility may offer additional payment agreements to the customer.

*d. Refusal by utility.* A customer may offer the utility a proposed payment agreement. If the utility and the customer do not reach an agreement, the utility may refuse the offer orally, but the utility must render a written refusal of the customer's final offer, stating the reason for the refusal, within three days of the oral notification. The written refusal shall be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the written refusal shall be considered rendered to the customer when handed

to the customer or when delivered to the last-known address of the person responsible for the payment for the service.

A customer may ask the board for assistance in working out a reasonable payment agreement. The request for assistance must be made to the board within ten days after the rendering of the written refusal. During the review of this request, the utility shall not disconnect the service.

**19.4(11) Bill payment terms.** The bill 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 bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall be not less than 20 days between the rendering of a bill and the date by which the account becomes delinquent. Bills for customers on more frequent billing intervals under subrule 19.3(7) may not be considered delinquent less than 5 days from the date of rendering. However, a late payment charge may not be assessed if payment is received within 20 days of the date the bill is rendered.

*a.* The date of delinquency for all residential customers or other customers whose consumption is less than 250 ccf per month shall be changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. In no case, however, shall the utility be required to delay the date of delinquency more than 30 days beyond the date of preparation of the previous bill.

*b.* In any case where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's late payment charge shall not exceed 1.5 percent per month of the past due amount. No collection fee may be levied in addition to this late payment charge. This rule does not prohibit cost-justified charges for disconnection and reconnection of service.

*c.* If the customer makes partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall be credited pro rata between the bill for utility services and related taxes.

*d.* 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 that the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

*e.* Level payment plan. Utilities shall offer a level payment plan to all residential customers or other customers whose consumption is less than 250 ccf per month. A level payment plan should be designed to limit the volatility of a customer's bill and maintain reasonable account balances. The level payment plan shall include at least the following:

- (1) Be offered to each eligible customer when the customer initially requests service.
- (2) Allow for entry into the level payment plan anytime during the calendar year.
- (3) Provide that a customer may request termination of the plan at any time. If the customer's account is in arrears at the time of termination, the balance shall be due and payable at the time of termination. If there is a credit balance, the customer shall be allowed the option of obtaining a refund or applying the credit to future charges. A utility is not required to offer a new level payment plan to a customer for six months after the customer has terminated from a level payment plan.

- (4) Use a computation method that produces a reasonable monthly level payment amount, which may take into account forward-looking factors such as fuel price and weather forecasts, and that complies with requirements in 19.4(11)"e"(4). The computation method used by the utility shall be described in the utility's tariff and shall be subject to board approval. The utility shall give notice to customers when it changes the type of computation method in the level payment plan.

The amount to be paid at each billing interval by a customer on a level payment plan shall be computed at the time of entry into the plan and shall be recomputed at least annually. The level payment amount may be recomputed monthly, quarterly, when requested by the customer, or whenever price, consumption, or a combination of factors results in a new estimate differing by 10 percent or more from that in use.

When the level payment amount is recomputed, the level payment plan account balance shall be divided by 12, and the resulting amount shall be added to the estimated monthly level payment amount. Except when a utility has a level payment plan that recomputes the level payment amount monthly, the customer shall be given the option of applying any credit to payments of subsequent months' level payment amounts due or of obtaining a refund of any credit in excess of \$25.

Except when a utility has a level payment plan that recomputes the level payment amount monthly, the customer shall be notified of the recomputed payment amount not less than one full billing cycle prior to the date of delinquency for the recomputed payment. The notice may accompany the bill prior to the bill that is affected by the recomputed payment amount.

(5) Irrespective of the account balance, a delinquency in payment shall be subject to the same collection and disconnection procedures as other accounts, with the late payment charge applied to the level payment amount. If the account balance is a credit, the level payment plan may be terminated by the utility after 30 days of delinquency.

**19.4(12) Customer records.** The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with 19.4(13) but not less than three years.

**19.4(13) Adjustment of bills.** Bills which are incorrect due to billing errors or faulty metering installation are to be adjusted as follows:

*a. Fast metering.* Whenever a metering installation is tested and found to have overregistered more than 2 percent, the utility shall recalculate the bills for service.

(1) The bills for service shall be recalculated from the time at which the error first developed or occurred if that time can be definitely determined.

(2) If the time at which the error first developed or occurred cannot be definitely determined, it shall be assumed that the overregistration has existed for the shortest time period calculated as one-half the time since the meter was installed or one-half the time elapsed since the last meter test unless otherwise ordered by the board.

(3) If the recalculated bills indicate that \$5 or more is due an existing customer or \$10 or more is due a person no longer a customer of the utility, the tariff shall provide for refunding of the full amount of the calculated difference between the amount paid and the recalculated amount. Refunds shall be made to the two most recent customers who received service through the metering installation during the time the error existed. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount subject to refund shall be mailed to such previous customer at the last-known address, and the utility shall, upon demand made within three months thereafter, refund the same.

Refunds shall be completed within six months following the date of the metering installation test.

*b. Slow metering.* Whenever a meter is found to be more than 2 percent slow, the tariff may provide for back billing the customer for the amount the test indicates has been undercharged for the period of inaccuracy.

When the average error cannot be determined by test because of failure of part or all of the metering equipment, the tariff may provide for use of the registration of check metering installation, if any, or for estimating the quantity consumed based on available data. The customer must be advised of the failure and of the basis for the estimate of quantity billed.

(1) The utility may not back bill due to underregistration unless a minimum back bill amount is specified in its tariff. The minimum amount specified for back billing shall not be less than, but may be greater than, \$5 for an existing customer or \$10 for a former customer. All recalculations resulting in an amount due equal or greater than the tariff specified minimum shall result in issuance of a back bill.

(2) The period for back billing shall not exceed the last six months the meter was in service unless otherwise ordered by the board.

(3) Back billings shall be rendered no later than six months following the date of the metering installation test.

*c. Billing adjustments due to fast or slow meters* shall be calculated on the basis that the meter should be 100 percent accurate. For the purpose of billing adjustment the meter error shall be one-half of the algebraic sum of the error at full-rated flow plus the error at check flow.

*d.* When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

*e.* Undercharges. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the undercharge may be billed to the customer. The period for which the utility may adjust for the undercharge shall not exceed five years unless otherwise ordered by the board. The maximum back bill shall not exceed the dollar amount equivalent to the tariffed rate for like charges (e.g., usage-based, fixed or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

**19.4(14) Credits and explanations.** Credits due a customer because of meter inaccuracies, errors in billing, or misapplication of rates shall be separately identified.

**19.4(15) Refusal or disconnection of service.** A utility shall refuse service or disconnect service to a customer, as defined in subrule 19.1(3), in accordance with tariffs that are consistent with these rules.

*a.* The utility shall give written notice of pending disconnection except as specified in paragraph 19.4(15) "b." The notice shall set forth the reason for the notice and final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when addressed to the customer's last-known address and 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 date for disconnection of service shall be not less than 12 days after the notice is rendered. The date for disconnection of service for customers on shorter billing intervals under subrule 19.3(7) shall not be less than 24 hours after the notice is posted at the service premises.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for disconnection of service. In determining the final date by which the account is to be settled or other specific action taken, the days of notice for the causes shall be concurrent.

*b.* Service may be disconnected without notice:

- (1) In the event of a condition determined by the utility to be hazardous.
- (2) In the event of customer use of equipment in a manner which adversely affects the utility's equipment or the utility's service to others.
- (3) In the event of tampering with the equipment furnished and owned by the utility. For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.
- (4) In the event of unauthorized use.

*c.* Service may be disconnected or refused after proper notice:

- (1) For violation of or noncompliance with the utility's rules on file with the board.
- (2) For failure of the customer to furnish the service equipment, permits, certificates, or rights-of-way which are specified to be furnished, in the utility's rules filed with the board, as conditions of obtaining service, or for the withdrawal of that same equipment, or for the termination of those same permissions or rights, or for the failure of the customer to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the board.

(3) For failure of the customer to permit the utility reasonable access to the utility's equipment.

*d.* Service may be refused or disconnected after proper notice for nonpayment of a bill or deposit, except as restricted by subrules 19.4(16) and 19.4(17), provided that the utility has complied with the following provisions when applicable:

(1) Given the customer a reasonable opportunity to dispute the reason for the disconnection or refusal;

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities available. Customers billed more frequently

than monthly pursuant to subrule 19.3(7) shall be given posted written notice that they have 24 hours to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities. All written notices shall include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide the representative's name and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) The summary of the rights and responsibilities must be approved by the board. Any utility providing gas service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval. A utility billing a combination customer for both gas and electric service may modify the standard form to replace each use of the word "gas" with the words "gas and electric" in all instances.

#### **CUSTOMER RIGHTS AND RESPONSIBILITIES TO AVOID SHUTOFF OF GAS SERVICE FOR NONPAYMENT**

##### **1. What can I do if I receive a notice from the utility that says my gas service will be shut off because I have a past due bill?**

- a. Pay the bill in full; or
- b. Enter into a reasonable payment plan with the utility (see #2 below); or
- c. Apply for and become eligible for low-income energy assistance (see #3 below); or
- d. Give the utility a written statement from a doctor or public health official stating that shutting off your gas service would pose an especial health danger for a person living at the residence (see #4 below); or
- e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

##### **2. How do I go about making a reasonable payment plan? (Residential customers only)**

- a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that spreads payments evenly over at least 12 months. The plan may be longer depending on your financial situation.
- b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, you may qualify for a second payment agreement under certain conditions.
- c. If you do not make the payments you promise, the utility may shut off your utility service on one day's notice unless all the money you owe the utility is paid or you enter into another payment agreement.

##### **3. How do I apply for low-income energy assistance? (Residential customers only)**

- a. Contact the local community action agency in your area (see attached list); or
- b. Contact the Division of Community Action Agencies at the Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; telephone (515)281-0859. To prevent disconnection, you must contact the utility prior to disconnection of your service.
- c. To avoid disconnection, you must apply for energy assistance before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance. Once your service has been disconnected, it will not be reconnected based on approval for energy assistance.
- d. Being certified eligible for energy assistance will prevent your service from being disconnected from November 1 through April 1.

##### **4. What if someone living at the residence has a serious health condition? (Residential customers only)**

Contact the utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your utility service would pose an especial health danger for a person living at your residence. The doctor or public health official must provide a written statement to the utility office within 5 days of when your doctor or public health official notifies the utility of the health condition; otherwise, your utility service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements. After 30 days, your service may be shut off if payment arrangements have not been made.

**5. What should I do if I believe my bill is not correct?**

You may dispute your utility bill. You must tell the utility that you dispute the bill. You must pay the part of the bill you think is correct. If you do this, the utility will not shut off your service for 45 days from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect. You may ask the Iowa Utilities Board for assistance in resolving the dispute. (See #9 below.)

**6. When can the utility shut off my utility service because I have not paid my bill?**

a. Your utility can shut off service between the hours of 6 a.m. and 2 p.m., Monday through Friday.  
b. The utility will not shut off your service on nights, weekends, or holidays for nonpayment of a bill.

c. The utility will not shut off your service if you enter into a reasonable payment plan to pay the overdue amount (see #2 above).

d. The utility will not shut off your service if the temperature is forecasted to be 20 degrees Fahrenheit or colder during the following 24-hour period, including the day your service is scheduled to be shut off.

e. If you have qualified for low-income energy assistance, the utility cannot shut off your service from November 1 through April 1. However, you will still owe the utility for the service used during this time.

f. The utility will not shut off your service if you have notified the utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct.

g. If one of the heads of household is a service member deployed for military service, utility service cannot be shut off during the deployment or within 90 days after the end of deployment. In order for this exception to disconnection to apply, the utility must be informed of the deployment prior to disconnection. However, you will still owe the utility for service used during this time.

**7. How will I be told the utility is going to shut off my gas service?**

a. You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment. This notice will include the reason for shutting off your service.

b. If you have not made payments required by an agreed-upon payment plan, your service may be disconnected with only one day's notice.

c. The utility must also try to reach you by telephone or in person before it shuts off your service. From November 1 through April 1, if the utility cannot reach you by telephone or in person, the utility will put a written notice on the door of your residence to tell you that your utility service will be shut off.

**8. If service is shut off, when will it be turned back on?**

a. The utility will turn your service back on if you pay the whole amount you owe or agree to a reasonable payment plan (see #2 above).

b. If you make your payment during regular business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after regular business hours, the utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility must do it by 11 a.m. the next day.

c. The utility may charge you a fee to turn your service back on. Those fees may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

**9. Is there any other help available besides my utility?**

If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll-free at 1-877-565-4450. You may also write the Iowa Utilities Board at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail at [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov). Low-income customers may also be eligible for free legal assistance from Iowa Legal Aid, and may contact Legal Aid at 1-800-532-1275.

(4) When disconnecting service to a residence, made a diligent attempt to contact, by telephone or in person, the customer responsible for payment for service to the residence to inform the customer of the pending disconnection and the customer's rights and responsibilities. During the period from November 1 through April 1, if the attempt at customer contact fails, the premises shall be posted at least one day

prior to disconnection with a notice informing the customer of the pending disconnection and rights and responsibilities available to avoid disconnection.

If an attempt at personal or telephone contact of a customer occupying a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, the customer's present location. The landlord shall also be informed of the date when service may be disconnected.

If the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons for the disconnection.

(5) Disputed bill. If the customer has received notice of disconnection and has a dispute concerning a bill for natural gas service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid disconnection of service. A utility shall delay disconnection for nonpayment of the disputed bill for up to 45 days after the rendering of the bill if the customer pays the undisputed amount. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board in compliance with 199—Chapter 6.

(6) Reconnection. Disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If a disconnected customer makes payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect the customer not later than 11 a.m. the next day.

(7) Severe cold weather. A disconnection may not take place where gas is used as the only source of space heating or to control or operate the only space heating equipment at the residence on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will be 20 degrees Fahrenheit or colder. In any case where the utility has posted a disconnect notice in compliance with subparagraph 19.4(15)“d”(4) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises above 20 degrees Fahrenheit and is forecasted to be above 20 degrees Fahrenheit for at least 24 hours, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of paragraph 19.4(15)“d.”

(8) Health of a resident. Disconnection of a residential customer shall be postponed if the disconnection of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if a person appears to be seriously impaired and may, because of mental or physical problems, be unable to manage the person's own resources, to carry out activities of daily living or to be protected from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation.

The 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; a statement that the person is a resident of the premises in question; the name, business address, and telephone number of the certifying party; the nature of the health danger; and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for 30 days. In the event service is terminated within 14 days prior to verification of illness by or 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 enter into a reasonable payment agreement for the retirement of the unpaid balance of the account within the first 30 days and does not keep the current account paid during the period

that the unpaid balance is to be retired, the customer is subject to disconnection pursuant to paragraph 19.4(15) "f."

(9) Winter energy assistance (November 1 through April 1). If the utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, there shall be no disconnection of service for 30 days from the date the utility is notified to allow the customer time to obtain assistance. Disconnection shall not take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the community action agency as eligible for either the low-income home energy assistance program or weatherization assistance program.

(10) Deployment. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

*e.* Abnormal gas consumption. A customer who is subject to disconnection for nonpayment of bill, and who has gas consumption which appears to the customer to be abnormally high, may request the utility to provide assistance in identifying the factors contributing to this usage pattern and to suggest remedial measures. The utility shall provide assistance by discussing patterns of gas usage which may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance which may be available to the customer.

*f.* A utility may disconnect gas service without the written 12-day notice for failure of the customer to comply with the terms of a payment agreement, except as provided in numbered paragraph 19.4(10) "c"(1)"4," provided the utility complies with the provisions of paragraph 19.4(15) "d."

*g.* The utility shall, prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and the application process. The notice must be of a type size that is easily legible and conspicuous and must contain the information set out by the state agency administering the assistance program. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing. A utility serving fewer than 6,000 customers may publish the notice in an advertisement in a local newspaper of general circulation or shopper's guide.

**19.4(16) *Insufficient reasons for denying service.*** The following shall not constitute sufficient cause for refusal of service to a customer:

- a.* Delinquency in payment for service by a previous occupant of the premises to be served.
- b.* Failure to pay for 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.* Failure to pay the back bill rendered in accordance with paragraph 19.4(13) "b" (slow meters).
- f.* Failure to pay adjusted bills based on the undercharges set forth in paragraph 19.4(13) "e."
- g.* Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which the customer has been receiving service.
- h.* Delinquency in payment for service by an occupant, if the customer applying for service is creditworthy and able to satisfy any deposit requirements.

**19.4(17) *When disconnection prohibited.***

*a.* No disconnection may take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

*b.* If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

**19.4(18) *Change in character of service.*** The following shall apply to a material change in the character of gas service:

*a.* *Changes under the control of the utility.* The utility shall make such changes only with the approval of the board, and after adequate notice to the customers (see 19.7(6) "a").

*b. Changes not under control of the utility or customer.* The utility shall adjust appliances to attain the proper combustion of the gas supplied. Due consideration shall be given to the gas heating value and specific gravity (see 19.7(6)“b”).

*c. Appliance adjustment charge.* The utility shall make any necessary adjustments to the customer’s appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

**19.4(19) Customer complaints.** Each utility shall investigate promptly and thoroughly and keep a record of written complaints and all other reasonable complaints received by it from its customers in regard to safety, service, or rates, and the operation of its system as will enable it to review and analyze its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date thereof. All complaints caused by a major outage or interruption shall be summarized in a single report.

*a.* Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of customer complaints.

*b.* The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

*c.* The final step in a complaint hearing and review procedure shall be a filing for board resolution of the issues.

This rule is intended to implement Iowa Code sections 476.2, 476.6, 476.8, 476.20 and 476.54.  
[ARC 9101B, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 12/29/10]

### **199—19.5(476) Engineering practice.**

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

**19.5(2) Standards incorporated by reference.**

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

(1) 49 CFR Part 191, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” as amended through June 22, 2011.

(2) 49 CFR Part 192, “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” as amended through June 22, 2011.

(3) 49 CFR Part 193, “Liquefied Natural Gas Facilities: Federal Safety Standards,” as amended through June 22, 2011.

(4) 49 CFR Part 199, “Drug and Alcohol Testing,” as amended through June 22, 2011.

(5) ASME B31.8 - 2007, “Gas Transmission and Distribution Piping Systems.”

(6) NFPA 59-2008, “Utility LP-Gas Plant Code.”

(7) At railroad crossings, 199—42.7(476), “Engineering standards for pipelines.”

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

(1) ANSI Z223.1/NFPA 54-2009, “National Fuel Gas Code.”

(2) NFPA 501A-2009, “Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities.”

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

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

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

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

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11]

### **199—19.6(476) Metering.**

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

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

- a. Classification of meters by capacity, type, and any other factor considered pertinent.
- b. Checking of new meters for acceptable accuracy before being placed in service.
- c. Testing of in-service meters, including any associated instruments or corrective devices, for accuracy, adjustments or repairs. This may be accomplished by periodic tests at specified intervals or on the basis of a statistical sampling plan, but shall include meters removed from service for any reason.
- d. Periodic calibration or testing of devices or instruments used by the utility to test meters.
- e. Leak testing of meters before return to service.
- f. The limits of meter accuracy considered acceptable by the utility.
- g. The nature of meter and meter test records maintained by the utility.

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

- a. American National Standard for Gas Displacement Meters (500 Cubic Feet Per Hour Capacity and Under), ANSI B109.1-2000.
- b. American National Standard for Diaphragm Type Gas Displacement Meters (Over 500 Cubic Feet Per Hour Capacity), ANSI B109.2-2000.
- c. American National Standard for Rotary Type Gas Displacement Meters, ANSI B109.3-2000.
- d. Measurement of Gas Flow by Turbine Meters, ANSI/ASME MFC-4M-1986 (Reaffirmed 2008).
- e. Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, API MPMS Chapter 14.3, Parts 1-4.

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

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

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

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

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

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

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

[ARC 7962B, IAB 7/15/09, effective 8/19/09]

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

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

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

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

**19.7(4) Standards for pressure measurements.**

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

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

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

**19.7(6) Heating value.**

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

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

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

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

**19.7(7) Interruptions of service.**

*a.* Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety. Each utility shall maintain records for not less than two years of interruptions of service as required to be reported in 19.17(1) and shall periodically review these records to determine steps to be taken to prevent recurrence.

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

**199—19.8(476) Safety.**

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

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

**19.8(3) Turning on gas.** Each utility upon the installation of a meter and turning on gas or the act of turning on gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer's piping or appliances are not safe for gas turn on (Ref. Sec. 8.2.3 and Annex D, ANSI Z223.1/NFPA 54-2009).

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

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

**19.8(6) Burial near electric lines.** Each pipeline shall be installed with at least 12 inches of clearance from buried electrical conductors. If this clearance cannot be maintained, protection from damage or introduction of current from an electrical fault shall be provided by other means.

[ARC 7962B, IAB 7/15/09, effective 8/19/09]

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

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

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

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

PGA is the purchased gas adjustment per unit.

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

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

Rc is the weighted average of applicable commodity prices or rates, including appropriate hedging tools costs, to be in effect September 1 corresponding to purchases C.

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

Rd is the weighted average of applicable entitlement reservation charges to be in effect September 1 corresponding to purchases D.

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

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

Rb is the adjusted amount necessary to obtain the anticipated balance for the remaining PGA year calculated by taking the anticipated PGA balance divided by the forecasted volumes, including storage, for one or more months of the remaining PGA year.

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

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

a. The actual sales volumes S for the prior 12-month period ending May 31, with the necessary degree-day adjustments, and further adjustments approved by the board.

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

b. The annual expected lost and unaccounted for factors shall be calculated by determining the actual difference between sales and purchase volumes for the 12 months ending May 31 or from the current annual IG-1 filing, but in no case will this factor be less than 0.

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

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

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

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

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

The annual filing shall include all worksheets and detailed supporting data used to determine the purchased gas adjustment volumes and factors. The utility shall provide an explanation of the calculations of each factor. Information already on file with the board may be incorporated by reference in the filing.

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

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

Changes in factors S or C may not be made in periodic purchased gas filings. A change in factor D or Z may be made in periodic filings and will be deemed approved if it conforms to the annual purchased gas filing or if it conforms to the principles set out in 19.10(6).

The utility shall implement automatically all purchased gas adjustment changes which result from changes in Rc, Rd, or Rz with concurrent board notification with adequate information to calculate and

support the change. The purchased gas adjustment shall be calculated separately for each customer classification or grouping.

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

**19.10(4) Factor Rb.** Each utility has the option of filing an Rb calculation with its October-January PGA filings but shall file an Rb calculation with its February filing and subsequent monthly filings in the PGA year. If the anticipated PGA balance represents costs in excess of revenues, factor Rb shall be assigned a positive value; if the anticipated balance represents revenues in excess of costs, factor Rb shall be assigned a negative value.

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

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

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

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

*a.* The annual reconciliation filing shall include the following information concerning the hedging tools used by the utility:

- (1) The type and volume of physical gas being hedged.
- (2) The reason the hedge was undertaken (e.g., to hedge storage gas, a floating price contract).
- (3) A detailed explanation of the hedging strategy (e.g., costless collar, straddled costless collar, purchasing or selling options).
- (4) The date the futures contract or option was purchased or the date the swap was entered into.
- (5) The spot price of gas at the time the hedge was made, including an explanation of how the spot price was determined including the index or indices used.
- (6) The amount of all commissions paid and to whom those payments were made.
- (7) All administrative costs associated with the hedge.
- (8) The name(s) of all marketers used and the amount of money paid to each marketer.
- (9) The amount of savings or costs resulting from the hedge.
- (10) The amount of money tied up in margin accounts for futures trading and the cost of that money.
- (11) The premium paid for each option.
- (12) The strike price of each option.
- (13) The contracting costs for each swap transaction.
- (14) The name of the fixed-price payer in a swap transaction.
- (15) A statement as to how the hedge is consistent with the LDC's natural gas procurement plan.

(16) An explanation as to why the LDC believes the hedge was in the best interest of general system customers.

(17) All invoices, work papers, and internal reports associated with the hedge.

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

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

c. Any overbilling determined from the reconciliation shall be refunded to the customer classification or grouping from which it was generated. The overbilling shall be divided by the annual cost of purchased gas subject to recovery for the 12-month period which began the prior September 1 for each purchased gas adjustment clause and applied as follows:

(1) If the net overbilling from the purchased gas adjustment reconciliation exceeds 3 percent of the annual cost of purchased gas subject to recovery for a specific customer classification or grouping, the utility shall refund the overbilling by bill credit or check starting on the first day of billing in the November billing cycle of the current year. The minimum amount to be refunded by check shall be \$10. Interest shall be calculated on amounts exceeding 3 percent from the PGA year midpoint to the date of refunding. The interest rate shall be the dealer commercial paper rate (90-day, high-grade unsecured notes) quoted in the "Money Rates" section of the Wall Street Journal on the last working day of August of the current year.

(2) If the net overbilling from the purchased gas adjustment reconciliation does not exceed 3 percent of the annual cost of purchased gas subject to recovery for a specific customer classification or grouping, the utility may refund the overbilling by bill credit or check starting on the first day of billing in the November billing cycle of the current year, or the utility may refund the overbilling through ten-month adjustments to the particular purchased gas adjustment from which they were generated. The minimum amount to be refunded by check shall be \$10. This adjustment shall be determined by dividing the overcollection by the anticipated sales volume for the prospective ten-month period beginning November 1 as determined in subrule 19.10(1) for the applicable purchased gas adjustment clause. The quotient, determined on the same basis as the utility's tariff rates, shall be a reduction to that particular purchased gas adjustment for the prospective ten-month period beginning November 1.

d. When a customer has reduced or terminated system supply service and is receiving transportation service, any liability for overcollections and undercollections shall be determined in accordance with the utility's gas transportation tariff.

**19.10(8) Refunds related to gas costs charged through the PGA.** The utility shall file a refund plan with the board within 30 days of the receipt of any refund related to gas costs charged through the PGA.

a. The utility shall refund to customers by bill credit or check an amount equal to any refund, plus accrued interest, if the refund exceeds \$10 per average residential customer under the applicable customer classification or grouping. The utility may refund lesser amounts through the applicable customer classification or grouping or retain undistributed refund amounts in special refund retention accounts for each customer classification or grouping under the applicable PGA clause until such time as additional refund obligations or interest cause the average residential customer refund to exceed \$10. Any obligations remaining in the retention accounts on September 1 shall become a part of the annual PGA reconciliation.

b. The utility shall file with the refund plan the following information:

- (1) A statement of reason for the refund.
- (2) The amount of the refund with support for the amount.
- (3) The balance of the appropriate refund retention accounts.
- (4) The amount due under each customer classification or grouping.
- (5) The intended period of the refund distribution.
- (6) The estimated interest accrued for each refund through the proposed refund period, with complete interest calculations and supporting data as determined in paragraph 19.10(8) "d."

(7) The total amount to be refunded, the amount to be refunded per customer classification or grouping, and the refund per ccf or therm.

(8) The estimated interest accrued for each refund received and for each amount in the refund retention accounts through the date of the filing with the complete interest calculation and support as determined in paragraph 19.10(8)“d.”

(9) The total amount to be retained, the amount to be retained per customer classification or grouping, and the level per ccf or therm.

(10) The calculations demonstrating that the retained balance is less than \$10 per average residential customer with supporting schedules for all factors used.

c. The refund to each customer shall be determined by dividing the amount in the appropriate refund retention account, including interest, by the total ccf or therm of system gas consumed by affected customers during the period for which the refundable amounts are applicable and multiplying the quotient by the ccf or therms of system supply gas actually consumed by the customer during the appropriate period. The utility may use the last available 12-month period if the use of the actual period generating the refund is impractical. The utility shall file complete support documentation for all figures used.

d. The interest rate on refunds distributed under this subrule, compounded annually, shall be the dealer commercial paper rate (90-day, high-grade unsecured notes) quoted in the “Money Rates” section of the Wall Street Journal on the day the refund obligation vests. Interest shall accrue from the date the rate-regulated utility receives the refund or billing from the supplier or the midpoint of the first month of overcollection to the date the refund is distributed to customers.

e. The rate-regulated utility shall make a reasonable effort to forward refunds, by check, to eligible recipients who are no longer customers.

f. The minimum amount to be refunded by check shall be \$5.

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

### **199—19.11(476) Periodic review of gas procurement practices [476.6(15)].**

**19.11(1) Procurement plan.** The board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility’s natural gas procurement and contracting practices. The board shall provide the utilities 90 days’ notice of the requirement to file a procurement plan. In the years in which the board does not conduct a contested case proceeding, the board may require the utilities to file certain information for the board’s review. In years in which the board conducts a full proceeding, a rate-regulated utility shall file prepared direct testimony and exhibits in support of a detailed 12-month plan and a 3-year natural gas procurement plan. A utility’s procurement plan shall be organized as follows and shall include:

a. An index of all documents and information filed in the plan and identification of the board files in which documents incorporated by reference are located.

b. All contracts and gas supply arrangements executed or in effect for obtaining gas and all supply arrangements planned for the future 12-month and 3-year periods.

c. An organizational description of the officer or division responsible for gas procurement and a summary of operating procedures and policies for procuring and evaluating gas contracts.

d. A summary of the legal and regulatory actions taken to minimize purchased gas costs.

e. All studies or investigation reports considered in gas purchase contract or arrangement decisions during the plan periods.

f. A complete list of all contracts executed since the last procurement review.

g. A list of other unbundled services available (for example, storage services if offered).

h. A description of the supply options selected and an evaluation of the reasonableness and prudence of its decisions. This evaluation should show the relationship between forecast and procurement.

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

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

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

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

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

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

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

### **199—19.12(476) Flexible rates.**

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

#### **19.12(2) *General criteria.***

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

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

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

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

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

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

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

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

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

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

f. Customer charges may be discounted.

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

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

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

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

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

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

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

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

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

### **199—19.13(476) Transportation service.**

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Small volume transportation service. Rescinded IAB 4/28/04, effective 6/2/04.

f. Optional plan filing. Rescinded IAB 4/28/04, effective 6/2/04.

**19.13(5) *Reporting requirements.*** A natural gas utility shall file with the board two copies of each transportation contract entered into within 30 days of the date of execution. The utility may delete any information identifying the end-user and replace it with an identification number. The utility shall promptly supply the deleted information if requested by the board staff. The deleted information may be filed with a request for confidentiality, pursuant to 199 Iowa Administrative Code rule 1.9(22).

**19.13(6) *Written notice of risks.*** The utility must notify its large volume users as defined in 19.14(1) contracting for transportation service in writing that unless the customer buys system supply reserve service from the utility, the utility is not obligated to supply gas to the customer. The notice must also advise the large volume user of the nature of any identifiable penalties, any administrative or reconnection costs associated with purchasing available firm or interruptible gas, and how any available gas would be priced by the utility. The notice may be provided through a contract provision or separate written instrument. The large volume user must acknowledge in writing that it has been made aware of the risks and accepts the risks.

**199—19.14(476) Certification of competitive natural gas providers and aggregators.**

**19.14(1) *Definitions.*** The following words and terms, when used in these rules, shall have the meanings indicated below:

“*Competitive natural gas provider*” or “*CNGP*” means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa, and it also means an aggregator as defined in Iowa Code section 476.86. CNGP includes an affiliate of an Iowa public utility. CNGP excludes the following:

1. A public utility which is subject to rate regulation under Iowa Code chapter 476.

2. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in Iowa Code section 437A.3(21) “a”(1), in which the municipally owned utility is located.

“*Competitive natural gas services*” means natural gas sold at retail in this state excluding the sale of natural gas by a rate-regulated public utility or a municipally owned utility as provided in the definition of CNGP in 19.14(1).

“*Large volume user*” means any end user whose usage exceeds 25,000 therms in any month or 100,000 therms in any consecutive 12-month period.

“*Small volume user*” means any end user whose usage does not exceed 25,000 therms in any month and does not exceed 100,000 therms in any consecutive 12-month period.

**19.14(2) *General requirement to obtain certificate.*** A CNGP shall not provide competitive natural gas services to an Iowa retail end user without a certificate approved by the board pursuant to Iowa Code section 476.87. An exception to this requirement is a CNGP that has provided service to retail customers before April 25, 2001. A CNGP subject to this exception shall file for a certificate under the provisions of this rule on or before June 1, 2001, to continue providing service pending the approval of the certificate.

**19.14(3) *Filing requirements and application process.*** Applications shall be made in the format and contain all of the information required in 199—subrule 2.2(18). Applications must be filed with the executive secretary at Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. An original and ten copies must be filed. An application fee of \$125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant will be billed an hourly rate for actual time spent by the board reviewing the application. Iowa Code section 476.87(3) requires the board to allocate the costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding.

An applicant shall notify the board during the pendency of the certification request of any material change in the representations and commitments required by this subrule within 14 days of such change. Any new legal actions or formal complaints as identified in 199 IAC 2.2(18), numbered paragraph “4,” are considered material changes in the request. Once certified, CNGPs shall notify the board of any material change in the representations and commitments required for certification within 14 days of such change.

**19.14(4) *Deficiencies and board determination.*** The board shall act on a certification application within 90 days unless it determines an additional 60 days is necessary. Applications will be considered complete and the 90-day period will commence when all required items are submitted. Applicants will be notified of deficiencies and given 30 days to complete applications. Applicants will be notified when their application is complete and the 90-day period commences.

**19.14(5) *Conditions of certification.*** CNGPs shall comply with the conditions set out in this subrule. Failure to comply with the conditions of certification may result in revocation of the certificate.

*a.* Unauthorized charges. A CNGP shall not charge or attempt to collect any charges from end users for any competitive natural gas services or equipment used in providing competitive natural gas services not contracted for or otherwise agreed to by the end user.

*b.* Notification of emergencies. Upon receipt of information from an end user of the existence of an emergency situation with respect to delivery service, a CNGP shall immediately contact the appropriate public utility whose facilities may be involved. The CNGP shall also provide the end user with the emergency telephone number of the public utility.

*c.* Reports to the board. Each CNGP shall file a report with the board on April 1 of each year for the 12-month period ending December 31 of the previous year. This information may be filed with a request for confidentiality, pursuant to 199—subrule 1.9(6). For each utility distribution system, the report shall contain the following information for its Iowa operations:

- (1) The average number of small volume end users served per month.
- (2) The average number of large volume end users served per month.
- (3) The total volume of sales to small volume end users, by month.
- (4) The total volume of sales to large volume end users, by month.
- (5) The revenue collected from small volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.
- (6) The revenue collected from large volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.
- (7) The date the applicant began providing service in Iowa.

*d.* Rescinded IAB 4/28/04, effective 6/2/04.

**19.14(6)** *Additional conditions applicable to CNGPs providing service to small volume end users.* All CNGPs when providing service to small volume natural gas end users shall be subject to the following conditions in addition to those listed under subrule 19.14(5):

*a. Customer deposits.* Compliance with the following provisions shall apply to customers whose usage does not exceed 2500 therms in any month or 10,000 therms in any consecutive 12-month period.

- Customer deposits – subrule 19.4(2)
- Interest on customer deposits – subrule 19.4(3)
- Customer deposit records – subrule 19.4(4)
- Customer’s receipt for a deposit – subrule 19.4(5)
- Deposit refund – subrule 19.4(6)
- Unclaimed deposits – subrule 19.4(7)

*b. Bills to end users.* A CNGP shall include on bills to end users all the information listed in this paragraph. The bill may be sent to the customer electronically at the customer’s option.

- (1) The period of time for which the billing is applicable.
- (2) The amount owed for current service, including an itemization of all charges.
- (3) Any past-due amount owed.
- (4) The last date for timely payment.
- (5) The amount of penalty for any late payment.
- (6) The location for or method of remitting payment.
- (7) A toll-free telephone number for the end user to call for information and to make complaints regarding the CNGP.
- (8) A toll-free telephone number for the end user to contact the CNGP in the event of an emergency.
- (9) A toll-free telephone number for the end user to notify the public utility of an emergency regarding delivery service.
- (10) The tariffed transportation charges and supplier refunds, where a combined bill is provided to the customer.

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

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

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

- (1) The transferee will serve the affected end users through a certified CNGP;
- (2) The transferee will honor the transferor’s contracts with the affected end users;
- (3) The transferor provides written notice of the transfer to each affected end user prior to the transfer;

- (4) Any affected end user is given 30 days to change supplier without penalty; and
- (5) The transferor provides notice to the public utility of the effective date of the transfer.

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

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

[Editorial change: IAC Supplement 12/29/10]

### **199—19.15(476) Customer contribution fund.**

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

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

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

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

*c.* A sample of the authorization form provided to customers; and

*d.* The date of implementation.

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

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

*a.* A description of the availability and the purpose of the fund;

*b.* A customer authorization form. This form shall include a monthly billing option and any other methods of contribution.

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

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

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

**199—19.16(476) Reserve margin.**

**19.16(1) *Applicability.*** All rate-regulated gas utility companies may maintain a reserve of contract services in excess of their maximum daily system demand requirement and recover the cost of the reserve from their customers through the purchased gas adjustment.

**19.16(2) *Definitions.***

*a. Contract services.* The amount of firm gas delivery capacity or delivery services contracted for use by a utility to satisfy its maximum daily system demand requirement, including the planned delivery capacity of the utility-owned liquefied natural gas facilities, but excluding the delivery capacity of propane storage facilities, shall be considered as contract services.

*b. Maximum daily system demand requirements.* The maximum daily gas demand requirement that the utility forecasts to occur on behalf of its system firm sales customers under peak (design day) weather conditions.

*c. Design day.* The maximum heating season forecast level of all firm sales customers' gas requirements during a 24-hour period beginning at 9 a.m. The design day forecast shall be the combined estimated gas requirements of all firm sales customers calculated by totaling the gas requirements of each customer classification or grouping. The estimated gas requirements for each customer classification or grouping shall be determined based upon an evaluation of historic usage levels of customers in each customer classification or grouping, adjusted for reasonably anticipated colder-than-normal weather conditions and any other clearly identifiable factors that may contribute to the demand for gas by firm customers. The design day calculation shall be submitted for approval by the board with the annual PGA filing required by subrule 19.10(2).

**19.16(3) *Maximum daily system demand requirements of less than 25,000 Dth per day.*** A reserve margin of 9 percent or less in excess of the maximum daily system demand requirements will be presumed reasonable.

**19.16(4) *Maximum daily system demand requirements of more than 25,000 Dth per day.*** A reserve margin of 5 percent or less in excess of the maximum daily system demand requirements will be presumed reasonable.

**19.16(5) *Rebuttable presumption.*** All contract services in excess of an amount needed to meet the maximum daily system demand requirements plus the reserve are presumed to be unjust and unreasonable unless a factual showing to the contrary is made during the periodic review of gas proceeding or in a proceeding specifically addressing the issue with an opportunity for an evidentiary hearing. All contract services less than an amount of the maximum daily system demand requirements plus the reserve are presumed to be just and reasonable unless a factual showing to the contrary can be made during the periodic review of gas proceeding or in a proceeding specifically addressing the issue with an opportunity for an evidentiary hearing.

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

**199—19.17(476) Incident notification and reports.**

**19.17(1) *Notification.*** A utility shall notify the board immediately, or as soon as practical, of any incident involving the release of gas, failure of equipment, or interruption of facility operations, which results in any of the following:

- a.* A death or personal injury necessitating in-patient hospitalization.
- b.* Estimated property damage of \$15,000 or more to the property of the utility and to others, including the cost of gas lost.
- c.* Emergency shutdown of a liquefied natural gas (LNG) facility.
- d.* An interruption of service to 50 or more customers.
- e.* Any other incident considered significant by the utility.

**19.17(2) *Information required.*** The utility shall notify the board by telephone, as soon as practical, of any reportable incident by calling the board duty officer at (515)745-2332 or by E-mail at

[iubdutyofficer@iub.iowa.gov](mailto:iubdutyofficer@iub.iowa.gov). The caller shall leave a call-back number for a person who can provide the following information:

- a. The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.
- b. The location of the incident.
- c. The time of the incident.
- d. The number of deaths or personal injuries and the extent of those injuries, if any.
- e. An initial estimate of damages.
- f. The number of services interrupted.
- g. A summary of the significant information available to the utility regarding the probable cause of the incident and extent of damages.
- h. Any oral or written report required by the U.S. Department of Transportation, and the name of the person who made the oral report or prepared the written report.

**19.17(3) *Written incident reports.*** Within 30 days of the date of the incident, the utility shall file a written report with the board. The report shall include the information required for telephone notice in subrule 19.17(2), the probable cause as determined by the utility, the number and cause of any deaths or personal injuries requiring in-patient hospitalization, and a detailed description of property damage and the amount of monetary damages. If significant additional information becomes available at a later date, a supplemental report shall be filed. Copies of any written reports concerning an incident or safety-related condition filed with or submitted to the U.S. Department of Transportation or the National Transportation Safety Board shall also be provided to the board.

[Editorial change: IAC Supplement 12/29/10]

**199—19.18(476) Capital infrastructure investment automatic adjustment mechanism.**

**19.18(1) *Eligible capital infrastructure investment.*** A rate-regulated natural gas utility may file for board approval a capital infrastructure investment automatic adjustment mechanism to allow recovery of certain costs from customers. To be eligible for recovery through the capital infrastructure investment automatic adjustment mechanism, the costs shall either:

- a. Meet the following criteria:
  - (1) The costs are beyond the direct control of management;
  - (2) The costs are subject to sudden, important change in level;
  - (3) The costs are an important factor in determining the total cost of capital infrastructure investment to serve customers; and
  - (4) The costs are readily, precisely, and continuously segregated in the accounts of the utility; or
- b. Be costs for a capital infrastructure investment which:
  - (1) Does not serve to increase revenues by directly connecting the infrastructure replacement to new customers;
  - (2) Is in service but was not included in the gas utility's rate base in its most recent general rate case; and
  - (3) Replaces or modifies existing infrastructure required by state or local government action or is required to meet state or federal natural gas pipeline safety regulations.

c. Recovery of additional costs for eligible infrastructure investment through an automatic adjustment mechanism under paragraph 19.18(1)“b” shall not be allowed after four years from December 7, 2011. The costs of eligible capital infrastructure investment included in rates prior to the end of the four-year period may still be recovered until the utility's next general rate proceeding filing or until the unit of capital has been depreciated to zero. The utility shall file a proposed tariff annually for recovery after the end of the four-year period.

**19.18(2) *Determination of recovery factor.*** The utility may recover a rate of return and depreciation expense associated with eligible capital infrastructure investments described in subrule 19.18(1). The allowed rate of return shall be the average cost of debt from the utility's last general rate review proceeding. Depreciation expense shall be based upon the depreciation rates allowed by the board in the utility's last general rate review proceeding.

**19.18(3) Recovery procedures.**

*a.* To recover capital infrastructure investment costs that meet the criteria in paragraph 19.18(1)“*a*” through an automatic adjustment mechanism, the utility is required to obtain prior board approval of the automatic adjustment mechanism. The utility shall file information in support of the proposed automatic adjustment mechanism that includes:

- (1) A description of the capital infrastructure investment and the costs that are proposed to be recovered through the automatic adjustment mechanism;
- (2) An explanation of why the costs of the capital infrastructure investment are beyond the control of the utility’s management;
- (3) An exhibit that shows the changes in level of the costs of the capital infrastructure investment that are proposed to be recovered, both historical and projected;
- (4) An explanation of why these particular capital infrastructure investment costs are an important factor in determining the total cost of capital infrastructure investment to serve customers;
- (5) A description of proposed recovery procedures, if different from the procedures described in paragraphs 19.18(3)“*c*” and “*d*”; and
- (6) The length of time that the automatic adjustment mechanism will be in place.

*b.* Recovery of capital infrastructure investment costs that meet the requirements in paragraph 19.18(1)“*b*” may be made by the utility by filing a proposed tariff with a 30-day effective date. Only one tariff filing to recover capital infrastructure investment costs shall be made in a 12-month period. The utility shall file information in support of the proposed automatic adjustment rates that includes:

- (1) The government entity mandate or action, including compliance with an integrity or safety plan adopted by the gas utility to comply with any such mandate or action, that results in the gas utility project and the purpose of the project, or the safety-related reason requiring the project.
- (2) The location, description, and costs associated with the project.
- (3) The cost of debt and applicable depreciation rates from the utility’s last general rate review proceeding.
- (4) The calculations showing the total costs that are eligible for recovery and the rates that are proposed to be implemented.
- (5) The utility shall provide supporting documentation, including but not limited to work orders and journal entries, to the board staff or the office of consumer advocate upon request.
- (6) If the capital infrastructure investment to be included in the automatic adjustment mechanism is based upon an integrity or safety plan adopted in compliance with state or federal natural gas pipeline safety regulations, describe the relationship of the capital infrastructure investment to the integrity or safety plan and the relationship of the integrity or safety plan to a specific state or federal regulation. Provide the date the state or federal regulation was adopted, any relevant compliance dates, and the date the integrity or safety plan was adopted by the utility and how the integrity or safety plan was developed.

*c.* The utility shall calculate the rates for the recovery of the capital infrastructure investment through the automatic adjustment mechanism over the 12-month period beginning from the effective date of the tariff, unless otherwise ordered by the board. Unless otherwise specified in an approved tariff, the capital infrastructure investment factor shall be calculated by taking the total eligible investment costs for the prior calendar year divided by the actual prior calendar year’s sales volumes with the necessary degree-day adjustments. The utility may also use the degree-day adjustment that the utility utilized in the most recent purchased gas adjustment annual filing or any other appropriate degree-day adjustment. The degree-day adjustment shall not be determinative of any weather normalization adjustment in any future rate case.

*d.* The utility shall file an annual reconciliation within 60 days of the end of the 12-month period each year after the initial year in which the automatic adjustment mechanism is implemented that reconciles the actual revenue recovered through the automatic adjustment mechanism with the costs of the eligible capital infrastructure investments proposed to be recovered. The reconciliation shall be for the 12-month period beginning with the effective date of the tariff. Any over-recoveries or under-recoveries from the reconciliation shall be recovered over the ten-month period from the effective date of any adjustment required by the reconciliation.

*e.* Recovery of a return on and return of capital infrastructure investment that is eligible for recovery pursuant to an automatic adjustment mechanism approved under this rule shall continue until the effective date of temporary rates in a subsequent general rate proceeding or, if temporary rates are not implemented, until final rates approved by the board in the utility's next general rate proceeding. To continue recovery, a utility shall file a proposed tariff each year. Once final rates approved by the board in the next general rate proceeding are effective, the automatic adjustment mechanism shall reset to zero. [ARC 9831B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement 42 U.S.C.A. 8372, 10 CFR, 516.30, and Iowa Code sections 476.1, 476.2, 476.6, 476.8, 476.20, 476.54, 476.66, 476.86, 476.87 and 546.7.

[Filed 7/12/66; amended 6/27/75]

[Filed 12/30/75, Notice 10/6/75—published 1/26/76, effective 3/1/76]

[Filed 9/30/77, Notice 6/29/77—published 10/19/77, effective 11/23/77]

[Filed 10/4/78, Notice 8/23/78—published 11/1/78, effective 12/6/78]

[Filed emergency 12/22/78—published 1/10/79, effective 12/22/78]

[Filed 4/10/79, Notice 11/1/78—published 5/2/79, effective 6/6/79]

[Filed 6/8/79, Notice 4/4/79—published 6/27/79, effective 8/1/79]

[Filed 9/24/80, Notice 7/23/80—published 10/15/80, effective 11/19/80]

[Filed 9/26/80, Notice 8/6/80—published 10/15/80, effective 11/19/80]

[Filed 6/5/81, Notice 4/15/81—published 6/24/81, effective 7/29/81]

[Filed 6/19/81, Notice 10/1/80—published 7/8/81, effective 8/12/81]

[Filed 10/20/81, Notice 11/26/80—published 11/11/81, effective 12/16/81]

[Filed emergency 11/17/81 after Notice 9/30/81—published 12/9/81, effective 11/17/81]

[Filed emergency 12/14/81—published 1/6/82, effective 12/14/81]

[Filed 1/28/82, Notice 5/27/81—published 2/17/82, effective 3/24/82]

[Filed 1/28/82, Notice 10/1/80—published 2/17/82, effective 3/31/82]

[Filed 9/24/82, Notice 4/28/82—published 10/13/82, effective 11/17/82]

[Filed 10/21/82, Notice 8/18/82—published 11/10/82, effective 12/15/82]

[Filed 2/25/83, Notice 12/22/82—published 3/16/83, effective 4/20/83]

[Filed emergency 4/22/83—published 5/11/83, effective 4/22/83]

[Filed 4/15/83, Notice 1/19/83—published 5/11/83, effective 6/15/83]

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]

[Filed emergency 7/29/83—published 8/17/83, effective 7/29/83]

[Filed 9/9/83, Notice 6/8/83—published 9/28/83, effective 11/2/83]

[Filed 9/9/83, Notice 6/8/83—published 9/28/83, effective 1/1/84]

[Filed 11/4/83, Notice 8/31/83—published 11/23/83, effective 1/1/84]

[Filed emergency 12/16/83 after Notice 9/28/83—published 1/4/84, effective 1/1/84]

[Filed 12/16/83, Notice 9/14/83—published 1/4/84, effective 2/8/84]

[Filed 1/13/84, Notice 11/9/83—published 2/1/84, effective 3/7/84]

[Filed 1/27/84, Notice 11/23/84—published 2/15/84, effective 3/21/84]<sup>1</sup>

[Filed 4/9/84, Notice 1/18/84—published 4/25/84, effective 5/30/84]

[Filed 4/20/84, Notice 2/15/84—published 5/9/84, effective 6/13/84]<sup>2</sup>

[Filed 5/4/84, Notice 1/4/84—published 5/23/84, effective 6/27/84]

[Filed emergency 6/1/84—published 6/20/84, effective 6/1/84]

[Filed emergency 6/15/84—published 7/4/84, effective 6/15/84]

[Filed 8/24/84, Notice 1/18/84—published 9/12/84, effective 10/17/84]

[Filed 9/10/84, Notice 7/18/84—published 9/26/84, effective 10/31/84]

[Filed 9/21/84, Notice 5/23/84—published 10/10/84, effective 11/14/84]

[Filed 10/19/84, Notice 8/15/84—published 11/7/84, effective 12/26/84]

[Filed 1/14/85, Notice 11/7/84—published 1/30/85, effective 3/6/85]

[Filed 4/19/85, Notice 2/13/85—published 5/8/85, effective 6/12/85]

[Filed 5/6/85, Notice 1/2/85—published 5/22/85, effective 6/26/85]

[Filed 6/14/85, Notice 4/10/85—published 7/3/85, effective 8/7/85]

- [Filed 8/9/85, Notice 6/19/85—published 8/28/85, effective 10/2/85]
- [Filed emergency 2/7/86 after Notices 10/9/85, 12/4/85—published 2/26/86, effective 3/31/86]
- [Filed 8/8/86, Notice 5/7/86—published 8/27/86, effective 10/1/86]<sup>3</sup>
- [Filed 8/22/86, Notice 6/18/86—published 9/10/86, effective 10/15/86]<sup>3</sup>
- [Filed 8/22/86, Notices 5/21/86, 6/4/86—published 9/10/86, effective 10/15/86]<sup>4</sup>
- [Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]
- [Filed 4/3/87, Notices 11/5/86, 12/3/86, 2/25/87—published 4/22/87, effective 5/27/87]
- [Filed 4/17/87, Notice 12/3/86—published 5/6/87, effective 6/10/87]
- [Filed 11/13/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]
- [Filed 9/2/88, Notice 3/9/88—published 9/21/88, effective 10/26/88]
- [Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
- [Filed 12/8/88, Notice 10/19/88—published 12/28/88, effective 2/1/89]
- [Filed 1/6/89, Notices 7/1/87, 1/13/88, 7/27/88—published 1/25/89, effective 3/1/89]
- [Filed 3/30/89, Notice 10/19/88—published 4/19/89, effective 5/24/89]
- [Filed 4/28/89, Notice 9/21/88—published 5/17/89, effective 6/21/89]
- [Filed 5/24/89, Notices 5/4/88, 6/29/88, 12/14/88—published 6/14/89, effective 7/19/89]
- [Filed 5/24/89, Notice 1/11/89—published 6/14/89, effective 7/19/89]
- [Filed 11/27/89, Notice 9/6/89—published 12/13/89, effective 1/17/90]
- [Filed 2/1/90, Notice 9/20/89—published 2/21/90, effective 3/28/90]
- [Filed 2/28/90, Notice 11/1/89—published 3/21/90, effective 4/25/90]<sup>o</sup>
- [Filed emergency 4/13/90—published 5/2/90, effective 4/13/90]
- [Filed 4/13/90, Notice 10/18/89—published 5/2/90, effective 6/6/90]
- [Filed 5/11/90, Notice 10/18/89—published 5/30/90, effective 7/4/90]
- [Filed 5/25/90, Notice 2/21/90—published 6/13/90, effective 7/18/90]
- [Filed 9/14/90, Notice 11/29/89—published 10/3/90, effective 11/7/90]
- [Filed 11/21/90, Notice 5/2/90—published 12/12/90, effective 1/16/91]
- [Filed 12/21/90, Notice 6/27/90—published 1/9/91, effective 2/13/91]
- [Filed emergency 3/15/91 after Notice 1/23/91—published 4/3/91, effective 3/15/91]
- [Filed 3/28/91, Notice 10/3/90—published 4/17/91, effective 5/22/91]
- [Filed emergency 7/16/91 after Notice 6/12/91—published 8/7/91, effective 7/16/91]
- [Filed emergency 8/16/91 after Notice 5/1/91—published 9/4/91, effective 10/1/91]
- [Filed 3/20/92, Notice 8/7/91—published 4/15/92, effective 5/20/92]
- [Filed 4/23/92, Notice 10/30/91—published 5/13/92, effective 6/17/92]
- [Filed 2/12/93, Notice 9/16/92—published 3/3/93, effective 4/7/93]
- [Filed 8/11/93, Notice 5/12/93—published 9/1/93, effective 10/6/93]<sup>5</sup>
- [Filed emergency 4/21/94—published 5/11/94, effective 4/21/94]
- [Filed emergency 7/15/94 after Notice 3/16/94—published 8/3/94, effective 8/1/94]
- [Filed 4/21/95, Notice 9/28/94—published 5/10/95, effective 6/14/95]
- [Filed 12/23/96, Notice 9/11/96—published 1/15/97, effective 2/19/97]
- [Filed 9/4/97, Notice 3/12/97—published 9/24/97, effective 10/29/97]
- [Filed 10/31/97, Notices 1/29/97, 3/12/97—published 11/19/97, effective 12/24/97]
- [Filed 10/31/97, Notice 5/7/97—published 11/19/97, effective 12/24/97]
- [Filed 1/23/98, Notice 7/2/97—published 2/11/98, effective 3/18/98]
- [Published 6/17/98 to update name and address of board]
- [Filed 10/13/99, Notice 5/19/99—published 11/3/99, effective 12/8/99]
- [Filed 12/8/99, Notice 4/21/99—published 12/29/99, effective 2/2/00]
- [Filed 1/21/00, Notice 11/3/99—published 2/9/00, effective 3/15/00]
- [Filed 5/11/00, Notice 10/6/99—published 5/31/00, effective 7/5/00]
- [Filed 1/4/01, Notices 3/8/00, 8/23/00—published 1/24/01, effective 2/28/01]
- [Filed 3/1/01, Notice 7/12/00—published 3/21/01, effective 4/25/01]
- [Filed emergency 3/30/01—published 4/18/01, effective 3/30/01]
- [Filed 8/3/01, Notice 3/21/01—published 8/22/01, effective 11/1/01]

[Filed 9/14/01, Notice 4/18/01—published 10/3/01, effective 11/7/01]  
 [Filed 3/29/02, Notice 2/6/02—published 4/17/02, effective 5/22/02]  
 [Filed 12/27/02, Notice 7/24/02—published 1/22/03, effective 2/26/03]  
 [Filed 7/18/03, Notice 2/5/03—published 8/6/03, effective 9/10/03]  
 [Filed 10/24/03, Notices 2/5/03, 4/2/03—published 11/12/03, effective 12/17/03]  
 [Filed 11/19/03, Notice 4/2/03—published 12/10/03, effective 1/14/04]  
 [Filed 4/9/04, Notice 10/15/03—published 4/28/04, effective 6/2/04]  
 [Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]  
 [Filed 7/30/04, Notice 6/9/04—published 8/18/04, effective 9/22/04]  
 [Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]  
 [Filed 10/8/04, Notice 7/7/04—published 10/27/04, effective 12/1/04]  
 [Filed 1/22/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]  
 [Filed 4/4/07, Notice 9/13/06—published 4/25/07, effective 5/30/07]  
 [Filed 5/2/07, Notice 3/28/07—published 5/23/07, effective 6/27/07]  
 [Filed 12/27/07, Notice 9/26/07—published 1/30/08, effective 3/5/08]  
 [Filed ARC 7584B (Notice ARC 7420B, IAB 12/17/08), IAB 2/25/09, effective 4/1/09]  
 [Filed ARC 7962B (Notice ARC 7749B, IAB 5/6/09), IAB 7/15/09, effective 8/19/09]  
 [Filed ARC 9101B (Notice ARC 8858B, IAB 6/16/10), IAB 9/22/10, effective 10/27/10]  
 [Editorial change: IAC Supplement 12/29/10]  
 [Filed ARC 9501B (Notice ARC 9394B, IAB 2/23/11), IAB 5/18/11, effective 6/22/11]  
 [Filed ARC 9831B (Notice ARC 9529B, IAB 6/1/11), IAB 11/2/11, effective 12/7/11]

◇ Two or more ARCs

<sup>1</sup> Effective date of 19.3(10) “a,” “b,” (1), (2), (2)“1,” (3) and (4) delayed 70 days by administrative rules review committee.

<sup>2</sup> Effective date of 19.4(11), third unnumbered paragraph, delayed 70 days by administrative rules review committee.

<sup>3</sup> See IAB, Utilities Division

<sup>4</sup> Published in Notice portion of IAB 9/10/86; See IAB 10/22/86

<sup>5</sup> Effective date of 19.4(3) delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.



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

**199—20.1(476) General information.**

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

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

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

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

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

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

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

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

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

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

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

*“Affected unit”* means a unit or source that is subject to any emission reduction requirement or limitation under the Acid Rain Program, the Clean Air Interstate Rule (CAIR) or the Clean Air Mercury Rule (CAMR), or a unit or source that opts in under 40 CFR Part 74.

*“Allowance”* means an authorization, allocated by the United States Environmental Protection Agency (EPA) under the Acid Rain Program, to emit sulfur dioxide (SO<sub>2</sub>), any SO<sub>2</sub> and nitrogen oxide (NO<sub>x</sub>) emissions subject to the Clean Air Interstate Rule (CAIR), or mercury (Hg) emissions subject to the Clean Air Mercury Rule (CAMR), during or after a specified calendar year.

*“Allowance forward contract”* is an agreement between a buyer and seller to transfer an allowance on a specified future date at a specified price.

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

*“Allowance option contract”* is an agreement between a buyer and seller whereby the buyer has the option to transfer an allowance(s) at a specified date at a specified price. The seller of a call or put option will receive a premium for taking on the associated risk.

*“Board”* means the utilities board.

*“Clean Air Interstate Rule”* or *“CAIR”* means the requirements EPA published in the Federal Register (70 Fed. Reg. 25161) on May 12, 2005.

“*Clean Air Mercury Rule*” or “*CAMR*” means the requirements EPA published in the Federal Register (70 Fed. Reg. 28605) on May 18, 2005.

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

“*Compliance plan*” means the document submitted for an affected source to the EPA which specifies the methods by which each affected unit at the source will meet the applicable emissions limitation and emissions reduction requirements.

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

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

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

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

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

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

“*Emission for emission trade*” is an exchange of one type of emission for another type of emission. For example, the exchange of SO<sub>2</sub> emission allowances for NO<sub>x</sub> emission allowances.

“*Energy*” means electric energy measured in kilowatt hours.

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

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

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

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

“*Operating reserve*” is a reserve generating capacity required to ensure reliability of generation resources.

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

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

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

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

“*Power*” means electric power measured in kilowatts.

“*Price hedging*” means using futures contracts or options to guard against unfavorable price changes.

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

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

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

“*Service limiter*” or “*service limitation device*” means a device that limits a residential customer’s power consumption to 3,600 watts (or some higher level of usage approved by the board) and that resets itself automatically, or can be reset manually by the customer, and may also be reset remotely by the utility at all times.

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

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

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

“*Transmission line*” means any single or multiphase electric power line operating at nominal voltages at or in excess of either 69,000 volts between ungrounded conductors or 40,000 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

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

“*Vintage trade*” is an exchange of one vintage of allowances for another vintage of allowances with the difference in value between vintages being cash or additional allowances.

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

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

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

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

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

EPA—United States Environmental Protection Agency.

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

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

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

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

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

[ARC 7976B, IAB 7/29/09, effective 9/2/09]

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

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

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

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476 shall not be required to file schedules of rates, rules, or contracts primarily concerned with a rate schedule with the

board and shall not be subject to the provisions related to rate regulations, but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board's duties upon request to do so by the board.

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

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

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

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

(Name of Public Utility)

Electric Tariff

Filed with

Iowa Utilities Board

(Date)

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

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

TARIFF NO. \_\_\_\_\_

SUPERSEDES TARIFF NO. \_\_\_\_\_

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

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

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

—Symbols—

(C)—Changed regulation

(D)—Discontinued rate or regulation

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

(N)—New rate, treatment or regulation

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

(T)—Change in text only

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

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

(2) Issuing official and issue date.

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

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

|                          |   |
|--------------------------|---|
| (Company Name)           | (Part identification)                   |
| Electric Tariff          | (This sheet identification)             |
| Filed with board         | (Canceled sheet identification, if any) |
|                          | (Content or tariff)                     |
| Issued: (Date)           | Effective:                              |
| Issued by: (Name, title) | (Proposed Effective Date:)              |

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

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

The utility may propose an effective date.

**20.2(4) Content of tariffs.**

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

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

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

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

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

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

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

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

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

*j.* Definitions of classes of customers.

*k.* Extension rules for extending service to new customers indicating what portion of the extension or cost thereof will be furnished by the utility; and if the rule is based on cost, the items of cost included.

*l.* Type of construction which the utility requires the customer to provide if in excess of the Iowa electric safety code or the requirements of the municipality having jurisdiction, whichever may be the most stringent in any particular.

*m.* Specification of such portion of service as the utility furnishes, owns, and maintains, such as service drop, service entrance cable or conductors, conduits, service entrance equipment, meter and socket. Indication of the portions of interior wiring such as range or water heater connection, furnished in whole or in part by the utility, and statement indicating final ownership and responsibility for maintaining equipment furnished by utility.

*n.* Statement of the type of special construction commonly requested by customers which the utility allows to be connected, and terms upon which such construction will be permitted, with due provision for the avoidance of unjust discrimination as between customers who request special construction and those who do not. This applies, for example, to a case where a customer desires underground service in overhead territory.

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

*p.* Rules governing the establishment and maintenance of credit by customers for payment of service bills.

*q.* Rules governing the procedure followed in disconnecting and reconnecting service.

*r.* Notice required from a customer for having service discontinued.

*s.* Rules covering temporary, emergency, auxiliary and stand-by service.

*t.* Rules covering the type of equipment which may or may not be connected, including rules such as those requiring demand-limiting devices or power-factor corrective equipment.

*u.* General statement of the method used in making adjustments for wastage of electricity when accidental grounds exist without the knowledge of the customer.

*v.* Statements of utility rules on meter reading, bill issuance, customer payment, notice of delinquency, and service discontinuance for nonpayment of bill.

*w.* Rules for extending service in accordance with 20.3(13).

*x.* If a sliding scale or automatic adjustment is applicable to regulated rates and charges of billed customers, the manner and method of such adjustment calculation shall be covered through a detailed explanation.

*y.* Rules on how a customer or prospective customer should file a complaint with the utility, and how the complaint will be processed.

*z.* Rules on how a customer, disconnected customer or potential customer for residential service may negotiate for a payment agreement on amount due, determination of even payment amounts, and time allowed for payments.

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

*a.* System map verification. The utility shall file annually a verification that it has a currently correct set of utility system maps in accordance with general requirement 20.3(11) and a statement as to the location of the utility's offices where such maps are accessible and available for examination by the board or its agents. The verification and map location information shall also be reported to the board upon other occasions when significant changes occur in either the maps or location of the maps.

*b.* Accident reports. Rescinded IAB 12/11/91, effective 1/15/92. See 199—25.5(476,478).

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

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

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

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

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

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

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

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

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

*k.* List of persons authorized to receive board inquiries. Each utility shall file with the board in the annual report required in 199—subrule 23.1(2) a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) franchises for electric lines; (6) certificates for electric generating plants. Each utility shall file with the board a telephone contact number where the board can obtain current information 24 hours a day about outages and interruptions of service from a knowledgeable person. The contact information required by this paragraph shall be kept current as changes or corrections are made.

This rule is intended to implement Iowa Code section 476.2.

### **199—20.3(476) General service requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Identification of the meter or meters either by permanently marked utility number or by manufacturer’s name, type number and serial number.

c. Meter readings.

d. If the reading has been estimated.

e. Any applicable multiplier or constant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Filing of the petition with the board, and service to other parties, shall be in accordance with 199—Chapter 14.

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

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

**20.3(11) Maps.**

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

- (1) Generating stations with capacity designation.
- (2) Purchased power supply points with maximum contracted capacity designation.
- (3) Purchased power metering points if located at other than power delivery points.
- (4) Transmission lines with size and type of conductor designation and operating voltage designation.
- (5) Transmission-to-transmission voltage transformation substations with transformer voltage and capacity designation.

(6) Transmission-to-distribution voltage transformation substations with transformer voltage and capacity designation.

(7) Distribution lines with size and type of conductor designation, phase designation and voltage designation.

(8) All points at which transmission, distribution or secondary lines of the utility cross Iowa state boundaries.

(9) All current information required in Iowa Code section 476.24(1).

(10) All county boundaries and county names.

(11) Natural and artificial lakes which cover more than 50 acres and all rivers.

(12) Any additional information required by the board.

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

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

**20.3(13)** *Plant additions, electrical line extensions and service lines.*

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

*"Advance for construction,"* as used in this subrule, means cash payments or equivalent surety made to the utility by an applicant for an extensive plant addition or an electrical line extension, portions of which may be refunded depending on the attachment of any subsequent service line made to the extensive plant addition or electrical line extension. Cash payments or equivalent surety 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 tax liability.

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

*"Contribution in aid of construction,"* as used in this subrule, means a nonrefundable cash payment grossed-up for the income tax effect of such revenue covering the costs of an electrical line extension or service line that are in excess of costs paid by the utility. 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.

*"Electrical line extensions"* means distribution line extensions and secondary line extensions as defined in subrule 20.1(3), except for service lines as defined in this subrule.

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

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

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

*"Estimated construction costs,"* as used in this subrule, shall be calculated using average current costs in accordance with good engineering practices and upon the following factors: amount of service required or desired by the customer requesting the electrical line extension or service line; size, location, and characteristics of the electrical line extension or service line, including appurtenances, except

equivalent overhead transformer cost; and whether the ground is frozen or whether other adverse conditions exist. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility. The customer shall be charged actual permit fees in addition to estimated construction costs. Permit fees are to be paid regardless of whether the customer is required to pay an advance for construction or a nonrefundable contribution in aid of construction, and the cost of any permit fee is not refundable.

*“Plant addition,”* as used in this subrule, means any additional plant required to be constructed to provide service to a customer other than an electrical line extension or service line.

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

*“Service line,”* as used in this subrule, means any secondary line extension, as defined in subrule 20.1(3), on private property serving a single customer or point of attachment of electric service.

*“Similarly situated customer,”* as used in this subrule, means a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are approximately the same as the annual consumption or service requirements of other customers.

*“Utility,”* as used in this subrule, means a rate-regulated utility.

*b. Plant additions.* The utility shall provide all electric plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served. A written contract between the utility and the customer which requires an advance for construction by the customer to make plant additions shall be available for board inspection.

*c. Electrical line extensions.* Where the customer will attach to the electrical line extension within the agreed-upon attachment period after completion of the electrical line extension, the following shall apply:

(1) The utility shall finance and make the electrical line extension for a customer without requiring an advance for construction if the estimated construction costs to provide an electrical line extension are less than or equal to three times estimated base revenue calculated on the basis of similarly situated customers. The utility may use a feasibility model, rather than three times estimated base revenue, to determine what, if any, advance for construction is required by the customer. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility’s tariff. Whether or not the construction of the electrical line extension would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(2) If the estimated construction cost to provide an electrical line extension is greater than three times estimated base revenue calculated on the basis of similarly situated customers, the applicant for the electrical line extension shall contract with the utility and make, no more than 30 days prior to commencement of construction, an advance for construction equal to the estimated construction cost less three times estimated base revenue to be produced by the customer. The utility may use a feasibility model to determine whether an advance for construction is required. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility’s tariff. A written contract between the utility and the customer shall be available for board inspection upon request. Whether or not the construction of the electrical line extension would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(3) Where the customer will not attach within the agreed-upon attachment period after completion of the electrical line extension, the applicant for the electrical line extension shall contract with the utility and make, no more than 30 days prior to the commencement of construction, an advance for construction

equal to the estimated construction cost. The utility may use a feasibility model to determine the amount of the advance for construction. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility's tariff. A written contract between the utility and the customer shall be available for board inspection upon request. Whether or not the construction of the electrical line extension would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(4) Advances for construction may be paid by cash or equivalent surety and shall be refundable for ten years. The customer has the option of providing an advance for construction by cash or equivalent surety unless the utility determines that the customer has failed to comply with the conditions of a surety in the past.

(5) Refunds. When the customer is required to make an advance for construction, the utility shall refund to the depositor for a period of ten years from the date of the original advance a pro-rata share for each service line attached to the electrical line extension. The pro-rata refund shall be computed in the following manner:

1. If the combined total of three times estimated base revenue, or the amount allowed by the feasibility model, for the electrical line extension and each service line attached to the electrical line extension exceeds the total estimated construction cost to provide the electrical line extension, the entire amount of the advance for construction provided shall be refunded.

2. If the combined total of three times estimated base revenue, or the amount allowed by the feasibility model, for the electrical line extension and each service line attached to the electrical line extension is less than the total estimated construction cost to provide the electrical line extension, the amount to be refunded shall equal three times estimated base revenue, or the amount allowed by the feasibility model, when a service line is attached to the electrical line extension.

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

(6) The utility shall keep a record of each work order under which the electrical line extension was installed, to include the estimated revenues, the estimated construction costs, the amount of any payment received, and any refunds paid.

*d. Service lines.*

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

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

(Estimated Construction Costs) ×

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

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

(4) A utility may adopt a tariff or rule that allows the utility to finance and construct a service line of more than 50 feet without requiring a nonrefundable contribution in aid of construction from the customer if the tariff or rule applies equally to all customers or members.

(5) Whether or not the construction of the service line would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees.

*e. Extensions not required.* Utilities shall not be required to make electrical line extensions or install service lines as described in this subrule, unless the electrical line extension or service line shall be of a permanent nature.

*f. Different payment arrangement.* This subrule shall not be construed as prohibiting any utility from making a contract with a customer using a different payment arrangement, if the contract provides a more favorable payment arrangement to the customer, so long as no discrimination is practiced among customers.

This rule is intended to implement Iowa Code section 476.8.

[ARC 7584B, IAB 2/25/09, effective 4/1/09; ARC 9501B, IAB 5/18/11, effective 6/22/11]

### **199—20.4(476) Customer relations.**

**20.4(1) Customer information.** Each utility shall:

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

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

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

*d.* Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for public inspection. If the utility has provided access to its rate schedules and rules for service on its Web site, the notice should include the Web site address.

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

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

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

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

**20.4(2) Customer contact employee qualifications.** Each utility shall promptly and courteously resolve inquiries for information or complaints. 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 that will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling (515)725-7321, or toll-free 1-877-565-4450, or by writing to 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail to [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov)."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling (515)725-7321, or toll-free 1-877-565-4450, by writing to 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail to [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov)."

The bill insert or notice for non-rate-regulated rural electric cooperatives shall include the following statement: “If your complaint is related to the (utility name) service rather than its rates, and (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling (515)725-7321, or toll-free 1-877-565-4450, by writing to 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail to [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov).”

The bill insert or notice on the bill shall be provided monthly by utilities serving more than 50,000 Iowa retail customers and no less than annually by all other electric utilities. Any utility which does not use the standard statement described in this subrule shall file its proposed statement in its tariff for approval. A utility that bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

**20.4(3) Customer deposits.**

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

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

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

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

**20.4(4) Interest on customer deposits.** Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. On or after April 21, 1994, rate-regulated utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer’s account, or to the date the customer’s bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer’s last-known address. The date a customer’s bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

**20.4(5) Customer deposit records.** Each utility shall keep records to show:

a. The name and address of each depositor.

b. The amount and date of the deposit.

c. Each transaction concerning the deposit.

**20.4(6) Customer’s receipt for a deposit.** Each utility shall issue a receipt of deposit to each customer from whom a deposit is received, and shall provide means whereby a depositor may establish claim if the receipt is lost.

**20.4(7) Deposit refund.** A deposit shall be refunded after 12 consecutive months of prompt payment (which may be 11 timely payments and 1 automatic forgiveness of late payment). For refund purposes the account shall be reviewed for prompt payment after 12 months of service following the making of the deposit and for each 12-month interval terminating on the anniversary of the deposit. However,

deposits received from customers subject to the exemption provided by 20.4(3) "b," including surety deposits, may be retained by the utility until final billing. Upon termination of service, the deposit plus accumulated interest, less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

**20.4(8) 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.

**20.4(9) Customer bill forms.** Each customer shall be informed as promptly as possible following the reading of the customer's meter, on bill form or otherwise, of the following:

a. The reading of the meter at the beginning and at the end of the period for which the bill is rendered.

b. The dates on which the meter was read, at the beginning and end of the billing period.

c. The number and kind of units metered.

d. The applicable rate schedule, or identification of the applicable rate schedule.

e. The account balance brought forward and amount of each net charge for rate-schedule-priced utility service, sales tax, other taxes, late payment charge, and total amount currently due. In the case of prepayment meters, the amount of money collected shall be shown.

f. The last date for timely payment shall be clearly shown and shall be not less than 20 days after the bill is rendered.

g. A distinct marking to identify an estimated bill.

h. A distinct marking to identify a minimum bill.

i. Any conversions from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors, such as sliding scale or automatic adjustment and amount of sales tax adjustments used in determining the bill.

j. Customer billing information alternate. A utility serving less than 5000 electric customers may provide the information in 20.4(9) on bill form or otherwise. If the utility elects not to provide the information of 20.4(9), it shall advise the customer, on bill form or by bill insert, that such information can be obtained by contacting the utility's local office.

**20.4(10) Rescinded, effective 7/1/81.**

**20.4(11) Payment agreements.**

a. *Availability of a first payment agreement.* When a residential customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the utility for residential utility service and is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement.

b. *Reasonableness.* Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the person to confirm financial difficulty with an acknowledgment from the department of human services or another agency.

c. *Terms of payment agreements.*

(1) *First payment agreement.* The utility shall offer customers who have received a disconnection notice or have been disconnected 120 days or less and who are not in default of a payment agreement the option of spreading payments evenly over at least 12 months by paying specific amounts at scheduled times. The utility shall offer customers who have been disconnected more than 120 days and who are not in default of a payment agreement the option of spreading payments evenly over at least 6 months by paying specific amounts at scheduled times.

1. The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with

these rules. The utility may also require the customer to enter into a level payment plan to pay the current bill.

2. When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer.

3. The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission. When the customer makes the agreement over the telephone or through electronic transmission, the utility shall render to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement or electronic agreement. The document will be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the document shall be considered rendered to the customer when delivered to the last-known address of the person responsible for payment for the service. The document shall state that unless the customer notifies the utility within ten days from the date the document is rendered, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free or collect telephone number where a qualified representative can be reached. By making the first payment, the customer confirms acceptance of the terms of the oral agreement or electronic agreement.

4. Each customer entering into a first payment agreement shall be granted at least one late payment that is made four days or less beyond the due date for payment and the first payment agreement shall remain in effect.

(2) *Second payment agreement.* The utility shall offer a second payment agreement to a customer who is in default of a first payment agreement if the customer has made at least two consecutive full payments under the first payment agreement. The second payment agreement shall be for the same term as or longer than the term of the first payment agreement. The customer shall be required to pay for current service in addition to the monthly payments under the second payment agreement and may be required to make the first payment up-front as a condition of entering into the second payment agreement. The utility may also require the customer to enter into a level payment plan to pay the current bill. The utility may offer additional payment agreements to the customer.

d. *Refusal by utility.* A customer may offer the utility a proposed payment agreement. If the utility and the customer do not reach an agreement, the utility may refuse the offer orally, but the utility must render a written refusal to the customer, stating the reason for the refusal, within three days of the oral notification. The written refusal shall be considered rendered to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the written refusal shall be considered rendered to the customer when handed to the customer or when delivered to the last-known address of the person responsible for the payment for the service.

A customer may ask the board for assistance in working out a reasonable payment agreement. The request for assistance must be made to the board within ten days after the rendering of the written refusal. During the review of this request, the utility shall not disconnect the service.

**20.4(12) Bill payment terms.** The bill 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 bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall not be less than 20 days between the rendering of a bill and the date by which the account becomes delinquent. Bills for customers on more frequent billing intervals under subrule 20.3(6) may not be considered delinquent less than 5 days from the date of rendering. However, a late payment charge may not be assessed if payment is received within 20 days of the date the bill is rendered.

a. The date of delinquency for all residential customers or other customers whose consumption is less than 3,000 kWh per month, shall be changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. In no case, however, shall the utility be required to delay the date of delinquency more than 30 days beyond the date of preparation of the previous bill.

b. In any case where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's late payment charge shall not exceed 1.5 percent per month of the past due amount. No collection fee may be levied in addition to this late payment charge. This rule does not prohibit cost-justified charges for disconnection and reconnection of service.

c. If the customer makes partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall be credited pro rata between the bill for utility services and related taxes.

d. 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 that the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

e. Level payment plan. Utilities shall offer a level payment plan to all residential customers or other customers whose consumption is less than 3,000 kWh per month. A level payment plan should be designed to limit the volatility of a customer's bill and maintain reasonable account balances. The level payment plan shall include at least the following:

(1) Be offered to each eligible customer when the customer initially requests service.

(2) Allow for entry into the level payment plan anytime during the calendar year.

(3) Provide that a customer may request termination of the plan at any time. If the customer's account is in arrears at the time of termination, the balance shall be due and payable at the time of termination. If there is a credit balance, the customer shall be allowed the option of obtaining a refund or applying the credit to future charges. A utility is not required to offer a new level payment plan to a customer for six months after the customer has terminated from a level payment plan.

(4) Use a computation method that produces a reasonable monthly level payment amount, which may take into account forward-looking factors such as fuel price and weather forecasts, and that complies with requirements in 20.4(12) "e"(4). The computation method used by the utility shall be described in the utility's tariff and shall be subject to board approval. The utility shall give notice to customers when it changes the type of computation method in the level payment plan.

The amount to be paid at each billing interval by a customer on a level payment plan shall be computed at the time of entry into the plan and shall be recomputed at least annually. The level payment amount may be recomputed monthly, quarterly, when requested by the customer, or whenever price, consumption, or a combination of factors results in a new estimate differing by 10 percent or more from that in use.

When the level payment amount is recomputed, the level payment plan account balance shall be divided by 12, and the resulting amount shall be added to the estimated monthly level payment amount. Except when a utility has a level payment plan that recomputes the level payment amount monthly, the customer shall be given the option of applying any credit to payments of subsequent months' level payment amounts due or of obtaining a refund of any credit in excess of \$25.

Except when a utility has a level payment plan that recomputes the level payment amount monthly, the customer shall be notified of the recomputed payment amount not less than one full billing period prior to the date of delinquency for the recomputed payment. The notice may accompany the bill prior to the bill that is affected by the recomputed payment amount.

(5) Irrespective of the account balance, a delinquency in payment shall be subject to the same collection and disconnection procedures as other accounts, with the late payment charge applied to the level payment amount. If the account balance is a credit, the level payment plan may be terminated by the utility after 30 days of delinquency.

**20.4(13) Customer records.** The utility shall retain records as may be necessary to effectuate compliance with 20.4(14) and 20.6(6), but not less than three years. Records for customer shall show where applicable:

a. kWh meter reading

- b. kWh consumption
- c. kW meter reading
- d. kW measured demand
- e. kW billing demand
- f. Total amount of bill.

**20.4(14) Adjustment of bills.**

a. *Meter error.* Whenever a meter creeps or whenever a metering installation is found upon any test to have an average error of more than 2.0 percent for watthour metering; or a demand metering error of more than 1.5 percent in addition to the errors allowed under accuracy of demand metering; an adjustment of bills for service for the period of inaccuracy shall be made in the case of overregistration and may be made in the case of underregistration. The amount of the adjustment shall be calculated on the basis that the metering equipment should be 100 percent accurate with respect to the testing equipment used to make the test. For watthour metering installations the average accuracy shall be the arithmetic average of the percent registration at 10 percent of rated test current and at 100 percent of rated test current giving the 100 percent of rated test current registration a weight of four and the 10 percent of rated test current registration a weight of one.

b. *Determination of adjustment.* Recalculation of bills shall be on the basis of actual monthly consumption except that if service has been measured by self-contained single-phase meters or three-wire network meters and involves no billing other than for kilowatt-hours, the recalculation of bills may be based on the average monthly consumption determined from the most recent 36 months, consumption data.

When the average error cannot be determined by test because of failure of part or all of the metering equipment, it shall be permissible to use the registration of check metering installations, if any, or to estimate the quantity of energy consumed based on available data. The customer must be advised of the failure and of the basis for the estimate of quantity billed. The periods of error shall be used as defined in immediately following subparagraphs (1) and (2).

(1) *Overregistration.* If the date when overregistration began can be determined, such date shall be the starting point for determination of the amount of the adjustment. If the date when overregistration began cannot be determined, it shall be assumed that the error has existed for the shortest time period calculated as one-half the time since the meter was installed, or one-half the time elapsed since the last meter test unless otherwise ordered by the board.

The overregistration due to creep shall be calculated by timing the rate of creeping and assuming that the creeping affected the registration of the meter for 25 percent of the time since the more recent of either metering installation or last previous test.

(2) *Underregistration.* If the date when underregistration began can be determined, it shall be the starting point for determination of the amount of the adjustment except that billing adjustment shall be limited to the preceding six months. If the date when underregistration began cannot be determined, it shall be assumed that the error has existed for one-half of the time elapsed since the more recent of either meter installation or the last meter test, except that billing adjustment shall be limited to the preceding six months unless otherwise ordered by the board.

The underregistration due to creep shall be calculated by timing the rate of creeping and assuming that this creeping affected the registration for 25 percent of the time since the more recent of either metering installation or last previous test, except that billing adjustment shall be limited to the preceding six months.

c. *Refunds.* If the recalculated bills indicate that \$5 or more is due an existing customer or \$10 or more is due a person no longer a customer of the utility, the tariff shall provide refunding of the full amount of the calculated difference between the amount paid and the recalculated amount. Refunds shall be made to the two most recent customers who received service through the metering installation found to be in error. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount subject to refund shall be mailed to such previous customer at the last-known address, and the utility shall, upon demand made within three months thereafter, refund the same.

Refunds shall be completed within six months following the date of the metering installation test.

*d. Back billing.* A utility may not back bill due to underregistration unless a minimum back bill amount is specified in its tariff. The minimum amount specified for back billing shall not be less than, but may be greater than, \$5 for an existing customer or \$10 for a former customer. All recalculations resulting in an amount due equal or greater than the tariff specified minimum shall result in issuance of a back bill.

Back billings shall be rendered no later than six months following the date of the metering installation test.

*e. Overcharges.* When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation or other similar reasons, the amount of the overcharge shall be adjusted, refunded or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

*f. Undercharges.* When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter or other similar reasons, the amount of the undercharge may be billed to the customer. The period for which the utility may adjust for the undercharge shall not exceed five years unless otherwise ordered by the board. The maximum back bill shall not exceed the dollar amount equivalent to the tariffed rate for like charges (e.g., usage-based, fixed or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

*g. Credits and explanations.* Credits due a customer because of meter inaccuracies, errors in billing, or misapplication of rates shall be separately identified.

**20.4(15) Refusal or disconnection of service.** A utility shall refuse service or disconnect service to a customer, as defined in subrule 20.1(3), in accordance with tariffs that are consistent with these rules.

*a.* The utility shall give written notice of pending disconnection except as specified in paragraph 20.4(15) "b." The notice shall set 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 addressed to the customer's last-known address and 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 date for disconnection of service shall be not less than 12 days after the notice is rendered. The date for disconnection of service for customers on shorter billing intervals under subrule 20.3(6) shall not be less than 24 hours after the notice is posted at the service premises.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for disconnection of service. In determining the final date by which the account is to be settled or other specific action taken, the days of notice for the causes shall be concurrent.

*b.* Service may be disconnected without notice:

- (1) In the event of a condition on the customer's premises determined by the utility to be hazardous.
- (2) In the event of customer use of equipment in a manner which adversely affects the utility's equipment or the utility's service to others.
- (3) In the event of tampering with the equipment furnished and owned by the utility. For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.
- (4) In the event of unauthorized use.

*c.* Service may be disconnected or refused after proper notice:

- (1) For violation of or noncompliance with the utility's rules on file with the board.
- (2) For failure of the customer to furnish the service equipment, permits, certificates, or rights-of-way which are specified to be furnished, in the utility's rules filed with the board, as conditions of obtaining service, or for the withdrawal of that same equipment, or for the termination of those same permissions or rights, or for the failure of the customer to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the board.

- (3) For failure of the customer to permit the utility reasonable access to the utility's equipment.

d. Service may be refused or disconnected after proper notice for nonpayment of a bill or deposit, except as restricted by subrules 20.4(16) and 20.4(17), provided that the utility has complied with the following provisions when applicable:

(1) Given the customer a reasonable opportunity to dispute the reason for the disconnection or refusal.

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities available. Customers billed more frequently than monthly pursuant to subrule 20.3(6) shall be given posted written notice that they have 24 hours to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities. All written notices shall include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide the representative's name and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) The summary of the rights and responsibilities must be approved by the board. Any utility providing electric service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval. A utility billing a combination customer for both gas and electric service may modify the standard form to replace each use of the word "electric" with the words "gas and electric" in all instances.

#### **CUSTOMER RIGHTS AND RESPONSIBILITIES TO AVOID SHUTOFF OF ELECTRIC SERVICE FOR NONPAYMENT**

##### **1. What can I do if I receive a notice from the utility that says my service will be shut off because I have a past due bill?**

- a. Pay the bill in full; or
- b. Enter into a reasonable payment plan with the utility (see #2 below); or
- c. Apply for and become eligible for low-income energy assistance (see #3 below); or
- d. Give the utility a written statement from a doctor or public health official stating that shutting off your electric service would pose an especial health danger for a person living at the residence (see #4 below); or
- e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

##### **2. How do I go about making a reasonable payment plan? (Residential customers only)**

- a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that spreads payments evenly over at least 12 months. The plan may be longer depending on your financial situation.
- b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, you may qualify for a second payment agreement under certain conditions.
- c. If you do not make the payments you promise, the utility may shut off your utility service on one day's notice unless all the money you owe the utility is paid or you enter into another payment agreement.

##### **3. How do I apply for low-income energy assistance? (Residential customers only)**

- a. Contact the local community action agency in your area (see attached list); or
- b. Contact the Division of Community Action Agencies at the Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; telephone (515)281-0859. To prevent disconnection, you must contact the utility prior to disconnection of your service.
- c. To avoid disconnection, you must apply for energy assistance before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance. Once your service has been disconnected, it will not be reconnected based on approval for energy assistance.

d. Being certified eligible for energy assistance will prevent your service from being disconnected from November 1 through April 1.

##### **4. What if someone living at the residence has a serious health condition? (Residential customers only)**

Contact the utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your utility service would pose an especial health danger for a person living at your residence. The doctor or public health official must provide a written statement to the utility office within 5 days of when your doctor or public health official notifies the utility of the health condition; otherwise, your utility service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements. After 30 days, your service may be shut off if payment arrangements have not been made.

**5. What should I do if I believe my bill is not correct?**

You may dispute your utility bill. You must tell the utility that you dispute the bill. You must pay the part of the bill you think is correct. If you do this, the utility will not shut off your service for 45 days from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect. You may ask the Iowa Utilities Board for assistance in resolving the dispute. (See #9 below.)

**6. When can the utility shut off my utility service because I have not paid my bill?**

- a. Your utility can shut off service between the hours of 6 a.m. and 2 p.m., Monday through Friday.
- b. The utility will not shut off your service on nights, weekends, or holidays for nonpayment of a bill.
- c. The utility will not shut off your service if you enter into a reasonable payment plan to pay the overdue amount (see #2 above).
- d. The utility will not shut off your service if the temperature is forecasted to be 20 degrees Fahrenheit or colder during the following 24-hour period, including the day your service is scheduled to be shut off.
- e. If you have qualified for low-income energy assistance, the utility cannot shut off your service from November 1 through April 1. However, you will still owe the utility for the service used during this time.
- f. The utility will not shut off your service if you have notified the utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct.
- g. If one of the heads of household is a service member deployed for military service, utility service cannot be shut off during the deployment or within 90 days after the end of deployment. In order for this exception to disconnection to apply, the utility must be informed of the deployment prior to disconnection. However, you will still owe the utility for service used during this time.

**7. How will I be told the utility is going to shut off my service?**

- a. You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment. This notice will include the reason for shutting off your service.
- b. If you have not made payments required by an agreed-upon payment plan, your service may be disconnected with only one day's notice.
- c. The utility must also try to reach you by telephone or in person before it shuts off your service. From November 1 through April 1, if the utility cannot reach you by telephone or in person, the utility will put a written notice on the door of your residence to tell you that your utility service will be shut off.

**8. If service is shut off, when will it be turned back on?**

- a. The utility will turn your service back on if you pay the whole amount you owe or agree to a reasonable payment plan (see #2 above).
- b. If you make your payment during regular business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after regular business hours, the utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility must do it by 11 a.m. the next day.
- c. The utility may charge you a fee to turn your service back on. Those fees may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

**9. Is there any other help available besides my utility?**

If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll-free at 1-877-565-4450. You may also write the Iowa Utilities Board at 1375 E.

Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail at [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov). Low-income customers may also be eligible for free legal assistance from Iowa Legal Aid, and may contact Legal Aid at 1-800-532-1275.

(4) If the utility has adopted a service limitation policy pursuant to subrule 20.4(23), the following paragraph shall be appended to the end of the standard form for the summary of rights and responsibilities, as set forth in subparagraph 20.4(15)“d”(3):

*Service limitation:* We have adopted a limitation of service policy for customers who otherwise could be disconnected. Contact our business office for more information or to learn if you qualify.

(5) When disconnecting service to a residence, made a diligent attempt to contact, by telephone or in person, the customer responsible for payment for service to the residence to inform the customer of the pending disconnection and the customer’s rights and responsibilities. During the period from November 1 through April 1, if the attempt at customer contact fails, the premises shall be posted at least one day prior to disconnection with a notice informing the customer of the pending disconnection and rights and responsibilities available to avoid disconnection.

If an attempt at personal or telephone contact of a customer occupying a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, the customer’s present location. The landlord shall also be informed of the date when service may be disconnected.

If the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons for the disconnection.

(6) Disputed bill. If the customer has received notice of disconnection and has a dispute concerning a bill for electric utility service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid disconnection of service. A utility shall delay disconnection for nonpayment of the disputed bill for up to 45 days after the rendering of the bill if the customer pays the undisputed amount. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board in compliance with 199—Chapter 6.

(7) Reconnection. Disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If a disconnected customer makes payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect the customer not later than 11 a.m. the next day.

(8) Severe cold weather. A disconnection may not take place where electricity is used as the only source of space heating or to control or operate the only space heating equipment at the residence on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will be 20 degrees Fahrenheit or colder. In any case where the utility has posted a disconnect notice in compliance with subparagraph 20.4(15)“d”(5) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises above 20 degrees Fahrenheit and is forecasted to be above 20 degrees Fahrenheit for at least 24 hours, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of paragraph 20.4(15)“d.”

(9) Health of a resident. Disconnection of a residential customer shall be postponed if the disconnection of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if a person appears to be seriously impaired and may, because of mental or physical problems, be unable to manage the person’s own resources, to carry out activities of daily living or to be protected from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or

mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation.

The 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; a statement that the person is a resident of the premises in question; the name, business address, and telephone number of the certifying party; the nature of the health danger; and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for 30 days. In the event service is terminated within 14 days prior to verification of illness by or 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 enter into a reasonable payment agreement for the retirement of the unpaid balance of the account within the first 30 days and does not keep the current account paid during the period that the unpaid balance is to be retired, the customer is subject to disconnection pursuant to paragraph 20.4(15) "f."

(10) Winter energy assistance (November 1 through April 1). If the utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, there shall be no disconnection of service for 30 days from the date the utility is notified to allow the customer time to obtain assistance. Disconnection shall not take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the community action agency as eligible for either the low-income home energy assistance program or weatherization assistance program.

(11) Deployment. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

*e.* Abnormal electric consumption. A customer who is subject to disconnection for nonpayment of bill, and who has electric consumption which appears to the customer to be abnormally high, may request the utility to provide assistance in identifying the factors contributing to this usage pattern and to suggest remedial measures. The utility shall provide assistance by discussing patterns of electric usage which may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance which may be available to the customer.

*f.* A utility may disconnect electric service after 24-hour notice (and without the written 12-day notice) for failure of the customer to comply with the terms of a payment agreement.

*g.* The utility shall, prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and the application process. The notice must be of a type size that is easily legible and conspicuous and must contain the information set out by the state agency administering the assistance program. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing. A utility serving fewer than 6,000 customers may publish the notice in an advertisement in a local newspaper of general circulation or shopper's guide.

**20.4(16)** *Insufficient reasons for denying service.* The following shall not constitute sufficient cause for refusal of service to a customer:

- a.* Delinquency in payment for service by a previous occupant of the premises to be served.
- b.* Failure to pay for 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.* Failure to pay the back bill rendered in accordance with paragraph 20.4(14) "d" (slow meters).
- f.* Failure to pay a bill rendered in accordance with paragraph 20.4(14) "f."
- g.* Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which the customer has been receiving service.
- h.* Delinquency in payment for service by an occupant if the customer applying for service is creditworthy and able to satisfy any deposit requirements.

**20.4(17)** *When disconnection prohibited.*

a. No disconnection may take place from November 1 through April 1 for a resident who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

b. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

**20.4(18)** *Estimated demand.* Upon request of the customer and provided the customer's demand is estimated for billing purposes, the utility shall measure the demand during the customer's normal operation and use the measured demand for billing.

**20.4(19)** *Servicing utilization control equipment.* Each utility shall service and maintain any equipment it uses on customer's premises and shall correctly set and keep in proper adjustment any thermostats, clocks, relays, time switches or other devices which control the customer's service in accordance with the provisions in the utility's rate schedules.

**20.4(20)** *Customer complaints.* Complaints concerning the charges, practices, facilities or service of the utility shall be investigated promptly and thoroughly. The utility shall keep such records of customer complaints as will enable it to review and analyze its procedures and actions.

a. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of customer complaints.

b. The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

c. The final step in a complaint hearing and review procedure shall be a filing for board resolution of the issues.

**20.4(21)** *Temporary service.* When the utility renders temporary service to a customer it may require that the customer bear all of the cost of installing and removing the service facilities in excess of any salvage realized.

**20.4(22)** *Change in type of service.* If a change in the type of service, such as from 25- to 60-cycle or from direct or alternating current, or a change in voltage to a customer's substation, is effected at the insistence of the utility and not solely by reason of increase in the customer's load or change in the character thereof, the utility shall share equitably in the cost of changing the equipment of the customer affected as determined by the board in the absence of agreement between utility and customer. In general, the customer should be protected against or reimbursed for the following losses and expenses to an appropriate degree:

a. Loss of value in electrical power utilization equipment.

b. Cost of changes in wiring, and

c. Cost of removing old and installing new utilization equipment.

**20.4(23)** *Limitation of service.* The utility shall have the option of adopting a policy for service limitation at a customer's residence as a measure to be taken in lieu of disconnection of service to the customer. The service limiter policy shall be set out in the utility's tariff and shall contain the following conditions:

a. A service limitation device shall not be activated without the customer's agreement.

b. A service limitation device shall not be activated unless the customer has defaulted on all payment agreements for which the customer qualifies under the board's rules and the customer has agreed to a subsequent payment agreement.

c. The service limiter shall provide for usage of a minimum of 3,600 watts. If the service limiter policy provides for different usage levels for different customers, the tariff shall set out specific nondiscriminatory criteria for determining the usage levels. Electric-heating residential customers may have their service limited if otherwise eligible, but such customers shall have consumption limits set at a level that allows them to continue to heat their residences. For purposes of this rule, "electric heating" shall mean heating by means of a fixed-installation electric appliance that serves as the primary source of heat and not, for example, one or more space heaters.

*d.* A provision that, if the minimum usage limit is exceeded such that the limiter function interrupts service, the service limiter function must be capable of being reset manually by the customer, or the service limiter function must reset itself automatically within 15 minutes after the interruption. In addition, the service limiter function may also be capable of being reset remotely by the utility. If the utility chooses to use the option of resetting the meter remotely, the utility shall provide a 24-hour toll-free number for the customer to notify the utility that the limiter needs to be reset and the meter shall be reset immediately following notification by the customer. If the remote reset option is used, the meter must still be capable of being reset manually by the customer or the service limiter function must reset itself automatically within 15 minutes after the interruption.

*e.* There shall be no disconnect, reconnect, or other charges associated with service limiter interruptions or restorations.

*f.* A provision that, upon installation of a service limiter or activation of a service limiter function on the meter, the utility shall provide the customer with information on the operation of the limiter, including how it can be reset, and information on what appliances or combination of appliances can generally be operated to stay within the limits imposed by the limiter.

*g.* A provision that the service limiter function of the meter shall be disabled no later than the next working day after the residential customer has paid the delinquent balance in full.

*h.* A service limiter customer that defaults on the payment agreement is subject to disconnection after a 24-hour notice pursuant to paragraph 20.4(15)“f.”

[ARC 7976B, IAB 7/29/09, effective 9/2/09; ARC 9101B, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 12/29/10]

These rules are intended to implement Iowa Code sections 476.6, 476.8, 476.20 and 476.54.

### **199—20.5(476) Engineering practice.**

**20.5(1) Requirement for good engineering practice.** The electric plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

**20.5(2) Standards incorporated by reference.** The utility shall use the applicable provisions in the publications listed below as standards of accepted good practice unless otherwise ordered by the board.

- a.* Iowa Electrical Safety Code, as defined in 199—Chapter 25.
- b.* National Electrical Code, ANSI/NFPA 70-2008.
- c.* American National Standard Requirements for Instrument Transformers, ANSI/IEEE C57.13.1-2006; and C57.13.3-2005.
- d.* American National Standard for Electric Power Systems and Equipment Voltage Ratings (60 Hertz), ANSI C84.1-2006.
- e.* Grounding of Industrial and Commercial Power Systems, IEEE 142-2007.
- f.* IEEE Standard 1159-2009, IEEE Recommended Practice for Monitoring Electric Power Quality or any successor standard.
- g.* IEEE Standard 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems or its successor standard.
- h.* At railroad crossings, 199—42.6(476), “Engineering standards for electric and communications lines.”

**20.5(3) Adequacy of supply and reliability of service.** The generating capacity of the utility’s plant, supplemented by the electric power regularly available from other sources, must be sufficiently large to meet all normal demands for service and provide a reasonable reserve for emergencies.

In appraising adequacy of supply the board will segregate electric utilities into two classes viz., those having high capacity transmission interconnections with other electrical utilities and those which lack such interconnection and are therefore completely dependent upon the firm generating capacity of the utility’s own generating facilities.

*a.* In the case of utilities having interconnecting ties with other utilities, the board will, upon appraising adequacy of supply, take appropriate notice of the utility’s recent past record, as of the

date of appraisal, of any widespread service interruptions and any capacity shortages along with the consideration of the supply regularly available from other sources, the normal demands, and the required reserve for emergencies.

*b.* In the case of noninterconnected utilities the board will give attention to the maximum total coincident customer demand which could be satisfied without the use of the single element of plant equipment, the disability of which would produce the greatest reduction in total net plant productive capacity and also give attention to the normal demands for service and to the reasonable reserve for emergencies.

**20.5(4)** *Electric transmission and distribution facilities.* Rescinded IAB 11/13/02, effective 12/18/02.

**20.5(5)** *Inspection of electric plant.* Each utility shall adopt a written program for inspection of its electric plant in order to determine the necessity for replacement and repair in compliance with board rule 199—25.3(476,478).

This rule is intended to implement Iowa Code section 476.8 and 478.18.  
[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11]

### **199—20.6(476) Metering.**

**20.6(1)** *Inspection and testing program.* Each utility shall adopt a written program for the inspection and testing of its meters to determine the necessity for adjustment, replacement or repair. The frequency of inspection and methods of testing shall be based on the utility's experience, manufacturer's recommendations, and accepted good practice. The publications listed in 20.6(3) are representative of accepted good practice. Each utility shall maintain inspecting and testing records for each meter and associated device until three years after its retirement.

**20.6(2)** *Program content.* The written program shall, at minimum, address the following subject areas:

- a.* Classification of meters by capacity, type, and any other factor considered pertinent.
- b.* Checking of new meters for acceptable accuracy before being placed in service.
- c.* Testing of in-service meters, including any associated instruments or corrective devices, for accuracy, adjustments or repairs. This may be accomplished by periodic tests at specified intervals or on the basis of a statistical sampling plan, but shall include meters removed from service for any reason.
- d.* Periodic calibration or testing of devices or instruments used by the utility to test meters.
- e.* The limits of meter accuracy considered acceptable by the utility.
- f.* The nature of meter and meter test records which will be maintained by the utility.

**20.6(3)** *Accepted good practice.* The following publications are considered to be representative of accepted good practice in matters of metering and meter testing:

- a.* American National Standard Code for Electricity Metering, ANSI C12.1-2008.
- b.* and *c.* Rescinded IAB 5/23/07, effective 6/27/07.

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

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

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

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

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

Within five days of receipt of the written request and payment, the board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after

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

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

[ARC 7962B, IAB 7/15/09, effective 8/19/09]

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

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

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

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

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

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

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

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

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

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

**20.7(8) Equipment for voltage measurements.**

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

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

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

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

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

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

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

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

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

#### **199—20.8(476) Safety.**

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

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

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

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

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

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

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

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

Are incurred in supplying energy;

Are beyond direct control of management;

Are subject to sudden important change in level;

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

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

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

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

1. To show the actual amount of sales of energy by month for which an adjustment was utilized, and
2. To support the energy cost adjustment balance utilized in the monthly energy adjustment clause filings.
  - a. The energy adjustment shall provide for change of the price per kilowatt hour consumed under rates set by the board based upon the formulas provided below. The calculation shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The cost of water used for hydraulic power generation. Water cost shall be limited to items of account 536 of the Uniform System of Accounts. For pumped storage projects the energy

cost of pumping is included. Pumping energy cost shall be determined from the applicable costs of subparagraphs of paragraph 20.9(2) "b."

(5) The energy costs paid for energy purchased under arrangements or contracts for firm power, operational control energy, outage energy, participation power, peaking power, and economy energy, as entered into account 555 of the Uniform System of Accounts, less the energy revenues to be recovered from corresponding sales, as entered in account 447 of the Uniform System of Accounts.

(6) Purchases from AEP facilities under rule 199—15.11(476).

(7) The weighted average costs of inventoried allowances used in generating electricity.

(8) The gains and losses, as described in subrule 20.17(9), from allowance transactions occurring during the month. Allowance transactions shall include vintage trades and emission for emission trades.

(9) Eligible costs or credits associated with the utility's annual reconciliation of its alternate energy purchase program under 199—paragraph 15.17(4) "b."

c. The energy cost adjustment account balance (A) shall be the cumulative balance of any excess or deficiency which arises out of the difference between board recognized energy cost recovery and the amount recovered through application of energy charges to consumption under rates set by the board. Each monthly entry (D) into the energy cost adjustment account shall be the dollar amount determined from solution of the following equation (with proper adjustment for those deliveries at high voltage which for billing purposes recognized the lower losses associated with the high voltage deliveries).

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

$C_2$  is the actual expense for energy, calculated as set forth in 20.9(2) "b," in the month prior to  $EJ_1$  of 20.9(2) "a."

$J_2$  is the actual energy consumed in the prior month under rates set by the board and recorded in accounts 440, 442 and 444-6 of the Uniform System of Accounts.

$Q_2$  is the actual total energy consumed or delivered in the prior month and recorded in accounts 440, 442, 444-7, excluding energy from distinct interchange deliveries entered in account 447, and including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts.

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

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

d. Reserve account for nuclear generation. A rate-regulated utility owning nuclear generation or purchasing energy under a participation power agreement on nuclear generation may establish a reserve account. The reserve account will spread the higher cost of energy used to replace that normally received from nuclear sources. A surcharge would be added to each kilowatt hour from the nuclear source. The surcharges collected are credited to the reserve account. During an outage or reduced level of operation, replacement energy cost would be offset through debit to the reserve account. The debit would be based upon the cost differential between replacement energy cost and the average cost (including the surcharge) of energy from the nuclear capacity. A reserve account shall have credit and debit limitations equal in dollar amounts to the total cost differential for replacement energy during a normal refueling outage.

e. A rate-regulated utility desiring to collect expensed allowance costs and the gains and losses from allowance transactions through the energy adjustment must file with the board monthly reports including:

(1) The number and weighted average unit cost of allowances used during the month to offset emissions from the utility's affected units;

(2) The number and unit price of allowances purchased during the month;

(3) The number and unit price of allowances sold during the month;

(4) The weighted average unit cost of allowances remaining in inventory;

(5) The dollar amount of any gain from an allowance sale occurring during the month;

(6) The dollar amount of any loss from an allowance sale occurring during the month; and

(7) Documentation of any gain or loss from an allowance sale occurring during the month.

*f.* A rate-regulated utility which proposes a new sliding scale or automatic adjustment clause of electric utility energy rates shall conform such clause with the rules.

**20.9(3) Optional energy clause for a rate-regulated utility which does not own generation.** A rate-regulated utility which does not own generation may adopt the energy adjustment clause of this subrule in lieu of that set forth in subrule 20.9(2). Prior to each billing cycle it shall determine and file for board approval the adjustment amount to be charged for each energy unit consumed under rates set by the board. The filing shall include all journal entries, invoices (except invoices for fuel, freight, and transportation), worksheets, and detailed supporting data used to determine the amount of the adjustment. The estimated amount of fossil fuel should be detailed to reflect the amount of fuel, transportation, and other costs.

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

1. To show the actual amount of sales of energy by month for which an adjustment was utilized, and
2. To support the energy cost adjustment balance utilized in the monthly energy adjustment clause filings.

*a.* The energy adjustment charge shall provide for change of the price per kilowatt-hour consumed to equal the average cost per kilowatt hour delivered by the utility's system. The calculation shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **199—20.10(476) Ratemaking standards.**

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

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

The design of rates should reasonably approximate a pricing methodology for any individual utility that would reflect the price system that would exist in a competitive market environment. For purposes

of determining revenue requirements among customer classes, embedded costs shall be preferred. For purposes of determining rate designs within customer classes, long-run marginal cost approaches are preferred although embedded cost approaches may be considered reasonable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*a.* The plan shall include the following:

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

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

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

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

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

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

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

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

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

(3) If a utility can demonstrate it would have been required to provide between June 15 and September 15 a peak alert notice to customers, because of the existence of the conditions set forth in

20.11(2) “b”(1) or 20.11(2) “b”(2), on more than six days in any one of the preceding ten years, the utility may substitute a 97° Fahrenheit (36° Celsius) standard in lieu of the 95° Fahrenheit (35° Celsius) standard in the subrule.

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

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

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

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

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

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

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

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

- (1) All contracts and fuel supply arrangements for obtaining fuel for use by any unit in generation;
- (2) All contracts and arrangements for transporting fuel from point of production to the site where placed in inventory, including any unit generating electricity for the utility;
- (3) All contracts and arrangements for purchasing or selling allowances;
- (4) Purchased power contracts or arrangements, including sale-of-capacity contracts, involving over 25 MW of capacity;
- (5) Pool interchange agreements;
- (6) Multiutility transmission line interchange agreements; and
- (7) Interchange agreements between investor-owned utilities, generation and transmission cooperatives, or both, not required to be filed above, which were entered into or in effect since the last filing, and all such contracts or arrangements which will be entered into or exercised by the utility during the prospective 12-month period.

All procurement plans filed by a utility shall include all of the types of contracts and arrangements listed in subparagraphs (1) and (2) of this paragraph which will be entered into or exercised by the utility

during the prospective 12-month period. In addition, the utility shall file an updated list of contracts that are or will become subject to renegotiation, extension, or termination within five years. The utility shall also update any price adjustment affecting any of the filed contracts or arrangements.

*c. Other contract offers.* The procurement plan shall include a list and description of those types of contracts and arrangements listed in paragraph 20.13(1) "b" offered to the utility since the last filing into which the utility did not enter. In addition, the procurement plan shall include a list of those types of contracts and arrangements listed in paragraph 20.13(1) "b" which were offered to the utility for the prospective 12-month period and into which the utility did not enter.

*d. Studies or investigation reports.* The procurement plans shall include all studies or investigation reports which have been considered by the utility in deciding whether to enter into any of those types of contracts or arrangements listed in paragraphs 20.13(1) "b" and "c" which will be exercised or entered into during the prospective 12-month period.

*e. Price hedge justification.* The procurement plan shall justify purchasing allowance futures contracts as a hedge against future price changes in the market rather than for speculation.

*f. Actual and projected costs.* The procurement plan shall include an accounting of the actual costs incurred in the purchase and transportation of fuel and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraph 20.13(1) "b" for the previous 12-month period.

The procurement plan also shall include an accounting of all costs projected to be incurred by the utility in the purchase and transportation of fuel and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraph 20.13(1) "b" in the prospective 12-month period.

If applicable, the reporting of transportation costs in the procurement plan shall include all known liabilities, including all unit train costs.

*g. Costs directly related to the purchase of fuel.* The utility shall provide a list and description of all other costs directly related to the purchase of fuels for use in generating electricity not required to be reported by paragraph "f."

*h. Compliance plans.* Each utility shall file its emissions compliance plan as submitted to the EPA. Revisions to the compliance plan shall be filed with each subsequent procurement plan.

*i. Evidence submitted.* Each utility shall submit all factual evidence and written argument in support of its evaluation of the reasonableness and prudence of the utility's procurement practice decisions in the manner described in its procurement plan. The utility shall file data sufficient to forecast fuel consumption at each generating unit or power plant for the prospective 12-month period. The board may require the submission of machine-readable data for selected computer codes or models.

*j. Additional information.* Each utility shall file additional information as ordered by the board.

**20.13(2) Periodic review proceeding.** The board shall periodically conduct a proceeding to evaluate the reasonableness and prudence of a rate-regulated utility's procurement practices. The prudence review of allowance transactions and accompanying compliance plans shall be determined on information available at the time the options or plans were developed.

*a.* On or before May 15 of a required filing year, each utility shall file prepared direct testimony and exhibits in support of its fuel procurement decisions and its fuel requirement forecast. This filing shall be in conjunction with the filing of the plans. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased fuel costs.

*b.* The board shall disallow any purchased fuel costs in excess of costs incurred under responsible and prudent policies and practices.

#### **199—20.14(476) Flexible rates.**

**20.14(1) Purpose.** This subrule is intended to allow electric utility companies to offer, at their option, incentive or discount rates to their customers.

##### **20.14(2) General criteria.**

*a.* Electric utility companies may offer discounts to individual customers, to selected groups of customers, or to an entire class of customers. However, discounted rates must be offered to all directly

competing customers in the same service territory. Customers are direct competitors if they make the same end product (or offer the same service) for the same general group of customers. Customers that only produce component parts of the same end product are not directly competing customers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The dollar value of sales to each customer for each of the past 12 months.

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

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

**199—20.15(476) Customer contribution fund.**

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

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

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

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

*c.* A sample of the authorization form provided to customers;

*d.* The date of implementation.

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

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

*a.* A description of the availability and the purpose of the fund;

*b.* A customer authorization form. This form shall include a monthly billing option and any other methods of contribution.

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

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

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

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

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

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

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

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

*“Allowance option contract”* is an agreement between a buyer and seller whereby the buyer has the option to transfer an allowance(s) at a specified date at a specified price. The seller of a call or put option will receive a premium for taking on the associated risk.

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

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

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

*“Emission for emission trade”* is an exchange of one type of emission for another type of emission. For example, the exchange of SO<sub>2</sub> emission allowances for NO<sub>x</sub> emission allowances.

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

*“Historical cost”* is the amount of cash or its equivalent paid to acquire an asset, including any direct acquisition expenses. Any commissions paid to brokers shall be considered a direct acquisition expense.

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

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

*“Vintage trade”* is an exchange of one vintage of allowances for another vintage of allowances with the difference in value between vintages being cash or additional allowances.

**20.17(3) *Valuing allowances for ratemaking purposes.***

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

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

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

**20.17(6) *Valuing allowances acquired through exchanges.***

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

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

**20.17(7) *Valuing allowances transferred among affiliates.***

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

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

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

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

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

b. *Expense recovery.* The expense associated with allowances used for compliance shall be passed through the energy adjustment as specified in rule 199—20.9(476). The expense associated with allowances used for compliance shall include expenses associated with vintage trades and emission for emission trades.

c. *Allowance inventory shortage.* If a utility emits more emissions in a month than it has allowances in inventory, the utility shall pass the estimated cost of acquiring the needed allowances through the energy adjustment. When the needed allowances are acquired, any difference between the estimated and actual cost of the allowances shall be passed through the energy adjustment as specified in rule 199—20.9(476).

**20.17(9) Gains/losses from allowance transactions.** The gains and losses, including net gains and losses, from allowance transactions shall be passed through the energy adjustment as specified in rule 20.9(476). Allowance transactions shall include vintage trades and emission for emission trades.

**20.17(10) Allowance futures or option contracts.**

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

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

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

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

**20.17(13) Prudence of allowance transactions.** The prudence of allowance transactions shall be determined by the board in the periodic electric energy supply and cost review. The prudency review of allowance transactions and accompanying compliance plans shall be based on information available at the time the options or plans were developed. Costs recovered from ratepayers through the energy adjustment that are deemed imprudent by the board shall be refunded with interest to ratepayers through the energy adjustment as specified in rule 199—20.9(476).

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

**20.18(1) Applicability.** Rule 199—20.18(476,478) is applicable to investor-owned electric utilities and electric cooperative corporations and associations operating within the state of Iowa subject to Iowa Code chapter 476 and to the construction, operation, and maintenance of electric transmission lines by electric utilities as defined in subrule 20.18(4) to the extent provided in Iowa Code chapter 478.

**20.18(2) Purpose and scope.** Reliable electric service is of high importance to the health, safety, and welfare of the citizens of Iowa. The purpose of rule 199—20.18(476,478) is to establish requirements for assessing the reliability of the transmission and distribution systems and facilities that are under the board's jurisdiction. This rule establishes reporting requirements to provide consumers, the board, and electric utilities with methodology for monitoring reliability and ensuring quality of electric

service within an electric utility's operating area. This rule provides definitions and requirements for maintenance of interruption data, retention of records, and report filing.

**20.18(3) General obligations.**

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

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

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

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

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

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

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

**20.18(4) Definitions.** Terms and formulas when used in rule 199—20.18(476,478) are defined as follows:

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

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

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

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

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

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

“*Interrupting device*” means a device capable of being reclosed whose purpose is to interrupt faults and restore service or disconnect loads. These devices can be manual, automatic, or motor-operated.

Examples may include transmission breakers, feeder breakers, line reclosers, motor-operated switches, fuses, or other devices.

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

1. Interruptions intentionally initiated pursuant to the provisions of an interruptible service tariff or contract and affecting only those customers taking electric service under such tariff or contract;
2. Interruptions due to nonpayment of a bill;
3. Interruptions due to tampering with service equipment;
4. Interruptions due to denied access to service equipment located on the affected customer’s private property;
5. Interruptions due to hazardous conditions located on the affected customer’s private property;
6. Interruptions due to a request by the affected customer;
7. Interruptions due to a request by a law enforcement agency, fire department, other governmental agency responsible for public welfare, or any agency or authority responsible for bulk power system security;
8. Interruptions caused by the failure of a customer’s equipment; the operation of a customer’s equipment in a manner inconsistent with law, an approved tariff, rule, regulation, or an agreement between the customer and the electric utility; or the failure of a customer to take a required action that would have avoided the interruption, such as failing to notify the company of an increase in load when required to do so by a tariff or contract.

*“Interruption duration”* as used herein in regard to sustained outages means a period of time measured in one-minute increments that starts when an electric utility is notified or becomes aware of an interruption and ends when an electric utility restores electric service. Durations of less than five minutes shall not be reported in sustained outages.

*“Interruption, momentary”* means single operation of an interrupting device that results in a voltage of zero. For example, two breaker or recloser operations equals two momentary interruptions. A momentary interruption is one in which power is restored automatically.

*“Interruption, momentary event”* means an interruption of electric service to one or more customers of duration limited to the period required to restore service by an interrupting device. Note: Such switching operations must be completed in a specified time not to exceed five minutes. This definition includes all reclosing operations that occur within five minutes of the first interruption. For example, if a recloser or breaker operates two, three, or four times and then holds, the event shall be considered one momentary event interruption.

*“Interruption, scheduled”* means an interruption of electric power that results when a transmission or distribution component is deliberately taken out of service at a selected time, usually for the purposes of construction, preventive maintenance, or repair. If it is possible to defer the interruption, the interruption is considered a scheduled interruption.

*“Interruption, sustained”* means any interruption not classified as a momentary event interruption. It is an interruption of electric service that is not automatically or instantaneously restored, with duration of greater than five minutes.

*“Loss of service”* means the loss of electrical power, a complete loss of voltage, to one or more customers. This does not include any of the power quality issues such as sags, swells, impulses, or harmonics. Also see definition of “interruption.”

*“Major event”* will be declared whenever extensive physical damage to transmission and distribution facilities has occurred within an electric utility’s operating area due to unusually severe and abnormal weather or event and:

1. Wind speed exceeds 90 mph for the affected area, or
2. One-half inch of ice is present and wind speed exceeds 40 mph for the affected area, or
3. Ten percent of the affected area total customer count is incurring a loss of service for a length of time to exceed five hours, or

4. 20,000 customers in a metropolitan area are incurring a loss of service for a length of time to exceed five hours.

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

“*Metropolitan area*” means any community, or group of contiguous communities, with a population of 20,000 individuals or more.

“*Momentary average interruption frequency index (MAIFI)*” means the average number of momentary electric service interruptions for each customer during the year. It is calculated by dividing the total number of customer momentary interruptions by the total number of customers served.

$$\text{MAIFI} = \frac{\text{Total Number of Customer Momentary Interruptions}}{\text{Total Number of Customers Served}}$$

“*OMS*” is a computerized outage management system.

“*Operating area*” means a geographical area defined by the electric utility that is a distinct area for administration, operation, or data collection with respect to the facilities serving, or the service provided within, the geographical area.

“*Outage*” means the state of a component when it is not available to perform its intended function due to some event directly associated with that component. An outage may or may not cause an interruption of service to customers, depending on system configuration.

“*Power quality*” means the characteristics of electric power received by the customer, with the exception of sustained interruptions and momentary event interruptions. Characteristics of electric power that detract from its quality include waveform irregularities and voltage variations, either prolonged or transient. Power quality problems shall include, but are not limited to, disturbances such as high or low voltage, voltage spikes and transients, flickers and voltage sags, surges and short-time overvoltages, as well as harmonics and noise.

“*Rural circuit*” means a circuit not defined as an urban circuit.

“*System average interruption duration index (SAIDI)*” means the average interruption duration per customer served during the year. It is calculated by dividing the sum of the customer interruption durations by the total number of customers served during the year.

$$\text{SAIDI} = \frac{\text{Sum of All Customer Interruption Durations}}{\text{Total Number of Customers Served}}$$

“*System average interruption frequency index (SAIFI)*” means the average number of interruptions per customer during the year. It is calculated by dividing the total annual number of customer interruptions by the total number of customers served during the year.

$$\text{SAIFI} = \frac{\text{Total Number of Customer Interruptions}}{\text{Total Number of Customers Served}}$$

“*Total number of customers served*” means the total number of customers served on the last day of the reporting period.

“*Urban circuit*” means a circuit where both 75 percent or more of its customers and 75 percent or more of its primary circuit miles are located within a metropolitan area.

**20.18(5) Record-keeping requirements.**

a. *Required records for electric utilities with over 50,000 Iowa retail customers.*

(1) Each electric utility shall maintain a geospatial information system (GIS) and an outage management system (OMS) sufficient to determine a history of sustained electric service interruptions experienced by each customer. The OMS shall have the ability to access data for each customer in order

to determine a history of electric service interruptions. Data shall be sortable by each of, and in any combination with, the following factors:

1. State jurisdiction;
  2. Operating area (if any);
  3. Substation;
  4. Circuit;
  5. Number of interruptions in reporting period; and
  6. Number of hours of interruptions in reporting period.
- (2) Records on interruptions shall be sufficient to determine the following:
1. Starting date and time the utility became aware of the interruption;
  2. Duration of the interruption;
  3. Date and time service was restored;
  4. Number of customers affected;
  5. Description of the cause of the interruption;
  6. Operating areas affected;
  7. Circuit number(s) of the distribution circuit(s) affected;
  8. Service account number or other unique identifier of each customer affected;
  9. Address of each affected customer location;
  10. Weather conditions at time of interruption;
  11. System component(s) involved (e.g., transmission line, substation, overhead primary main, underground primary main, transformer); and
  12. Whether the interruption was planned or unplanned.
- (3) Each electric utility shall maintain as much information as feasible on momentary interruptions.
- (4) Each electric utility shall keep information on cause codes, weather codes, isolating device codes, and equipment failed codes.
1. The minimum interruption cause code set should include: animals, lightning, major event, scheduled, trees, overload, error, supply, equipment, other, unknown, and earthquake.
  2. The minimum interruption weather code set should include: wind, lightning, heat, ice/snow, rain, clear day, and tornado/hurricane.
  3. The minimum interruption isolating device set should include: breaker, recloser, fuse, sectionalizer, switch, and elbow.
  4. The minimum interruption equipment failed code set should include: cable, transformer, conductor, splice, lightning arrester, switches, cross arm, pole, insulator, connector, other, and unknown.
  5. Utilities may augment the code sets listed above to enhance tracking.
- (5) An electric utility shall retain for seven years the records required by 20.18(5) "a"(1) through (4).
- (6) Each electric utility shall record the date of installation of major facilities (poles, conductors, cable, and transformers) installed on or after April 1, 2003, and integrate that data into its GIS database.
- b. Required records for all other electric utilities.*
- (1) Each electric utility, other than those providing only wholesale electric service, shall record and maintain sufficient records and reports that will enable it to calculate for the most recent seven-year period the average annual hours of interruption per customer due to causes in each of the following four major categories: power supplier, major storm, scheduled, and all other. Those electric utilities that provide only wholesale electric service shall provide their wholesale customers with the information necessary to allow those customers to ascertain the cause of power supply-related outages.
- The category "scheduled" refers to interruptions resulting when a distribution transformer, line, or owned substation is deliberately taken out of service at a selected time for maintenance or other reasons.
- The interruptions resulting from either scheduled or unscheduled outages on lines or substations owned by the power supplier are to be accounted for in the "power supplier" category.
- The category "major storm" represents service interruptions from conditions that cause many concurrent outages because of snow, ice, or wind loads that exceed design assumptions for the lines.

The “all other” category includes outages primarily resulting from emergency conditions due to equipment breakdown, malfunction, or human error.

(2) When recording interruptions, each electric utility, other than those providing only wholesale electric service, shall use detailed standard codes for interruption analysis recommended by the United States Department of Agriculture, Rural Utilities Service (RUS) Bulletin 1730A-119, Tables 1 and 2, including the major cause categories of equipment or installation, age or deterioration, weather, birds or animals, member (or public), and unknown. The utility shall also include the subcategories recommended by RUS for each of these major cause categories.

(3) Each electric utility, other than those providing only wholesale electric service, shall also maintain and record data sufficient to enable it to compute systemwide calculated indices for SAIFI-, SAIDI-, and CAIDI-type measurements, once with the data associated with “major storms” and once without.

c. Each electric utility shall make its records of customer interruptions available to the board as needed.

**20.18(6) Notification of major events.** Notification of major events as defined in subrule 20.18(4) shall comply with the requirements of rule 199—20.19(476,478).

**20.18(7) Annual reliability and service quality report for utilities with more than 50,000 Iowa retail customers.** Each electric utility with over 50,000 Iowa retail customers shall submit to the board and consumer advocate on or before May 1 of each year an annual reliability report for the previous calendar year for the Iowa jurisdiction. The report shall include the following information:

a. *Description of service area.* Urban and rural Iowa service territory customer count, Iowa operating area customer count, if applicable, and major communities served within each operating area.

b. *System reliability performance.*

(1) An overall assessment of the reliability performance, including the urban and rural SAIFI, SAIDI, and CAIDI reliability indices for the previous calendar year for the Iowa service territory and each defined Iowa operating area, if applicable. This assessment shall include outages at the substation, transmission, and generation levels of the system that directly result in sustained interruptions to customers on the distribution system. These indices shall be calculated twice, once with the data associated with major events and once without. This assessment should contain tabular and graphical presentations of the trend for each index as well as the trends of the major causes of interruptions.

(2) The urban and rural SAIFI, SAIDI, and CAIDI reliability average indices for the previous five calendar years for the Iowa service territory and each defined Iowa operating area, if applicable. The reliability average indices shall include outages at the substation, transmission, and generation levels of the system that directly result in sustained interruptions to customers on the distribution system. Calculation of the five-year average shall start with data from the year covered by the first Annual Reliability Report submittal so that by the fifth Annual Reliability Report submittal a complete five-year average shall be available. These indices shall be calculated twice, once with the data associated with major events and once without.

(3) The MAIFI reliability indices for the previous five calendar years for the Iowa service territory and each defined Iowa operating area for which momentary interruptions are tracked. The first annual report should specify which portions of the system are monitored for momentary interruptions, identify and describe the quality of data used, and update as needed in subsequent reports.

c. *Reporting on customer outages.*

(1) The reporting electric utility shall provide tables and graphical representations showing, in ascending order, the total number of customers that experienced set numbers of sustained interruptions during the year (i.e., the number of customers who experienced zero interruptions, the number of customers who experienced one interruption, two interruptions, three interruptions, and so on). The utility shall provide this for each of the following:

1. All Iowa customers, excluding major events.
2. All Iowa customers, including major events.

(2) The reporting electric utility shall provide tables and graphical representations showing, in ascending order, the total number of customers that experienced a set range of total annual sustained

interruption duration during the year (i.e., the number of customers who experienced zero hours total duration, the number of customers who experienced greater than 0.0833 but less than 0.5 hour total duration, the number of customers who experienced greater than 0.5 but less than 1.0 hour total duration, and so on, reflecting half-hour increments of duration). The utility shall provide this for each of the following:

1. All Iowa customers, excluding major events.
2. All Iowa customers, including major events.

*d. Major event summary.* For each major event that occurred in the reporting period, the following information shall be provided:

- (1) A description of the area(s) impacted by each major event;
- (2) The total number of customers interrupted by each major event;
- (3) The total number of customer-minutes interrupted by each major event; and
- (4) Updated damage cost estimates to the electric utility's facilities.

*e. Information on transmission and distribution facilities.*

(1) Total circuit miles of electric distribution line in service at year's end, segregated by voltage level. Reasonable groupings of lines with similar voltage levels, such as but not limited to 12,000- and 13,000-volt three-phase facilities, are acceptable.

(2) Total circuit miles of electric transmission line in service at year's end, segregated by voltage level.

*f. Plans and status report.*

(1) A plan for service quality improvements, including costs, for the electric utility's transmission and distribution facilities that will ensure quality, safe, and reliable delivery of energy to customers.

1. The plan shall cover not less than the three years following the year in which the annual report was filed. A copy of the electric utility's documents and databases supporting capital investment and maintenance budget amounts required in 20.18(7)"g"(1) and 20.18(7)"h"(1), respectively, (including but not limited to transmission and distribution facilities, transmission and distribution control and communication facilities, and transmission and distribution planning, maintenance, and reliability-related computer hardware and software) shall be maintained in the utility's principal Iowa business location and shall be available for inspection by the board and office of consumer advocate. The utility's plan may reference said budget documents and databases, instead of duplicating or restating the detail therein. Copies of capital budgeting documents shall be maintained for five years.

2. The plan shall identify reliability challenges and may describe specific projects and projected costs. The filing of the plan shall not be considered as evidence of the prudence of the utility's reliability expenditures.

3. The plan shall provide an estimate of the timing for achievement of the plan's goals.

(2) A progress report on plan implementation. The report shall include identification of significant changes to the prior plan and the reasons for the changes.

*g. Capital expenditure information.* Reporting of capital expenditure information shall start with data from the year covered by the first Annual Reliability Report submittal so that by the fifth Annual Reliability Report submittal five years of data shall be available in each subsequent annual report.

(1) Each electric utility shall report on an annual basis the total of:

1. Capital investment in the electric utility's Iowa-based transmission and distribution infrastructure approved by its board of directors or other appropriate authority. If any amounts approved by the board of directors are designated for use in a recovery from a major event, those amounts shall be identified in addition to the total.

2. Capital investment expenditures in the electric utility's Iowa-based transmission and distribution infrastructure. If any expenditures were utilized in a recovery from a major event, those amounts shall be identified in addition to the total.

(2) Each electric utility shall report the same capital expenditure data from the past five years in the same fashion as in 20.18(7)"g"(1).

*h. Maintenance.* Reporting of maintenance information shall start with data from the year covered by the first Annual Reliability Report submittal so that by the fifth Annual Reliability Report submittal five years of data shall be available in each subsequent annual report.

(1) Total maintenance budgets and expenditures for distribution, and for transmission, for each operating area, if applicable, and for the electric utility's entire Iowa system for the past five years. If any maintenance budgets and expenditures are designated for use in a recovery from a major event, or were used in a recovery from a major event, respectively, those amounts shall be identified in addition to the totals.

(2) Tree trimming.

1. The budget and expenditures described in 20.18(7) "h"(1) shall be stated in such a way that the total annual tree trimming budget expenditures shall be identifiable for each operating area and for the electric utility's entire Iowa system for the past five years.

2. Total annual projected and actual miles of transmission line and of distribution line for which trees were trimmed for the reporting year for each operating area and for the electric utility's entire Iowa system for the reporting year, compared to the past five years. If the utility has utilized, or would prefer to utilize, an alternative method or methods of tracking physical tree trimming progress, it may propose the use of that method or methods to the board in a request for waiver.

3. In the event the utility's actual tree trimming performance, based on how the utility tracks its tree trimming as described in 20.18(7) "h"(2) "1," lags behind its planned trimming schedule by more than six months, the utility shall be required to file for the board's approval additional tree trimming status reports on a quarterly basis. Such reports shall describe the steps the utility will take to remediate its tree trimming performance and backlog. The additional quarterly reports shall continue until the utility's backlog has been reduced to zero.

*i.* The annual reliability report, starting with the reliability report for calendar year 2008, shall include the number of poles inspected, the number rejected, and the number replaced.

**20.18(8)** *Annual report for all electric utilities not reporting pursuant to 20.18(7).*

*a.* By July 1, 2003, each electric utility shall adopt and have approved by its board of directors or other governing authority a reliability plan and shall file an informational copy of the plan with the board. The plan shall be updated not less than annually and shall describe the following:

(1) The utility's current reliability programs, including:

1. Tree trimming cycle, including descriptions and explanations of any changes to schedules and procedures reportable in accordance with 199 IAC 25.3(3) "c";

2. Animal contact reduction programs, if applicable;

3. Lightning outage mitigation programs, if applicable; and

4. Other programs the electric utility may identify as reliability-related.

(2) Current ability to track and monitor interruptions.

(3) How the electric utility plans to communicate its plan with customers/consumer owners.

*b.* By April 1, 2004, and each April 1 thereafter, each electric utility shall prepare for its board of directors or other governing authority a reliability report. A copy of the annual report shall be filed with the board for informational purposes, shall be made publicly available in its entirety to customers/consumer owners, and shall report on at least the following:

(1) Measures of reliability for each of the five previous calendar years, including reliability indices if required in 20.18(5) "b"(3). These measures shall start with data from the year covered by the first Annual Reliability Report so that by the fifth Annual Reliability Report submittal reliability measures will be based upon five years of data.

(2) Progress on any reliability programs identified in its plan, but not less than the applicable programs listed in 20.18(8) "a"(1).

**20.18(9)** *Inquiries about electric service reliability.*

*a.* For electric utilities with over 50,000 Iowa retail customers. A customer may request a report from an electric utility about the service reliability of the circuit supplying the customer's own meter. Within 20 working days of receipt of the request, the electric utility shall supply the report to the customer

at a reasonable cost. The report should identify which interruptions (number and durations) are due to major events.

*b.* Other utilities are encouraged to adopt similar responses to the extent it is administratively feasible.

[ARC 8394B, IAB 12/16/09, effective 1/20/10; ARC 9501B, IAB 5/18/11, effective 6/22/11]

**199—20.19(476,478) Notification of outages.**

**20.19(1) Notification.** The notification requirements in subrules 20.19(1) and 20.19(2) are for the timely collection of electric outage information that may be useful to emergency management agencies in providing for the welfare of individual Iowa citizens. Each electric utility shall notify the board when it is projected that an outage may result in a loss of service for more than six hours and the outage meets one of the following criteria:

*a.* For all utilities, loss of service for more than six hours to substantially all of a municipality, including the surrounding area served by the same utility. A utility may use loss of service to 75 percent or more of customers within a municipality, including the surrounding area served by the utility, to meet this criterion;

*b.* For utilities with 50,000 or more customers, loss of service for more than six hours to 20 percent of the customers in a utility's established zone or loss of service to more than 5,000 customers in a metropolitan area, whichever is less;

*c.* For utilities with more than 4,000 customers and fewer than 50,000 customers, loss of service for more than six hours to 25 percent or more of the utility's customers;

*d.* A major event as defined in subrule 20.18(4); or

*e.* Any other outage considered significant by the electric utility. This includes loss of service for more than six hours to significant public health and safety facilities known to the utility at the time of the notification, even when the outage does not meet the criteria in paragraphs 20.19(1) "a" through "d."

**20.19(2) Information required.**

*a.* Notification shall be provided regarding outages that meet the requirements of subrule 20.19(1) by notifying the board duty officer by E-mail at [iubdutyofficer@iub.iowa.gov](mailto:iubdutyofficer@iub.iowa.gov) or by telephone at (515)745-2332. Notification shall be made at the earliest possible time after it is determined the event may be reportable and should include the following information, as available:

(1) The general nature or cause of the outage;

(2) The area affected;

(3) The approximate number of customers that have experienced a loss of electric service as a result of the outage;

(4) The time when service is estimated to be restored; and

(5) The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the outage.

The notice should be supplemented as more complete or accurate information is available.

*b.* The utility shall provide to the board updates of the estimated time when service will be restored to all customers able to receive service or of significant changed circumstances, unless service is restored within one hour of the time initially estimated.

[ARC 8394B, IAB 12/16/09, effective 1/20/10; Editorial change: IAC Supplement 12/29/10; ARC 9819B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code sections 17A.3, 364.23, 474.5, 476.1, 476.2, 476.6, 476.8, 476.20, 476.54, 476.66, 478.18, and 546.7.

[Filed 7/12/66; amended 6/27/75]

[Filed 12/30/75, Notice 10/6/75—published 1/26/76, effective 3/1/76]

[Filed 1/7/77, Notice 11/3/76—published 1/26/77, effective 3/2/77]

[Filed 9/30/77, Notice 6/29/77—published 10/19/77, effective 11/23/77]

[Filed 10/4/78, Notice 8/23/78—published 11/1/78, effective 12/6/78]

[Filed 11/9/78, Notice 11/2/77—published 11/29/78, effective 1/3/79]

[Filed emergency 12/22/78—published 1/10/79, effective 12/22/78]

[Filed emergency 12/27/78—published 1/10/79, effective 12/27/78]

- [Filed 4/10/79, Notices 5/3/78, 8/23/78—published 5/2/79, effective 6/6/79]
  - [Filed 4/10/79, Notice 11/1/78—published 5/2/79, effective 6/6/79]
  - [Filed 6/8/79, Notice 4/4/79—published 6/27/79, effective 8/1/79]
  - [Filed 6/29/79, Notice 11/1/78—published 7/25/79, effective 8/29/79]
- [Filed 9/26/80, Notice 8/6/80—published 10/15/80, effective 11/19/80]
  - [Filed 1/30/81, Notice 5/14/80—published 2/18/81, effective 7/1/81]
  - [Filed 4/10/81, Notice 6/25/80—published 4/29/81, effective 6/3/81]
  - [Filed 5/18/81, Notice 9/17/80—published 6/10/81, effective 7/15/81]
  - [Filed 6/19/81, Notice 10/1/80—published 7/8/81, effective 8/12/81]
  - [Filed 9/10/81, Notice 2/6/80—published 9/30/81, effective 11/4/81]
- [Filed 10/20/81, Notice 11/26/80—published 11/11/81, effective 12/16/81]
- [Filed emergency 11/17/81 after Notice 9/30/81—published 12/9/81, effective 11/17/81]
  - [Filed emergency 12/14/81—published 1/6/82, effective 12/14/81]
  - [Filed emergency 6/28/82—published 7/21/82, effective 6/28/82]
  - [Filed 9/24/82, Notice 4/28/82—published 10/13/82, effective 11/17/82]
  - [Filed 10/21/82, Notice 8/18/82—published 11/10/82, effective 12/15/82]
  - [Filed 12/3/82, Notice 9/1/82—published 12/22/82, effective 1/26/83]
  - [Filed 1/28/83, Notice 12/8/82—published 2/16/83, effective 3/23/83]
  - [Filed 2/25/83, Notice 12/22/82—published 3/16/83, effective 4/20/83]
  - [Filed 4/11/83, Notice 2/16/83—published 4/27/83, effective 6/1/83]
  - [Filed 4/15/83, Notice 1/19/83—published 5/11/83, effective 6/15/83]
  - [Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
  - [Filed 9/9/83, Notice 6/8/83—published 9/28/83, effective 11/2/83]
  - [Filed 9/9/83, Notice 6/8/83—published 9/28/83, effective 1/1/84]
  - [Filed 11/4/83, Notice 8/31/83—published 11/23/83, effective 1/1/84]
  - [Filed 12/2/83, Notice 9/28/83—published 12/21/83, effective 1/25/84]
  - [Filed 12/16/83, Notice 9/14/83—published 1/4/84, effective 2/8/84]
  - [Filed 1/13/84, Notice 9/11/83—published 2/1/84, effective 3/7/84]
  - [Filed 1/27/84, Notice 11/23/83—published 2/15/84, effective 3/21/84]<sup>1</sup>
  - [Filed 4/9/84, Notice 1/18/84—published 4/25/84, effective 5/30/84]
  - [Filed emergency 4/20/84—published 5/9/84, effective 4/23/84]
  - [Filed 4/20/84, Notice 2/15/84—published 5/9/84, effective 6/13/84]<sup>2</sup>
  - [Filed emergency 6/1/84—published 6/20/84, effective 6/1/84]
  - [Filed 9/10/84, Notice 2/15/84—published 9/26/84, effective 10/31/84]
  - [Filed 9/10/84, Notice 7/18/84—published 9/26/84, effective 10/31/84]
  - [Filed 9/21/84, Notice 5/23/84—published 10/10/84, effective 11/14/84]
  - [Filed 10/19/84, Notice 8/15/84—published 11/7/84, effective 12/26/84]
  - [Filed 4/19/85, Notice 2/13/85—published 5/8/85, effective 6/12/85]
  - [Filed 5/6/85, Notice 1/2/85—published 5/22/85, effective 6/26/85]
  - [Filed emergency 6/14/85—published 7/3/85, effective 6/14/85]
  - [Filed 6/14/85, Notice 4/10/85—published 7/3/85, effective 8/7/85]
  - [Filed 8/9/85, Notice 6/19/85—published 8/28/85, effective 10/2/85]
- [Filed emergency 2/7/86 after Notices 10/9/85, 12/4/85—published 2/26/86, effective 3/31/86]
  - [Filed 3/7/86, Notice 12/4/85—published 3/26/86, effective 4/30/86]
  - [Filed 8/8/86, Notice 5/7/86—published 8/27/86, effective 10/1/86]<sup>3</sup>
- [Filed 8/22/86, Notices 5/21/86, 6/4/86—published 9/10/86, effective 10/15/86]<sup>4</sup>
  - [Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]
  - [Filed 4/17/87, Notice 12/3/86—published 5/6/87, effective 6/10/87]
  - [Filed 11/13/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]
- [Filed 6/10/88, Notices 4/8/87, 12/30/87, 3/9/88—published 6/29/88, effective 8/3/88]
  - [Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
  - [Filed 12/8/88, Notice 10/19/88—published 12/28/88, effective 2/1/89]

- [Filed 12/22/88, Notice 9/21/88—published 1/11/89, effective 2/15/89]
- [Filed 1/6/89, Notices 7/1/87, 1/13/88, 7/27/88—published 1/25/89, effective 3/1/89]
- [Filed 5/24/89, Notices 5/4/88, 6/29/88, 12/14/88—published 6/14/89, effective 7/19/89]
- [Filed 2/28/90, Notice 11/1/89—published 3/21/90, effective 4/25/90]
- [Filed 9/14/90, Notice 11/29/90—published 10/3/90, effective 11/7/90]
- [Filed 9/28/90, Notice 6/27/90—published 10/17/90, effective 11/21/90]
- [Filed 10/24/90, Notice 3/21/90—published 11/14/90, effective 12/19/90]
- [Filed 12/20/90, Notice 6/27/90—published 1/9/91, effective 2/13/91]
- [Filed 12/21/90, Notice 6/27/90—published 1/9/91, effective 2/13/91]
- [Filed emergency 3/15/91, after Notice 1/23/91—published 4/3/91, effective 3/15/91]
- [Filed 3/28/91, Notice 10/3/90—published 4/17/91, effective 5/22/91]
- [Filed 4/25/91, Notice 12/26/90—published 5/15/91, effective 6/19/91]
- [Filed 11/18/91, Notice 4/17/91—published 12/11/91, effective 1/15/92]
- [Filed 3/20/92, Notice 8/7/91—published 4/15/92, effective 5/20/92]
- [Filed 10/9/92, Notice 4/29/92—published 10/28/92, effective 12/2/92]
- [Filed 7/27/93, Notice 3/3/93—published 8/18/93, effective 9/22/93]
- [Filed 8/11/93, Notice 5/12/93—published 9/1/93, effective 10/6/93]<sup>5</sup>
- [Filed 12/2/93, Notice 9/15/93—published 12/22/93, effective 1/26/94]
- [Filed emergency 4/21/94—published 5/11/94, effective 4/21/94]
- [Filed 6/28/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
- [Filed 10/20/94, Notice 6/22/94—published 11/9/94, effective 12/14/94]
- [Filed 9/4/97, Notice 3/12/97—published 9/24/97, effective 10/29/97]
- [Filed 10/31/97, Notice 5/7/97—published 11/19/97, effective 12/24/97]
- [Published 6/17/98 to update name and address of board]
- [Filed 10/13/99, Notice 5/19/99—published 11/3/99, effective 12/8/99]
- [Filed 12/8/99, Notice 4/21/99—published 12/29/99, effective 2/2/00]
- [Filed 5/11/00, Notice 10/6/99—published 5/31/00, effective 7/5/00]
- [Filed 6/22/00, Notice 3/8/00—published 7/12/00, effective 8/16/00]
- [Filed 1/4/01, Notices 3/8/00, 8/23/00—published 1/24/01, effective 2/28/01]
- [Filed emergency 3/30/01—published 4/18/01, effective 3/30/01]
- [Filed 9/14/01, Notice 4/18/01—published 10/3/01, effective 11/7/01]
- [Filed 3/29/02, Notice 2/6/02—published 4/17/02, effective 5/22/02]
- [Filed 10/25/02, Notice 3/6/02—published 11/13/02, effective 12/18/02]
- [Filed 12/27/02, Notice 7/24/02—published 1/22/03, effective 2/26/03]
- [Filed 7/3/03, Notice 3/5/03—published 7/23/03, effective 8/27/03]
- [Filed 7/18/03, Notice 2/5/03—published 8/6/03, effective 9/10/03]
- [Filed 8/29/03, Notice 5/14/03—published 9/17/03, effective 10/22/03]
- [Filed 10/24/03, Notices 2/5/03, 4/2/03—published 11/12/03, effective 12/17/03]
- [Filed 11/19/03, Notice 4/2/03—published 12/10/03, effective 1/14/04]
- [Filed 7/30/04, Notice 6/9/04—published 8/18/04, effective 9/22/04]
- [Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]
- [Filed 10/8/04, Notice 7/7/04—published 10/27/04, effective 12/1/04]
- [Filed 1/22/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]
- [Filed 4/4/07, Notice 9/13/06—published 4/25/07, effective 5/30/07]
- [Filed 5/2/07, Notice 3/28/07—published 5/23/07, effective 6/27/07]
- [Filed 6/14/07, Notice 12/20/06—published 7/4/07, effective 8/8/07]
- [Filed 12/27/07, Notice 9/26/07—published 1/30/08, effective 3/5/08]
- [Filed 4/16/08, Notice 2/27/08—published 5/7/08, effective 6/11/08]
- [Filed ARC 7584B (Notice ARC 7420B, IAB 12/17/08), IAB 2/25/09, effective 4/1/09]
- [Filed ARC 7962B (Notice ARC 7749B, IAB 5/6/09), IAB 7/15/09, effective 8/19/09]
- [Filed ARC 7976B (Notice ARC 7409B, IAB 12/17/08), IAB 7/29/09, effective 9/2/09]
- [Filed ARC 8394B (Notice ARC 7820B, IAB 6/3/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 9101B (Notice ARC 8858B, IAB 6/16/10), IAB 9/22/10, effective 10/27/10]

[Editorial change: IAC Supplement 12/29/10]

[Filed ARC 9501B (Notice ARC 9394B, IAB 2/23/11), IAB 5/18/11, effective 6/22/11]

[Filed ARC 9819B (Notice ARC 9614B, IAB 7/13/11), IAB 11/2/11, effective 12/7/11]

- <sup>1</sup> Effective date of 20.3(13) "a," "b," (1), (2), (3), (4), and "c" delayed 70 days by Administrative Rules Review Committee.
- <sup>2</sup> Effective date of 20.4(12), third unnumbered paragraph, delayed seventy days by the Administrative Rules Review Committee.
- <sup>3</sup> See IAB, Utilities Division.
- <sup>4</sup> Published in Notice portion of IAB 9/10/86; see IAB 10/22/86
- <sup>5</sup> Effective date of 20.4(4) delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.



CHAPTER 41  
SHELTER ASSISTANCE FUND  
[Prior to 10/20/10, see 261—Ch 29]

**265—41.1(16) Purpose.** The shelter assistance fund is created for the purpose of providing financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.2(16) Definitions.** When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of eligible homeless services which is applying for SAF program funds.

“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

“*Emergency shelter*” means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons.

“*ESG program*” or “*ESGP*” means the Emergency Shelter Grants Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*HMIS*” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“*Homeless*” or “*homeless individual*” shall have the meaning set forth in 42 U.S.C. Section 11302.

“*Homeless prevention*” means activities or programs designed to prevent the incidence of homelessness.

“*Homeless shelter*” means a facility providing temporary housing and services for homeless persons.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*HUD ESG Desk Guide*” means the document provided by HUD which supplements the federal regulations pertaining to the Emergency Shelter Grants Program.

“*IFA*” means the Iowa finance authority.

“*Major rehabilitation*” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

“*Obligated*” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the shelter assistance fund. Funds awarded by IFA by a written agreement or letter of award requiring payment from the shelter assistance fund are obligated.

“*Operations*” means administration, maintenance, repair, security, provision of essential services, and provision of homelessness prevention activities.

“*Private, nonprofit organization*” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

“*Recipient*” means any private, nonprofit organization or city or county government to which IFA distributes shelter assistance fund program funds.

“*Rehabilitation*” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

“*Renovation*” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“*SAF*” means shelter assistance fund created in 2010 Iowa Acts, Senate File 2088, section 265.

“*Subrecipient*” means any private, nonprofit organization or city or county government to which a recipient distributes shelter assistance fund program funds.

“*Transitional housing*” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.

“*Value of the building*” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or subrecipient.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.3(16) Eligible applicants.** City governments, county governments, and private, nonprofit organizations are eligible applicants under the SAF program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other related services for homeless individuals and families.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.4(16) Eligible activities.** Activities assisted by the SAF may include the following:

1. Rehabilitation, renovation, or expansion of buildings for use in the provision of services for the homeless.

2. Provision of normal operating expenses for programs providing services to homeless individuals or families, including staff salaries, maintenance, insurance, utilities, furnishings, provision of essential services, provision of homeless prevention activities, administrative activities, and all other documented normal operating expenses.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.5(16) Ineligible activities.** As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with SAF program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;

3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.6(16) Application procedures.** IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD for the ESG program. Requests for proposals will combine the ESG program with the SAF program. The proposals must be submitted on the forms or on-line system prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match for the ESG program, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11; ARC 9642B, IAB 7/27/11, effective 7/8/11; ARC 9828B, IAB 11/2/11, effective 12/7/11]

**265—41.7(16) Application review process.** The application review process will be a joint process that combines the SAF program with the ESG program. The following procedures will be used in the review of applications for most purposes. IFA reserves the right to select an alternate application review process for SAF program funds only.

**41.7(1)** Review; threshold criteria; eligible activities.

- a. *Review of applications.* Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant

experience and capacity, as well as past performance, are top priorities. Other review criteria include, but are not limited to, program design, community need, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

*b. Threshold criteria.* IFA will identify threshold criteria that all programs must meet in order to be eligible.

*c. Activities eligible during funding cycle.* Each competition round will specify which of the total eligible program activities will be supported during that competition round.

**41.7(2)** If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

**41.7(3)** IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

**41.7(4)** IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

**41.7(5)** Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

**41.7(6)** IFA reserves the right to negotiate all aspects of a funding request prior to final approval.

**41.7(7)** IFA shall establish the period of funding for each competition.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.8(16) Matching requirement.** Subrecipients are not required to provide a match for SAF program funds.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.9(16) Funding awards.**

**41.9(1) Awards on behalf of multiple applicants.** A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer contracts for multiple applicants within a prescribed geographic area.

**41.9(2) Right to negotiate.** IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

**41.9(3) Special purpose awards.** IFA may, at its discretion, award any remaining funds as it sees fit within the SAF program regulations.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.10(16) Restrictions placed on recipients and subrecipients.**

**41.10(1) Use as provider of homeless services.** Any building for which SAF program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If SAF program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

*a.* In the case of a building that was not operated as a provider of services for the homeless before receipt of SAF program funds, on the date of initial occupancy as a provider of services to the homeless.

*b.* In the case of a building that was operated as a provider of services to the homeless before the receipt of SAF program funds, on the date that those funds are first obligated to the homeless service provider.

**41.10(2) Building standards.** Any building for which SAF program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

**41.10(3) Participation by homeless individuals and families.**

*a.* SAF program recipients and subrecipients must certify that homeless individuals and families are involved, through employment, volunteer services, or otherwise, in constructing, renovating, maintaining, and operating assisted facilities and in providing services.

*b.* Subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the subrecipient if the subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

**41.10(4) Termination of assistance and grievance procedure.** Subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

**41.10(5) Data reporting system.** Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract, unless the recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient shall participate in required data collection and reporting activities using a comparable database as defined by HUD (HUD HMIS Data Standards, Revised Notice March 2011).

**41.10(6) Ensuring confidentiality.** Subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11; ARC 9642B, IAB 7/27/11, effective 7/8/11; ARC 9828B, IAB 11/2/11, effective 12/7/11]

**265—41.11(16) Compliance with applicable federal and state laws and regulations.** All recipients and subrecipients must comply with the Iowa Code governing activities performed under this program. Use of SAF program funds must comply with the following additional requirements.

**41.11(1) Nondiscrimination and equal opportunity.** All recipients and subrecipients must comply with the following:

*a.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

*b.* Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

*c.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

*d.* The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

**41.11(2) Auditing.** All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11]

**265—41.12(16) Administration.**

**41.12(1) Contracts.** Upon selection of an application for funding, IFA will either initiate a contract or authorize a recipient to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients shall remain responsible for adherence to the requirements of the SAF program rules. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

**41.12(2) Record keeping and retention.** Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit subrecipients covered through an SAF program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their SAF program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

- a. Records for any assisted activity shall be retained for three years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.
- b. Representatives of the state auditor's office and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or a subrecipient pertaining to the receipt of assistance under these rules.

**41.12(3) Reporting requirements.** Recipients and subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

- a. HMIS data reports. All recipients and subrecipients of SAF program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA unless a recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient must submit reports using a comparable database. A comparable database must collect client-level data over time and generate unduplicated aggregate reports based on that data.

- b. Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in subrule 41.12(5).

**41.12(4) Amendments to contracts.** Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

**41.12(5) Remedies for noncompliance.** At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At its discretion, IFA may employ any of the following remedies for noncompliance:

- a. Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.
- b. Condition a future award.
- c. Direct the recipient or subrecipient to stop incurring costs with grant funds.
- d. Require that some or all of the awarded funds be remitted to the state.
- e. Reduce the level of funds the recipient or subrecipient would otherwise be entitled to receive.
- f. Elect not to provide future award funds to the recipient or subrecipient until appropriate actions are taken to ensure compliance.

[ARC 9162B, IAB 10/20/10, effective 10/1/10; ARC 9281B, IAB 12/15/10, effective 1/19/11; ARC 9642B, IAB 7/27/11, effective 7/8/11; ARC 9828B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2010 Iowa Acts, Senate File 2088, division XXII.

[Filed Emergency ARC 9162B, IAB 10/20/10, effective 10/1/10]

[Filed ARC 9281B (Notice ARC 9163B, IAB 10/20/10), IAB 12/15/10, effective 1/19/11]

[Filed Emergency ARC 9642B, IAB 7/27/11, effective 7/8/11]

[Filed ARC 9828B (Notice ARC 9643B, IAB 7/27/11), IAB 11/2/11, effective 12/7/11]



CHAPTER 42  
EMERGENCY SHELTER GRANTS PROGRAM

[Prior to 10/20/10, see 261—Ch 24]

**265—42.1(16) Purpose.** The emergency shelter grants program is designed to improve the quality of services to the homeless and to prevent individuals and families from becoming homeless. The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.2(16) Definitions.** When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of eligible homeless services which is applying for funds through the ESG program.

“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

“*Emergency shelter*” means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons.

“*ESG program*” or “*ESGP*” means the Emergency Shelter Grants Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*HMIS*” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“*Homeless*” or “*homeless individual*” shall have the meaning set forth in 42 U.S.C. Section 11302.

“*Homeless prevention*” means activities or programs designed to prevent the incidence of homelessness.

“*Homeless shelter*” means a facility providing temporary housing and services for homeless persons.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*HUD ESG Desk Guide*” means the document published by HUD which supplements the federal regulations pertaining to the Emergency Shelter Grants Program.

“*IFA*” means the Iowa finance authority.

“*Major rehabilitation*” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

“*Obligated*” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the grant amount. Funds awarded by IFA by a written agreement or letter of award requiring payment from the grant amount are obligated.

“*Private, nonprofit organization*” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

“*Recipient*” means any private, nonprofit organization or city or county government to which IFA distributes ESG program funds.

“*Rehabilitation*” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

“*Renovation*” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“SAF” means the shelter assistance fund, as set forth in 265—Chapter 41.

“Subrecipient” means any private, nonprofit organization or city or county government to which the recipient distributes ESG program funds.

“Transitional housing” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.

“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or the subrecipient.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.3(16) Eligible applicants.** City governments, county governments, and private, nonprofit organizations are eligible applicants under the ESG program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other services eligible under the ESG program as determined by HUD.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.4(16) Eligible activities.** Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576 and the HUD Desk Guide. Activities assisted by this program may include only the following:

**42.4(1) Construction.** Rehabilitation, renovation, or conversion of buildings for use in the provision of services for the homeless.

**42.4(2) Essential services—new or increased level of services.** Provision of essential services if the service is a new service or quantifiable increase in the level of service. ESG program funds may not be used to replace existing funding sources for services; however, once a new or increased level of service meets the standards, ESG program funds may be used to continue funding the service in subsequent years. No more than 30 percent of the IFA annual grant amount may be used for this purpose.

**42.4(3) Operating costs.** Payment of emergency shelter and transitional housing operating costs including shelter maintenance, operations, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings. Staff salaries, including fringe benefits, paid under the operating cost category are limited to 10 percent of the grant amount. Maintenance and security costs are not subject to the 10 percent standard.

**42.4(4) Prevention of homelessness.** Payment for eligible activities that assist in the prevention of homelessness. Grants may be made for homeless prevention as long as the total amount of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month’s rent to enable a family to acquire its own rental unit; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.

**42.4(5) Administrative costs.** A recipient may use a portion of a grant received for administrative purposes as determined by IFA. The maximum allowed for these administrative costs shall be 5 percent of the state ESGP allocation. IFA reserves the authority for distribution of administrative funds.

**42.4(6) Homeless Management Information System (HMIS) projects.** IFA may award grants for HMIS implementation to support data collection, reporting, and analysis as long as the total amount of such grants does not exceed 10 percent of the total emergency shelter grants program allocation. Eligible costs may include equipment, software, services, personnel, space and operations for HMIS activities. In the case of parties to a supportive housing grant agreement or renewal grant agreement with the United States Department of Housing and Urban Development for HMIS implementation who are in need of the required cash match, IFA may in its discretion award such a grant, subject to the

terms of this subrule, without regard to the application and review provisions of rules 265—42.6(16) and 265—42.7(16).

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11; ARC 9633B, IAB 7/27/11, effective 7/8/11; ARC 9830B, IAB 11/2/11, effective 12/7/11]

**265—42.5(16) Ineligible activities.** As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with ESG program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;

3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.6(16) Application procedures.** IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD. Requests for proposals will combine the ESG program with the SAF program. The proposals must be submitted on the forms or on-line system prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11; ARC 9633B, IAB 7/27/11, effective 7/8/11; ARC 9830B, IAB 11/2/11, effective 12/7/11]

**265—42.7(16) Application review process.** The following procedures will be used in the review of applications.

**42.7(1) Review; threshold criteria; eligible activities.**

*a. Review of applications.* Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review criteria include, but are not limited to, program design, community need, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

*b. Threshold criteria.* IFA will identify threshold criteria that all programs must meet in order to be eligible.

*c. Activities eligible during funding cycle.* Each competition round will also specify which of the total eligible program activities will be supported during that competition round.

**42.7(2)** If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

**42.7(3)** IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

**42.7(4)** IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

**42.7(5)** Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

**42.7(6)** IFA reserves the right to negotiate all aspects of a funding request prior to final approval.

**42.7(7)** IFA shall establish the term of each funding award.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.8(16) Matching requirement.** Each subrecipient of ESG program funds must match the grant amount with an equal amount. In calculating the amount of matching funds, the following may be included: the value of any donated material or building used in the project, the value of any lease on a building used in the project, any salary paid to staff of the subrecipient or to any state subrecipient in carrying out the ESG program, and the time and services contributed by volunteers at the rate of \$5 per hour. For purposes of this rule, IFA will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value. IFA may allow an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts. The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.9(16) Funding awards.**

**42.9(1) Awards on behalf of multiple applicants.** A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer a contract for multiple applicants within a prescribed geographic area.

**42.9(2) Right to negotiate.** IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

**42.9(3) Special purpose awards.** IFA may, at its discretion, award any remaining funds as it sees fit within the ESG program regulations.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.10(16) Restrictions placed on recipients and subrecipients.**

**42.10(1) Use as provider of homeless services.** Any building for which ESG program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

*a.* In the case of a building that was not operated as a provider of services for the homeless before receipt of ESG program funds, on the date of initial occupancy as a provider of services to the homeless.

*b.* In the case of a building that was operated as a provider of services to the homeless before the receipt of ESG program funds, on the date that those funds are first obligated to the homeless service provider.

**42.10(2) Building standards.** Any building for which ESG program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

**42.10(3) Participation by homeless individuals and families.**

*a.* A recipient or subrecipient of ESG program funds must certify that it involves, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating assisted facilities and in providing services.

*b.* Local government recipients or subrecipients or qualified recipients or subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the recipient or subrecipient if the recipient or subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

**42.10(4) Termination of assistance and grievance procedure.** Recipients and subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

**42.10(5) Data reporting system.** Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract,

unless the recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient shall participate in required data collection and reporting activities using a comparable database defined by HUD (HUD HMIS Data Standards, Revised Notice March 2011).

**42.10(6) Ensuring confidentiality.** Recipients and subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11; ARC 9633B, IAB 7/27/11, effective 7/8/11; ARC 9830B, IAB 11/2/11, effective 12/7/11]

**265—42.11(16) Compliance with applicable federal and state laws and regulations.** All recipients and subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations. Use of ESG program funds must comply with the following additional requirements.

**42.11(1) Nondiscrimination and equal opportunity.** All recipients and subrecipients must comply with the following:

*a.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

*b.* Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

*c.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

*d.* The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

**42.11(2) Auditing.** All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11]

**265—42.12(16) Administration.**

**42.12(1) Contracts.** Upon selection of an application for funding, IFA will either initiate a contract or authorize another entity to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including the federal ESG program rules and the state program rules as set forth herein. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

**42.12(2) Record keeping and retention.** Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit recipients and subrecipients covered through an ESG program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESG program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

*a.* Records for any assisted activity shall be retained for three years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

*b.* Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or subrecipient pertaining to the receipt of assistance under these rules.

**42.12(3) Reporting requirements.** Recipients and subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

*a.* HMIS data reports. All recipients and subrecipients of ESG program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA unless a recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient must submit reports using a comparable database. A comparable database must collect client-level data over time and generate unduplicated aggregate reports based on that data.

*b.* Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in 42.12(5).

**42.12(4) Amendments to contracts.** Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

**42.12(5) Remedies for noncompliance.** At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At IFA's discretion, remedies for noncompliance may include the following:

*a.* Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.

*b.* Condition a future award.

*c.* Direct the recipient or subrecipient to stop incurring costs with grant funds.

*d.* Require that some or all of the awarded funds be remitted to the state.

*e.* Reduce the level of funds the recipient or subrecipient would otherwise be entitled to receive.

*f.* Elect not to provide future award funds to the recipient or subrecipient until appropriate actions are taken to ensure compliance.

[ARC 9166B, IAB 10/20/10, effective 10/1/10; ARC 9282B, IAB 12/15/10, effective 1/19/11; ARC 9633B, IAB 7/27/11, effective 7/8/11; ARC 9830B, IAB 11/2/11, effective 12/7/11]

These rules are intended to implement Iowa Code section 16.5(1) "m" and 42 U.S.C. Sections 11371 through 11378.

[Filed Emergency ARC 9166B, IAB 10/20/10, effective 10/1/10]

[Filed ARC 9282B (Notice ARC 9167B, IAB 10/20/10), IAB 12/15/10, effective 1/19/11]

[Filed Emergency ARC 9633B, IAB 7/27/11, effective 7/8/11]

[Filed ARC 9830B (Notice ARC 9635B, IAB 7/27/11), IAB 11/2/11, effective 12/7/11]

CHAPTER 13  
ISSUANCE OF TEACHER LICENSES AND ENDORSEMENTS

[Prior to 1/14/09, see Educational Examiners Board[282] Ch 14]

**282—13.1(272) All applicants desiring Iowa licensure.** Licenses are issued upon application filed on a form provided by the board of educational examiners and upon completion of the following:

**13.1(1) *National criminal history background check.*** An initial applicant will be required to submit a completed fingerprint packet that accompanies the application to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet will be assessed to the applicant.

**13.1(2) *Iowa division of criminal investigation background check.*** An Iowa division of criminal investigation background check will be conducted on initial applicants. The fee for the evaluation of the DCI background check will be assessed to the applicant.

**13.1(3) *Temporary permits.*** The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application, including certification from the applicant of completion of the Praxis II examination, if required; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check. The temporary permit shall serve as evidence of the applicant's authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check and the board's receipt of verification of completion of the Praxis II examination. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

**282—13.2(272) Applicants from recognized Iowa institutions.** An applicant for initial licensure shall complete either the teacher, administrator, or school service personnel preparation program from a recognized Iowa institution or an alternative program recognized by the Iowa board of educational examiners. A recognized Iowa institution is one which has its program of preparation approved by the state board of education according to standards established by said board, or an alternative program recognized by the state board of educational examiners. Applicants shall complete the requirements set out in rule 282—13.1(272) and shall also have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized education institution where the preparation was completed.

**282—13.3(272) Applicants from non-Iowa institutions.**

**13.3(1) *Requirements for applicants from non-Iowa institutions.*** An applicant for licensure who completes the teacher, administrator, or school service personnel preparation program from a non-Iowa institution shall verify the requirements of either subrule 13.18(4) or 13.18(5).

**13.3(2) *Requirements for applicants from non-Iowa traditional teacher preparation programs.*** Provided all requirements for Iowa licensure have been met through a state-approved regionally accredited teacher education program at the graduate or undergraduate level in which college or university credits were given and student teaching was required, the applicant shall:

- a. Provide a recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed, and
- b. Submit a copy of a valid regular teaching certificate or license exclusive of a temporary, emergency or substitute license or certificate, and
- c. Provide verification of successfully passing mandated tests in the state in which the applicant is currently licensed if the applicant has fewer than three years of teaching experience.

**13.3(3) *Requirements for applicants from out-of-state nontraditional teacher preparation programs.*** An applicant who holds a valid license from another state and whose preparation was completed through a state-approved nontraditional teacher preparation program must:

- a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution.
- b. Provide a valid out-of-state teaching license based on a state-approved nontraditional teacher preparation program.
- c. Provide a recommendation from a regionally accredited institution, department of education, or a state's standards board indicating the completion of an approved nontraditional teacher preparation program.
- d. Provide an official institutional transcript(s) to be analyzed for the requirements necessary for full Iowa licensure based on 13.9(4) "a"(1) to (7), 13.9(4) "c"(1) to (5), 13.18(2), 282—13.28(272), and 282—14.2(272).
- e. Meet the recency requirements listed in 13.10(3).
- f. If the applicant has fewer than three years of teaching experience, provide verification from the state licensing agency/department in the state where the nontraditional teacher preparation program was completed indicating that the applicant has successfully passed that state's mandated tests.
- g. Complete a student teaching or internship experience or verify three years of teaching experience.
- h. If through a transcript analysis the professional education core requirements set forth in 13.9(4) "a"(1) to (7), 13.9(4) "c"(1) to (5), and 13.18(2) and the content endorsement requirements pursuant to 282—13.28(272) may be identified by course titles, published course descriptions, and grades, then the transcripts will be reviewed to determine the applicant's eligibility for an Iowa teaching license. However, if the professional education core requirements of 13.9(4) "a"(1) to (7), 13.9(4) "c"(1) to (5), and 13.18(2) and the content endorsement requirements cannot be reviewed in this manner, a portfolio review and evaluation process will be utilized.

**13.3(4) Portfolio review and evaluation process.** An applicant whose professional education core requirements pursuant to 13.9(4) "a"(1) to (7), 13.9(4) "c"(1) to (5), and 13.18(2) or whose content endorsement requirements for special education (282—subrule 14.2(2)) could not be reviewed through transcript analysis may submit to the board a portfolio in the approved format for review and evaluation.

- a. An applicant must demonstrate proficiency in seven of the nine standards in the Iowa professional education core, set forth in 13.18(4) "a" to "i," to be eligible to receive a license.
- b. An applicant must have completed at least 75 percent of the endorsement requirements through a two- or four-year institution in order for the endorsement to be included on the license. An applicant who does not have at least 75 percent of one content endorsement area as described in 282—13.28(272) completed will not be issued a license.
- c. An applicant must meet with the board of educational examiners to answer any of the board's questions concerning the portfolio.
- d. Any deficiencies in the professional education core as set forth in 13.18(4) "a" to "i" or in the special education content endorsement area that are identified during the portfolio review and evaluation process shall be met through coursework with course credits completed at a state-approved, regionally accredited institution or through courses approved by the executive director. Other content deficiencies may be met through coursework in a two- or four-year institution in which course credits are given.

**13.3(5) Definitions.**

"Nontraditional" means any method of teacher preparation that falls outside the traditional method of preparing teachers, that provides at least a one- or two-year sequenced program of instruction taught at regionally accredited and state-approved colleges or universities, that includes commonly recognized pedagogy classes being taught for course credit, and that requires a student teaching component.

"Proficiency," for the purposes of 13.3(4) "a," means that an applicant has passed all parts of the standard.

"Recognized non-Iowa teacher preparation institution" means an institution that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

[ARC 8139B, IAB 9/9/09, effective 10/14/09; ARC 8610B, IAB 3/10/10, effective 4/14/10]

**282—13.4(272) Applicants from foreign institutions.** An applicant for initial licensure whose preparation was completed in a foreign institution must obtain a course-by-course credential evaluation report completed by one of the board-approved credential evaluation services and then file this report with the board of educational examiners for a determination of eligibility for licensure.

**282—13.5(272) Teacher licenses.** A license may be issued to applicants who fulfill the general requirements set out in subrule 13.5(1) and the specific requirements set out for each license.

**13.5(1) General requirements.** The applicant shall:

- a. Have a baccalaureate degree from a regionally accredited institution.
- b. Have completed a state-approved teacher education program which meets the requirements of the professional education core.
- c. Have completed an approved human relations component.
- d. Have completed the exceptional learner component.
- e. Have completed the requirements for one of the basic teaching endorsements.
- f. Meet the recency requirement of subrule 13.10(3).

**13.5(2) Renewal requirements.** Renewal requirements for teacher licenses are set out in 282—Chapter 20.

**282—13.6(272) Specific requirements for an initial license.** An initial license valid for two years may be issued to an applicant who meets the general requirements set forth in subrule 13.5(1).

**282—13.7(272) Specific requirements for a standard license.** A standard license valid for five years may be issued to an applicant who:

1. Meets the general requirements set forth in subrule 13.5(1), and
2. Shows evidence of successful completion of a state-approved mentoring and induction program by meeting the Iowa teaching standards as determined by a comprehensive evaluation and two years' successful teaching experience. In lieu of completion of an Iowa state-approved mentoring and induction program, the applicant must provide evidence of three years' successful teaching experience in an Iowa nonpublic school or three years' successful teaching experience in an out-of-state K-12 educational setting.

**282—13.8(272) Specific requirements for a master educator's license.** A master educator's license is valid for five years and may be issued to an applicant who:

1. Is the holder of or is eligible for a standard license as set out in rule 282—13.7(272), and
2. Verifies five years of successful teaching experience, and
3. Completes one of the following options:
  - Master's degree in a recognized endorsement area, or
  - Master's degree in curriculum, effective teaching, or a similar degree program which has a focus on school curriculum or instruction.

**282—13.9(272) Teacher intern license.**

**13.9(1) Authorization.** The teacher intern is authorized to teach in grades 7 to 12.

**13.9(2) Term.** The term of the teacher intern license will be one year from the date of issuance. This license is nonrenewable. The fee for the teacher intern license is in 282—Chapter 12.

**13.9(3) Teacher intern requirements.** A teacher intern license shall be issued upon application provided that the following requirements have been met. The applicant shall:

- a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution.
- b. Meet the requirements of at least one of the board's secondary (5-12) teaching endorsements listed in rule 282—13.28(272).
- c. Possess a minimum of three years of postbaccalaureate work experience. An authorized official at a college or university with an approved teacher intern program will evaluate this experience.

d. Successfully complete the teacher intern program requirements listed in subrule 13.9(4) and approved by the state board of education.

e. Successfully pass a basic skills test at the level approved by the teacher education institution.

**13.9(4) Program requirements.** The teacher intern shall:

a. Complete the following requirements prior to the internship year:

(1) Learning environment/classroom management. The intern uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

(2) Instructional planning. The intern plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

(3) Instructional strategies. The intern understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

(4) Student learning. The intern understands how students learn and develop and provides learning opportunities that support intellectual, career, social, and personal development.

(5) Diverse learners. The intern understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

(6) Collaboration, ethics and relationships. The intern fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

(7) Assessment. The intern understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

(8) Field experiences that provide opportunities for interaction with students in an environment that supports learning in context. These experiences shall total at least 50 contact hours in the field prior to the beginning of the academic year of the candidate's initial employment as a teacher intern.

b. Complete four semester hours of a teacher intern seminar during the teacher internship year to include support and extension of coursework from the teacher intern program.

c. Complete the coursework and competencies in the following areas:

(1) Foundations, reflection, and professional development. The intern continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community and actively seeks out opportunities to grow professionally.

(2) Communication. The intern uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry and collaboration and to support interaction in the classroom.

(3) Exceptional learner program, which must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

(4) Preparation in the integration of reading strategies into the content area.

(5) Computer technology related to instruction.

(6) An advanced study of the items set forth in 13.9(4) "a"(1) to (7) above.

**13.9(5) Local school district requirements.** The local school district shall:

a. Provide an offer of employment to an individual who has been evaluated by a college or university for eligibility or acceptance in the teacher intern program.

b. Participate in a mentoring and induction program.

c. Provide a district mentor for the teacher intern.

d. Provide other support and supervision, as needed, to maximize the opportunity for the teacher intern to succeed.

e. Not overload the teacher intern with extracurricular duties not directly related to the teacher intern's teaching assignment.

f. Provide evidence to the board from a licensed evaluator that the teacher intern is participating in a mentoring and induction program.

g. At the board's request, provide information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

**13.9(6)** *Requirements to convert the teacher intern license to the initial license.*

a. An initial license shall be issued upon application provided that the teacher intern has met all of the following requirements:

(1) Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education.

(2) Verification from a licensed evaluator that the teacher intern served successfully for a minimum of 160 days.

(3) Verification from a licensed evaluator that the teacher intern is participating in a mentoring and induction program and is being assessed on the Iowa teaching standards.

(4) Recommendation by a college or university offering an approved teacher intern program that the individual is eligible for an initial license.

(5) At the board's request, the teacher intern shall provide to the board information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

b. The teacher intern year will count as one of the years that is needed for the teacher intern to convert the initial license to the standard license if the conditions listed in paragraph 13.9(6) "a" have been met.

**13.9(7)** *Requirements to obtain the initial license if the teacher intern does not complete the internship year.* An initial license shall be issued upon application provided that the teacher intern has met all of the following requirements:

a. Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education.

b. Verification by a college or university that the teacher intern successfully completed the college's or university's state-approved student teaching requirements.

c. Recommendation by a college or university offering an approved teacher intern program that the individual is eligible for an initial license.

d. At the board's request, the teacher intern shall provide to the board information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

**13.9(8)** *Requirements to extend the teacher intern license if the teacher intern does not complete all of the education coursework during the term of the teacher intern license.*

a. A one-year extension of the teacher intern license may be issued upon application provided that the teacher intern has met both of the following requirements:

(1) Successful completion of 160 days of teaching experience during the teacher internship.

(2) Verification by the recommending official at the approved teacher intern program that the teacher intern has not completed all of the coursework required for the initial license.

b. Only one year of teaching experience during the term of the teacher intern license or the extension of a teacher intern license may be used to convert the teacher intern license to a standard teaching license.

[ARC 8688B, IAB 4/7/10, effective 5/12/10]

**282—13.10(272) Specific requirements for a Class A license.** A nonrenewable Class A license valid for one year may be issued to an individual who has completed a teacher education program under any one of the following conditions:

**13.10(1)** *Professional core requirements.* The individual has not completed all of the required courses in the professional core, 13.18(4) "a" through "j."

**13.10(2)** *Human relations component.* The individual has not completed an approved human relations component.

**13.10(3)** *Recency.* The individual meets the requirements for a valid license, but has had fewer than 160 days of teaching experience during the five-year period immediately preceding the date of application or has not completed six semester hours of college credit from a recognized institution within the five-year period. To obtain the desired license, the applicant must complete recent credits and, where

recent credits are required, these credits shall be taken in professional education or in the applicant's endorsement area(s).

**13.10(4)** *Degree not granted until next regular commencement.* Rescinded IAB 9/9/09, effective 10/14/09.

**13.10(5)** *Based on an expired Iowa certificate or license, exclusive of a Class A or Class B license.*

*a.* The holder of an expired license, exclusive of a Class A or Class B license, shall be eligible to receive a Class A license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.

*b.* The holder of an expired license who is currently under contract with an Iowa educational unit (area education agency/local education agency/local school district) and who does not meet the renewal requirements for the license held shall be required to secure the signature of the superintendent or designee before the license will be issued.

**13.10(6)** *Based on a mentoring and induction program.* An applicant may be eligible for a Class A license if the school district, after conducting a comprehensive evaluation, recommends and verifies that the applicant shall participate in the mentoring program for a third year.

**13.10(7)** *Based on an administrative decision.* The executive director is authorized to issue a Class A license to an applicant whose services are needed to fill positions in unique need circumstances.

[ARC 7987B, IAB 7/29/09, effective 9/2/09; ARC 8134B, IAB 9/9/09, effective 10/14/09; ARC 8957B, IAB 7/28/10, effective 9/1/10]

**282—13.11(272) Specific requirements for a Class B license.** A Class B license, which is valid for two years and which is nonrenewable, may be issued to an individual under the following conditions:

**13.11(1)** *Endorsement in progress.* The individual has a valid initial, standard, master educator, permanent professional, Class A (one-year extension of an initial, standard, or master educator), exchange, or professional service license and one or more endorsements but is seeking to obtain some other endorsement. A Class B license may be issued if requested by an employer and if the individual seeking to obtain some other endorsement has completed at least two-thirds of the requirements, or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for the endorsement. A Class B license may not be issued for the driver's education endorsement.

**13.11(2)** *Program of study for special education endorsement.* The college or university must outline the program of study necessary to meet the special education endorsement requirements. This program of study must be attached to the application.

**13.11(3)** *Request for exception.* A school district administrator may file a written request with the board for an exception to the minimum content requirements on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

**13.11(4)** *Provisional occupational license.* If an individual is eligible for a provisional occupational license but has not met all of the experience requirements, a Class B license may be issued while the individual earns the necessary experience.

**13.11(5)** *Expiration.* This license will expire on June 30 of the fiscal year in which it was issued plus one year.

[ARC 7987B, IAB 7/29/09, effective 9/2/09; ARC 8133B, IAB 9/9/09, effective 10/14/09; ARC 9207B, IAB 11/3/10, effective 12/8/10; ARC 9573B, IAB 6/29/11, effective 8/3/11]

**282—13.12(272) Specific requirements for a Class C license.** Rescinded IAB 7/29/09, effective 9/2/09.

**282—13.13(272) Specific requirements for a Class D occupational license.** Rescinded IAB 7/29/09, effective 9/2/09.

**282—13.14(272) Specific requirements for a Class E license.** A nonrenewable license valid for one year may be issued to an individual as follows:

**13.14(1) Expired license.** Based on an expired Class A, Class B, or teacher exchange license, the holder of the expired license shall be eligible to receive a Class E license upon application and submission of all required materials.

**13.14(2) Application.** The application process will require transcripts of coursework completed during the term of the expired license, a program of study indicating the coursework necessary to obtain full licensure, and registration for coursework to be completed during the term of the Class E license. The Class E license will be denied if the applicant has not completed any coursework during the term of the Class A or Class B license unless extenuating circumstances are verified.

[ARC 7987B, IAB 7/29/09, effective 9/2/09]

**282—13.15(272) Specific requirements for a Class G license.** A nonrenewable Class G license valid for one year may be issued to an individual who must complete a school guidance counseling practicum or internship in an approved program in preparation for the school guidance counselor endorsement. The Class G license may be issued under the following limited conditions:

1. Verification of a baccalaureate degree from a regionally accredited institution.
2. Verification from the institution that the individual is admitted and enrolled in an approved school guidance counseling program.
3. Verification that the individual has completed the coursework and competencies required prior to the practicum or internship.
4. Written documentation of the requirements listed in “1” to “3” above, provided by the official at the institution where the individual is completing the approved school guidance counseling program and forwarded to the Iowa board of educational examiners with the application form for licensure.

**282—13.16(272) Specific requirements for a substitute teacher’s license.**

**13.16(1) Substitute teacher requirements.** A substitute teacher’s license may be issued to an individual who:

- a. Has been the holder of, or presently holds, a license in Iowa; or holds or held a regular teacher’s license or certificate in another state, exclusive of temporary, emergency, or substitute certificate or license, or a certificate based on an alternative certification program; or
- b. Has successfully completed all requirements of an approved teacher education program, but did not apply for an Iowa teacher’s license at the time of completion of the approved program.

**13.16(2) Validity.** A substitute license is valid for five years and for not more than 90 days of teaching in one assignment during any one school year. A school district administrator may file a written request with the board for an extension of the 90-day limit in one assignment on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

**13.16(3) Authorization.** The holder of a substitute license is authorized to teach in any school system in any position in which a regularly licensed teacher was employed to begin the school year except in the driver’s education classroom. In addition to the authority inherent in the initial, standard, master educator, professional administrator, two-year exchange, and permanent professional licenses and the endorsement(s) held, the holder of one of these regular licenses may substitute on the same basis as the holder of a substitute license while the regular license is in effect.

[ARC 9205B, IAB 11/3/10, effective 12/8/10; ARC 9206B, IAB 11/3/10, effective 12/8/10]

**282—13.17(272) Specific requirements for exchange licenses.** An applicant seeking Iowa licensure who completes the teacher preparation program from a recognized non-Iowa institution shall verify the requirements of subrules 13.18(4) and 13.18(5) through traditional course-based preparation program and transcript review. A recognized non-Iowa teacher preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located. Applicants for nontraditional exchange licenses are not required to have received their preparation through regionally approved teacher education programs.

**13.17(1) One-year teacher exchange license.**

a. For an applicant applying under 13.3(2), a one-year nonrenewable exchange license may be issued to the applicant under the following conditions:

(1) The applicant has completed a state-approved, regionally accredited teacher education program; and

(2) The applicant has the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized non-Iowa institution where the preparation was completed; and

(3) The applicant holds and submits a copy of a valid and current certificate or license in the state in which the preparation was completed or in which the applicant is currently teaching, exclusive of a temporary, emergency or substitute license or certificate;

1. If the applicant's out-of-state license is expired, a one-year teacher exchange license may be issued and the lack of a valid and current out-of-state license will be listed as a deficiency;

2. If the applicant submits verification that the applicant has applied for and will receive the applicant's first teaching license and is waiting for the processing or printing of a valid and current out-of-state license, a regional exchange license may be issued and the lack of a valid and current out-of-state license will be listed as a deficiency; and

(4) If the applicant has fewer than three years of teaching experience or is being recommended for a K-6 elementary education endorsement, the applicant must verify successful completion of mandated tests in the state in which the applicant is currently licensed; and

(5) Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application, the transcripts and the license or certificate held in the state in which the basic preparation for licensure was completed or of the application and the credential evaluation report. The applicant must have completed at least 75 percent of the endorsement requirements through a two- or four-year institution in order for the endorsement to be included on the exchange license; and

(6) The applicant is not subject to any pending disciplinary proceedings in any state or country; and

(7) The applicant complies with all requirements with regard to application processes and payment of licensure fees.

b. After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

c. If the lack of a valid and current out-of-state license was listed as a deficiency, the one-year teacher exchange license shall not be converted or extended until a valid and current out-of-state license is presented to remove the deficiency.

**13.17(2) Two-year nontraditional exchange license.** For an applicant applying under 13.3(3) and 13.3(4), a two-year nontraditional teacher exchange license may be issued to the applicant from state-approved preparation programs, under the following conditions:

a. The applicant has met the requirements of 13.3(4) "a" and "b."

b. The applicant has met the requirements of 13.17(1) "a" (3) through (7).

c. To convert the two-year nontraditional exchange license, the applicant must meet all deficiencies as well as meet the Iowa teaching standards as determined by a comprehensive evaluation by a licensed evaluator, and the applicant shall have two years of successful teaching experience in Iowa. The evaluator may recommend extending the license for a third year to meet Iowa teaching standards.

d. The license may be extended to meet the requirements for two years of successful teaching in Iowa with proof of employment.

**13.17(3) International teacher exchange license.**

a. A nonrenewable international exchange license may be issued to an applicant under the following conditions:

(1) The applicant has completed a teacher education program in another country; and

(2) The applicant is not subject to any pending disciplinary proceedings in any state or country; and

(3) The applicant complies with all requirements with regard to application processes and payment of licensure fees; and

(4) The applicant is a participant in a teacher exchange program administered through the Iowa department of education.

*b.* Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application and the credential evaluation report.

*c.* This license shall not exceed three years.

*d.* After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

[ARC 8138B, IAB 9/9/09, effective 10/14/09; ARC 8604B, IAB 3/10/10, effective 4/14/10; ARC 9072B, IAB 9/8/10, effective 10/13/10; ARC 9840B, IAB 11/2/11, effective 12/7/11]

**282—13.18(272) General requirements for an original teaching subject area endorsement.** Following are the general requirements for the issuance of a license with an endorsement.

**13.18(1)** Baccalaureate degree from a regionally accredited institution.

**13.18(2)** Completion of an approved human relations component.

**13.18(3)** Completion of the exceptional learner program, which must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

**13.18(4)** Professional education core. Completed coursework or evidence of competency in:

*a.* Student learning. The practitioner understands how students learn and develop, and provides learning opportunities that support intellectual, career, social and personal development.

*b.* Diverse learners. The practitioner understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

*c.* Instructional planning. The practitioner plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

*d.* Instructional strategies. The practitioner understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

*e.* Learning environment/classroom management. The practitioner uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

*f.* Communication. The practitioner uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry, collaboration, and support interaction in the classroom.

*g.* Assessment. The practitioner understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

*h.* Foundations, reflection and professional development. The practitioner continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community, and actively seeks out opportunities to grow professionally.

*i.* Collaboration, ethics and relationships. The practitioner fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

*j.* Computer technology related to instruction.

*k.* Completion of pre-student teaching field-based experiences.

*l.* Methods of teaching with an emphasis on the subject and grade level endorsement desired.

*m.* Student teaching in the subject area and grade level endorsement desired.

*n.* Preparation in reading programs, including reading recovery, and integration of reading strategies into content area methods coursework.

**13.18(5)** Content/subject matter specialization. The practitioner understands the central concepts, tools of inquiry, and structure of the discipline(s) the practitioner teaches and creates learning experiences that make these aspects of subject matter meaningful for students. This is evidenced by completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of

the basic endorsement areas, special education teaching endorsements, or secondary level occupational endorsements.

**282—13.19(272) NCATE-accredited programs.** Rescinded IAB 6/17/09, effective 7/22/09.

**282—13.20** Reserved.

**282—13.21(272) Human relations requirements for practitioner licensure.** Preparation in human relations shall be included in programs leading to teacher licensure. Human relations study shall include interpersonal and intergroup relations and shall contribute to the development of sensitivity to and understanding of the values, beliefs, lifestyles and attitudes of individuals and the diverse groups found in a pluralistic society.

**13.21(1)** Beginning on or after August 31, 1980, each applicant for an initial practitioner's license shall have completed the human relations requirement.

**13.21(2)** On or after August 31, 1980, each applicant for the renewal of a practitioner's license shall have completed an approved human relations requirement.

**13.21(3)** Credit for the human relations requirement shall be given for licensed persons who can give evidence that they have completed a human relations program which meets board of educational examiners criteria (see rule 282—13.24(272)).

**282—13.22(272) Development of human relations components.** Human relations components shall be developed by teacher preparation institutions. In-service human relations components may also be developed by educational agencies other than teacher preparation institutions, as approved by the board of educational examiners.

**13.22(1) Advisory committee.** Education agencies developing human relations components shall give evidence that in the development of their programs they were assisted by an advisory committee. The advisory committee shall consist of equal representation of various minority and majority groups.

**13.22(2) Standards for approved components.** Human relations components will be approved by the board of educational examiners upon submission of evidence that the components are designed to develop the ability of participants to:

*a.* Be aware of and understand the values, lifestyles, history, and contributions of various identifiable subgroups in our society.

*b.* Recognize and deal with dehumanizing biases such as sexism, racism, prejudice, and discrimination and become aware of the impact that such biases have on interpersonal relations.

*c.* Translate knowledge of human relations into attitudes, skills, and techniques which will result in favorable learning experiences for students.

*d.* Recognize the ways in which dehumanizing biases may be reflected in instructional materials.

*e.* Respect human diversity and the rights of each individual.

*f.* Relate effectively to other individuals and various subgroups other than one's own.

**13.22(3) Evaluation.** Educational agencies providing the human relations components shall indicate the means to be utilized for evaluation.

**282—13.23 to 13.25** Reserved.

**282—13.26(272) Requirements for elementary endorsements.**

**13.26(1) Teacher—prekindergarten-kindergarten.**

*a. Authorization.* The holder of this endorsement is authorized to teach at the prekindergarten/ kindergarten level.

*b. Program requirements.*

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations program, and

(3) Completion of the professional education core. See subrule 13.18(3).

*c. Content.*

(1) Human growth and development: infancy and early childhood, unless completed as part of the professional education core. See subrule 13.18(4).

(2) Curriculum development and methodology for young children.

(3) Child-family-school-community relationships (community agencies).

(4) Guidance of young children three to six years of age.

(5) Organization of prekindergarten-kindergarten programs.

(6) Child and family nutrition.

(7) Language development and learning.

(8) Kindergarten: programs and curriculum development.

**13.26(2) Teacher—prekindergarten through grade three.**

*a. Authorization.* The holder of this endorsement is authorized to teach children from birth through grade three.

*b. Program requirements.*

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

*c. Content.*

(1) Child growth and development with emphasis on cognitive, language, physical, social, and emotional development, both typical and atypical, for infants and toddlers, preprimary, and primary school children (grades one through three), unless combined as part of the professional education core. See subrule 13.18(4) of the licensure rules for the professional core.

(2) Historical, philosophical, and social foundations of early childhood education.

(3) Developmentally appropriate curriculum with emphasis on integrated multicultural and nonsexist content including language, mathematics, science, social studies, health, safety, nutrition, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology, including adaptations for individual needs, for infants and toddlers, preprimary, and primary school children.

(4) Characteristics of play and creativity, and their contributions to the cognitive, language, physical, social and emotional development and learning of infants and toddlers, preprimary, and primary school children.

(5) Classroom organization and individual interactions to create positive learning environments for infants and toddlers, preprimary, and primary school children based on child development theory emphasizing guidance techniques.

(6) Observation and application of developmentally appropriate assessments for infants and toddlers, preprimary, and primary school children recognizing, referring, and making adaptations for children who are at risk or who have exceptional educational needs and talents.

(7) Home-school-community relationships and interactions designed to promote and support parent, family and community involvement, and interagency collaboration.

(8) Family systems, cultural diversity, and factors which place families at risk.

(9) Child and family health and nutrition.

(10) Advocacy, legislation, and public policy as they affect children and families.

(11) Administration of child care programs to include staff and program development and supervision and evaluation of support staff.

(12) Pre-student teaching field experience with three age levels in infant and toddler, preprimary, and primary programs, with no less than 100 clock hours, and in different settings, such as rural and urban, socioeconomic status, cultural diversity, program types, and program sponsorship.

(13) Student teaching experiences with two different age levels, one before kindergarten and one from kindergarten through grade three.

**13.26(3)** *Teacher—prekindergarten through grade three, including special education.*

*a. Authorization.* The holder of this endorsement is authorized to teach children from birth through grade three.

*b. Program requirements.*

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations program, and

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

*c. Content.*

(1) Child growth and development.

1. Understand the nature of child growth and development for infants and toddlers (birth through age 2), preprimary (age 3 through age 5) and primary school children (age 6 through age 8), both typical and atypical, in areas of cognition, language development, physical motor, social-emotional, aesthetics, and adaptive behavior.

2. Understand individual differences in development and learning including risk factors, developmental variations and developmental patterns of specific disabilities and special abilities.

3. Recognize that children are best understood in the contexts of family, culture and society and that cultural and linguistic diversity influences development and learning.

(2) Developmentally appropriate learning environment and curriculum implementation.

1. Establish learning environments with social support, from the teacher and from other students, for all children to meet their optimal potential, with a climate characterized by mutual respect, encouraging and valuing the efforts of all regardless of proficiency.

2. Appropriately use informal and formal assessment to monitor development of children and to plan and evaluate curriculum and teaching practices to meet individual needs of children and families.

3. Plan, implement, and continuously evaluate developmentally and individually appropriate curriculum goals, content, and teaching practices for infants, toddlers, preprimary and primary children based on the needs and interests of individual children, their families and community.

4. Use both child-initiated and teacher-directed instructional methods, including strategies such as small and large group projects, unstructured and structured play, systematic instruction, group discussion and cooperative decision making.

5. Develop and implement integrated learning experiences for home-, center- and school-based environments for infants, toddlers, preprimary and primary children.

6. Develop and implement integrated learning experiences that facilitate cognition, communication, social and physical development of infants and toddlers within the context of parent-child and caregiver-child relationships.

7. Develop and implement learning experiences for preprimary and primary children with focus on multicultural and nonsexist content that includes development of responsibility, aesthetic and artistic development, physical development and well-being, cognitive development, and emotional and social development.

8. Develop and implement learning experiences for infants, toddlers, preprimary, and primary children with a focus on language, mathematics, science, social studies, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology.

9. Develop adaptations and accommodations for infants, toddlers, preprimary, and primary children to meet their individual needs.

10. Adapt materials, equipment, the environment, programs and use of human resources to meet social, cognitive, physical motor, communication, and medical needs of children and diverse learning needs.

(3) Health, safety and nutrition.

1. Design and implement physically and psychologically safe and healthy indoor and outdoor environments to promote development and learning.

2. Promote nutritional practices that support cognitive, social, cultural and physical development of young children.

3. Implement appropriate appraisal and management of health concerns of young children including procedures for children with special health care needs.

4. Recognize signs of emotional distress, physical and mental abuse and neglect in young children and understand mandatory reporting procedures.

5. Demonstrate proficiency in infant-child cardiopulmonary resuscitation, emergency procedures and first aid.

(4) Family and community collaboration.

1. Apply theories and knowledge of dynamic roles and relationships within and between families, schools, and communities.

2. Assist families in identifying resources, priorities, and concerns in relation to the child's development.

3. Link families, based on identified needs, priorities and concerns, with a variety of resources.

4. Use communication, problem-solving and help-giving skills in collaboration with families and other professionals to support the development, learning and well-being of young children.

5. Participate as an effective member of a team with other professionals and families to develop and implement learning plans and environments for young children.

(5) Professionalism.

1. Understand legislation and public policy that affect all young children, with and without disabilities, and their families.

2. Understand legal aspects, historical, philosophical, and social foundations of early childhood education and special education.

3. Understand principles of administration, organization and operation of programs for children from birth to age 8 and their families, including staff and program development, supervision and evaluation of staff, and continuing improvement of programs and services.

4. Identify current trends and issues of the profession to inform and improve practices and advocate for quality programs for young children and their families.

5. Adhere to professional and ethical codes.

6. Engage in reflective inquiry and demonstration of professional self-knowledge.

(6) Pre-student teaching field experiences. Complete 100 clock hours of pre-student teaching field experience with three age levels in infant and toddler, preprimary, and primary programs and in different settings, such as rural and urban, encompassing differing socioeconomic status, ability levels, cultural and linguistic diversity and program types and sponsorship.

(7) Student teaching. Complete a supervised student teaching experience of a total of at least 12 weeks in at least two different classrooms which include children with and without disabilities in two of three age levels: infant and toddler, preprimary, and primary.

**13.26(4) Teacher—elementary classroom.**

a. *Authorization.* The holder of this endorsement is authorized to teach in kindergarten and grades one through six.

b. *Program requirements.*

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations component, and

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

c. *Content.*

(1) Child growth and development with emphasis on the emotional, physical and mental characteristics of elementary age children, unless completed as part of the professional education core. See subrule 13.18(4).

(2) Methods and materials of teaching elementary language arts.

(3) Methods and materials of teaching elementary reading.

(4) Elementary curriculum (methods and materials).

(5) Methods and materials of teaching elementary mathematics.

(6) Methods and materials of teaching elementary science.

(7) Children's literature.

(8) Methods and materials of teaching elementary social studies.

(9) Methods and materials in two of the following areas:

1. Methods and materials of teaching elementary health.

2. Methods and materials of teaching elementary physical education.

3. Methods and materials of teaching elementary art.

4. Methods and materials of teaching elementary music.

(10) Pre-student teaching field experience in at least two different grades.

(11) A field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours.

**13.26(5) Teacher—elementary classroom.** Effective September 1, 2015, the following requirements apply to persons who wish to teach in the elementary classroom:

*a. Authorization.* The holder of this endorsement is authorized to teach in kindergarten and grades one through six.

*b. Program requirements.*

(1) Degree—baccalaureate, and

(2) Completion of an approved human relations component, and

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

*c. Content.*

(1) Child growth and development with emphasis on the emotional, physical and mental characteristics of elementary age children, unless completed as part of the professional education core. See subrule 13.18(4).

(2) At least 9 semester hours in literacy which must include:

1. Content:

- Children's literature;

- Oral and written communication skills for the twenty-first century.

2. Methods:

- Assessment, diagnosis and evaluation of student learning in literacy;

- Integration of the language arts (to include reading, writing, speaking, viewing, and listening);

- Integration of technology in teaching and student learning in literacy;

- Current best-practice, research-based approaches of literacy instruction;

- Classroom management as it applies to literacy methods;

- Pre-student teaching clinical experience in teaching literacy.

(3) At least 9 semester hours in mathematics which must include:

1. Content:

- Numbers and operations;

- Algebra/number patterns;

- Geometry;

- Measurement;

- Data analysis/probability.

2. Methods:

- Assessment, diagnosis and evaluation of student learning in mathematics;

- Current best-practice, research-based instructional methods in mathematical processes (to include problem solving; reasoning; communication; the ability to recognize, make and apply

connections; integration of manipulatives; the ability to construct and to apply multiple connected representations; and the application of content to real world experiences);

- Integration of technology in teaching and student learning in mathematics;
- Classroom management as it applies to mathematics methods;
- Pre-student teaching clinical experience in teaching mathematics.

(4) At least 9 semester hours in social sciences which must include:

1. Content:

- History;
- Geography;
- Political science/civic literacy;
- Economics;
- Behavioral sciences.

2. Methods:

- Current best-practice, research-based approaches to the teaching and learning of social sciences;
- Integration of technology in teaching and student learning in social sciences;
- Classroom management as it applies to social science methods.

(5) At least 9 semester hours in science which must include:

1. Content:

- Physical science;
- Earth/space science;
- Life science.

2. Methods:

• Current best-practice, research-based methods of inquiry-based teaching and learning of science;

- Integration of technology in teaching and student learning in science;
- Classroom management as it applies to science methods.

(6) At least 3 semester hours to include all of the following:

1. Methods of teaching elementary physical education, health, and wellness;
2. Methods of teaching visual arts for the elementary classroom;
3. Methods of teaching performance arts for the elementary classroom.

(7) Pre-student teaching field experience in at least two different grade levels to include one primary and one intermediate placement.

(8) A field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours.

[ARC 8400B, IAB 12/16/09, effective 1/20/10; ARC 8401B, IAB 12/16/09, effective 1/20/10; ARC 8402B, IAB 12/16/09, effective 1/20/10; ARC 8607B, IAB 3/10/10, effective 4/14/10]

### **282—13.27(272) Requirements for middle school endorsements.**

**13.27(1) Authorization.** The holder of this endorsement is authorized to teach in the two concentration areas in which the specific requirements have been completed as well as in other subject areas in grades five through eight which are not the core content areas. The holder is not authorized to teach art, industrial arts, music, reading, physical education and special education.

#### **13.27(2) Program requirements.**

*a.* Be the holder of a currently valid Iowa teacher's license with either the general elementary endorsement or one of the subject matter secondary level endorsements set out in rule 282—13.28(272) or 282—subrules 17.1(1) and 17.1(3).

*b.* A minimum of 9 semester hours of required coursework in the following:

(1) Coursework in the growth and development of the middle school age child, specifically addressing the social, emotional, physical and cognitive characteristics and needs of middle school age children in addition to related studies completed as part of the professional education core in subrule 13.18(4).

(2) Coursework in middle school design, curriculum, instruction, and assessment including, but not limited to, interdisciplinary instruction, teaming, and differentiated instruction in addition to related studies completed as part of the professional education core in subrule 13.18(4).

(3) Coursework to prepare middle school teachers in literacy (reading, writing, listening and speaking) strategies for students in grades five through eight and in methods to include these strategies throughout the curriculum.

c. Thirty hours of middle school field experiences included in the coursework requirements listed in 13.27(2)“b”(1) to (3).

**13.27(3) Concentration areas.** To obtain this endorsement, the applicant must complete the coursework requirements in two of the following content areas:

a. *Social studies concentration.* The social studies concentration requires 12 semester hours of coursework in social studies to include coursework in United States history, world history, government and geography.

b. *Mathematics concentration.* The mathematics concentration requires 12 semester hours in mathematics to include coursework in algebra.

c. *Science concentration.* The science concentration requires 12 semester hours in science to include coursework in life science, earth science, and physical science.

d. *Language arts concentration.* The language arts concentration requires 12 semester hours in language arts to include coursework in composition, language usage, speech, young adult literature, and literature across cultures.

## **282—13.28(272) Minimum content requirements for teaching endorsements.**

**13.28(1) Agriculture.** 5-12. Completion of 24 semester credit hours in agriculture and agriculture education to include:

- a. Foundations of vocational and career education.
- b. Planning and implementing courses and curriculum.
- c. Methods and techniques of instruction to include evaluation of programs and students.
- d. Coordination of cooperative education programs.
- e. Coursework in each of the following areas and at least three semester credit hours in five of the following areas:

- (1) Agribusiness systems.
- (2) Power, structural, and technical systems.
- (3) Plant systems.
- (4) Animal systems.
- (5) Natural resources systems.
- (6) Environmental service systems.
- (7) Food products and processing systems.

**13.28(2) Art.** K-8 or 5-12. Completion of 24 semester hours in art to include coursework in art history, studio art, and two- and three-dimensional art.

**13.28(3) Business—all.** 5-12. Completion of 30 semester hours in business to include 6 semester hours in accounting, 3 semester hours in business law to include contract law, 3 semester hours in computer and technical applications in business, 6 semester hours in marketing to include consumer studies, 3 semester hours in management, 6 semester hours in economics, and 3 semester hours in business communications to include formatting, language usage, and oral presentation. Coursework in entrepreneurship and in financial literacy may be a part of, or in addition to, the coursework listed above. Individuals who were licensed in Iowa prior to October 1, 1988, and were allowed to teach marketing without completing the endorsement requirements must complete the endorsement requirements by July 1, 2010, in order to teach or continue to teach marketing. A waiver provision is available through the board of educational examiners for individuals who have been successfully teaching marketing.

**13.28(4) Driver education.** 5-12. Completion of 9 semester hours in driver education to include coursework in accident prevention that includes drug and alcohol abuse; vehicle safety; and behind-the-wheel driving.

**13.28(5)** *English/language arts.*

a. K-8. Completion of 24 semester hours in English and language arts to include coursework in oral communication, written communication, language development, reading, children's literature, creative drama or oral interpretation of literature, and American literature.

b. 5-12. Completion of 24 semester hours in English to include coursework in oral communication, written communication, language development, reading, American literature, English literature and adolescent literature.

**13.28(6)** *Language arts. 5-12.* Completion of 40 semester hours in language arts to include coursework in the following areas:

a. *Written communication.*

(1) Develops a wide range of strategies and appropriately uses writing process elements (e.g., brainstorming, free-writing, first draft, group response, continued drafting, editing, and self-reflection) to communicate with different audiences for a variety of purposes.

(2) Develops knowledge of language structure (e.g., grammar), language conventions (e.g., spelling and punctuation), media techniques, figurative language and genre to create, critique, and discuss print and nonprint texts.

b. *Oral communication.*

(1) Understands oral language, listening, and nonverbal communication skills; knows how to analyze communication interactions; and applies related knowledge and skills to teach students to become competent communicators in varied contexts.

(2) Understands the communication process and related theories, knows the purpose and function of communication and understands how to apply this knowledge to teach students to make appropriate and effective choices as senders and receivers of messages in varied contexts.

c. *Language development.*

(1) Understands inclusive and appropriate language, patterns and dialects across cultures, ethnic groups, geographic regions and social roles.

(2) Develops strategies to improve competency in the English language arts and understanding of content across the curriculum for students whose first language is not English.

d. *Young adult literature, American literature, and world literature.*

(1) Reads, comprehends, and analyzes a wide range of texts to build an understanding of self as well as the cultures of the United States and the world in order to acquire new information, to respond to the needs and demands of society and the workplace, and for personal fulfillment. Among these texts are fiction and nonfiction, graphic novels, classic and contemporary works, young adult literature, and nonprint texts.

(2) Reads a wide range of literature from many periods in many genres to build an understanding of the many dimensions (e.g., philosophical, ethical, aesthetic) of human experience.

(3) Applies a wide range of strategies to comprehend, interpret, evaluate, and appreciate texts. Draws on prior experience, interactions with other readers and writers, knowledge of word meaning and of other texts, word identification strategies, and an understanding of textual features (e.g., sound-letter correspondence, sentence structure, context, graphics).

(4) Participates as a knowledgeable, reflective, creative, and critical member of a variety of literacy communities.

e. *Creative voice.*

(1) Understands the art of oral interpretation and how to provide opportunities for students to develop and apply oral interpretation skills in individual and group performances for a variety of audiences, purposes and occasions.

(2) Understands the basic skills of theatre production including acting, stage movement, and basic stage design.

f. *Argumentation/debate.*

(1) Understands concepts and principles of classical and contemporary rhetoric and is able to plan, prepare, organize, deliver and evaluate speeches and presentations.

(2) Understands argumentation and debate and how to provide students with opportunities to apply skills and strategies for argumentation and debate in a variety of formats and contexts.

*g. Journalism.*

(1) Understands ethical standards and major legal issues including First Amendment rights and responsibilities relevant to varied communication content. Utilizes strategies to teach students about the importance of freedom of speech in a democratic society and the rights and responsibilities of communicators.

(2) Understands the writing process as it relates to journalism (e.g., brainstorming, questioning, reporting, gathering and synthesizing information, writing, editing, and evaluating the final media product).

(3) Understands a variety of forms of journalistic writing (e.g., news, sports, features, opinion, Web-based) and the appropriate styles (e.g., Associated Press, multiple sources with attribution, punctuation) and additional forms unique to journalism (e.g., headlines, cutlines, and/or visual presentations).

*h. Mass media production.*

(1) Understands the role of the media in a democracy and the importance of preserving that role.

(2) Understands how to interpret and analyze various types of mass media messages in order for students to become critical consumers.

(3) Develops the technological skills needed to package media products effectively using various forms of journalistic design with a range of visual and auditory methods.

*i. Reading strategies (if not completed as part of the professional education core requirements).*

(1) Uses a variety of skills and strategies to comprehend and interpret complex fiction, nonfiction and informational text.

(2) Reads for a variety of purposes and across content areas.

**13.28(7) Foreign language.** K-8 and 5-12. Completion of 24 semester hours in each foreign language for which endorsement is sought.

**13.28(8) Health.** K-8 and 5-12. Completion of 24 semester hours in health to include coursework in public or community health, consumer health, substance abuse, family life education, mental/emotional health, and human nutrition.

**13.28(9) Family and consumer sciences—general.** 5-12. Completion of 24 semester hours in family and consumer sciences to include coursework in human development, parenthood education, family studies, consumer resource management, textiles and apparel, housing, and foods and nutrition.

**13.28(10) Industrial technology.** 5-12. Completion of 24 semester hours in industrial technology to include coursework in manufacturing, construction, energy and power, graphic communications and transportation. The coursework is to include at least 6 semester hours in three different areas.

**13.28(11) Journalism.** 5-12. Completion of 15 semester hours in journalism to include coursework in writing, editing, production and visual communications.

**13.28(12) Mathematics.**

*a. K-8.* Completion of 24 semester hours in mathematics to include coursework in algebra, geometry, number theory, measurement, computer programming, and probability and statistics.

*b. 5-12.*

(1) Completion of 24 semester hours in mathematics to include a linear algebra or an abstract (modern) algebra course, a geometry course, a two-course sequence in calculus, a computer programming course, a probability and statistics course, and coursework in discrete mathematics.

(2) For holders of the physics 5-12 endorsement, completion of 17 semester hours in mathematics to include a geometry course, a two-course sequence in calculus, a probability and statistics course, and coursework in discrete mathematics.

(3) For holders of the all science 9-12 endorsement, completion of 17 semester hours in mathematics to include a geometry course, a two-course sequence in calculus, a probability and statistics course, and coursework in discrete mathematics.

**13.28(13) Music.**

a. K-8. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history, and applied music.

b. 5-12. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history (at least two courses), applied music, and conducting.

**13.28(14) Physical education.**

a. K-8. Completion of 24 semester hours in physical education to include coursework in human anatomy, human physiology, movement education, adapted physical education, physical education in the elementary school, human growth and development of children related to physical education, and first aid and emergency care.

b. 5-12. Completion of 24 semester hours in physical education to include coursework in human anatomy, kinesiology, human physiology, human growth and development related to maturational and motor learning, adapted physical education, curriculum and administration of physical education, assessment processes in physical education, and first aid and emergency care.

**13.28(15) Reading.**

a. K-8 requirements. Completion of 24 semester hours in reading to include all of the following requirements:

(1) Foundations of reading. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of the psychological, sociocultural, and linguistic foundations of reading and writing processes and instruction.

2. The practitioner demonstrates knowledge of a range of research pertaining to reading, writing, and learning, including scientifically based reading research, and knowledge of histories of reading. The range of research encompasses research traditions from the fields of the social sciences and other paradigms appropriate for informing practice.

3. The practitioner demonstrates knowledge of the major components of reading, such as phonemic awareness, word identification, phonics, vocabulary, fluency, and comprehension, and effectively integrates curricular standards with student interests, motivation, and background knowledge.

(2) Reading in the content areas. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of text structure and the dimensions of content area vocabulary and comprehension, including literal, interpretive, critical, and evaluative.

2. The practitioner provides content area instruction in reading and writing that effectively uses a variety of research-based strategies and practices.

(3) Practicum. This requirement includes the following competencies:

1. The practitioner works with licensed professionals who observe, evaluate, and provide feedback on the practitioner's knowledge, dispositions, and performance of the teaching of reading and writing.

2. The practitioner effectively uses reading and writing strategies, materials, and assessments based upon appropriate reading and writing research and works with colleagues and families in the support of children's reading and writing development.

(4) Language development. This requirement includes the following competency: The practitioner uses knowledge of language development and acquisition of reading skills (birth through sixth grade), and the variations related to cultural and linguistic diversity to provide effective instruction in reading and writing.

(5) Oral communication. This requirement includes the following competencies:

1. The practitioner has knowledge of the unique needs and backgrounds of students with language differences and delays.

2. The practitioner uses effective strategies for facilitating the learning of Standard English by all learners.

(6) Written communication. This requirement includes the following competency: The practitioner uses knowledge of reading-writing-speaking connections; the writing process; the stages of spelling development; the different types of writing, such as narrative, expressive, persuasive, informational and descriptive; and the connections between oral and written language development to effectively teach writing as communication.

(7) Reading assessment, diagnosis and evaluation. This requirement includes the following competencies:

1. The practitioner uses knowledge of a variety of instruments, procedures, and practices that range from individual to group and from formal to informal to alternative for the identification of students' reading proficiencies and needs, for planning and revising instruction for all students, and for communicating the results of ongoing assessments to all stakeholders.

2. The practitioner demonstrates awareness of policies and procedures related to special programs, including Title I.

(8) Children's nonfiction and fiction. This requirement includes the following competency: The practitioner uses knowledge of children's literature for:

1. Modeling the reading and writing of varied genres, including fiction and nonfiction; technology- and media-based information; and nonprint materials;

2. Motivating through the use of texts at multiple levels, representing broad interests, and reflecting varied cultures, linguistic backgrounds, and perspectives; and

3. Matching text complexities to the proficiencies and needs of readers.

(9) Reading instructional strategies. This requirement includes the following competency: The practitioner uses knowledge of a range of research-based strategies and instructional technology for designing and delivering effective instruction across the curriculum, for grouping students, and for selecting materials appropriate for learners at various stages of reading and writing development and from varied cultural and linguistic backgrounds.

*b. 5-12 requirements.* Completion of 24 semester hours in reading to include all of the following requirements:

(1) Foundations of reading. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of the psychological, sociocultural, and linguistic foundations of reading and writing processes and instruction.

2. The practitioner demonstrates knowledge of a range of research pertaining to reading, writing, and learning, including scientifically based reading research, and knowledge of histories of reading. The range of research encompasses research traditions from the fields of the social sciences and other paradigms appropriate for informing practice.

3. The practitioner demonstrates knowledge of the major components of reading such as phonemic awareness, word identification, phonics, vocabulary, fluency, and comprehension, and integrates curricular standards with student interests, motivation, and background knowledge.

(2) Reading in the content areas. This requirement includes the following competencies:

1. The practitioner demonstrates knowledge of text structure and the dimensions of content area vocabulary and comprehension, including literal, interpretive, critical, and evaluative.

2. The practitioner provides content area instruction in reading and writing that effectively uses a variety of research-based strategies and practices.

(3) Practicum. This requirement includes the following competencies:

1. The practitioner works with licensed professionals who observe, evaluate, and provide feedback on the practitioner's knowledge, dispositions, and performance of the teaching of reading and writing.

2. The practitioner effectively uses reading and writing strategies, materials, and assessments based upon appropriate reading and writing research, and works with colleagues and families in the support of students' reading and writing development.

(4) Language development. This requirement includes the following competency: The practitioner uses knowledge of the relationship of language acquisition and language development with the acquisition and development of reading skills, and the variations related to cultural and linguistic diversity to provide effective instruction in reading and writing.

(5) Oral communication. This requirement includes the following competency: The practitioner demonstrates knowledge of the unique needs and backgrounds of students with language differences and uses effective strategies for facilitating the learning of Standard English by all learners.

(6) Written communication. This requirement includes the following competency: The practitioner uses knowledge of reading-writing-speaking connections to teach the skills and processes necessary for

writing narrative, expressive, persuasive, informational, and descriptive texts, including text structures and mechanics such as grammar, usage, and spelling.

(7) Reading assessment, diagnosis and evaluation. This requirement includes the following competencies:

1. The practitioner uses knowledge of a variety of instruments, procedures, and practices that range from individual to group and from formal to informal to alternative for the identification of students' reading proficiencies and needs, for planning and revising instruction for all students, and for communicating the results of ongoing assessments to all stakeholders.

2. The practitioner demonstrates awareness of policies and procedures related to special programs.

(8) Adolescent or young adult nonfiction and fiction. This requirement includes the following competency: The practitioner uses knowledge of adolescent or young adult literature for:

1. Modeling the reading and writing of varied genres, including fiction and nonfiction; technology and media-based information; and nonprint materials;

2. Motivating through the use of texts at multiple levels, representing broad interests, and reflecting varied cultures, linguistic backgrounds and perspectives; and

3. Matching text complexities to the proficiencies and needs of readers.

(9) Reading instructional strategies. This requirement includes the following competency: The practitioner uses knowledge of a range of research-based strategies and instructional technology for designing and delivering instruction across the curriculum, for grouping students, and for selecting materials appropriate for learners at various stages of reading and writing development and from varied cultural and linguistic backgrounds.

**13.28(16) Reading specialist. K-12.** The applicant must have met the requirements for the standard license and a teaching endorsement, and present evidence of at least one year of experience which included the teaching of reading as a significant part of the responsibility.

*a. Authorization.* The holder of this endorsement is authorized to serve as a reading specialist in kindergarten and grades one through twelve.

*b. Program requirements.* Degree—master's.

*c. Content.* Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least 27 semester hours to include the following:

(1) Educational psychology/human growth and development.

(2) Educational measurement and evaluation.

(3) Foundations of reading.

(4) Diagnosis of reading problems.

(5) Remedial reading.

(6) Psychology of reading.

(7) Language learning and reading disabilities.

(8) Practicum in reading.

(9) Administration and supervision of reading programs at the elementary and secondary levels.

**13.28(17) Science.**

*a. Science—basic. K-8.*

(1) Required coursework. Completion of at least 24 semester hours in science to include 12 hours in physical sciences, 6 hours in biology, and 6 hours in earth/space sciences.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

*b. Biological science. 5-12.* Completion of 24 semester hours in biological science or 30 semester hours in the broad area of science to include 15 semester hours in biological science.

*c. Chemistry.* 5-12. Completion of 24 semester hours in chemistry or 30 semester hours in the broad area of science to include 15 semester hours in chemistry.

*d. Earth science.* 5-12. Completion of 24 semester hours in earth science or 30 semester hours in the broad area of science to include 15 semester hours in earth science.

*e. General science.* 5-12. Completion of 24 semester hours in science to include coursework in biological science, chemistry, and physics.

*f. Physical science.* 5-12. Completion of 24 semester hours in physical sciences to include coursework in physics, chemistry, and earth science.

*g. Physics.*

(1) 5-12. Completion of 24 semester hours in physics or 30 semester hours in the broad area of science to include 15 semester hours in physics.

(2) For holders of the mathematics 5-12 endorsement, completion of:

1. 12 credits of physics to include coursework in mechanics, electricity, and magnetism; and

2. A methods class that includes inquiry-based instruction, resource management, and laboratory safety.

(3) For holders of the chemistry 5-12 endorsement, completion of 12 credits of physics to include coursework in mechanics, electricity, and magnetism.

*h. All science I.* 5-8. The holder of this endorsement must also hold the middle school endorsement listed under rule 282—13.27(272).

(1) Required coursework. Completion of at least 24 semester hours in science to include 6 hours in chemistry, 6 hours in physics or physical sciences, 6 hours in biology, and 6 hours in the earth/space sciences.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

*i. All science II.* 9-12.

(1) Required coursework.

1. Completion of one of the following endorsement areas listed under subrule 13.28(17): biological science 5-12 or chemistry 5-12 or earth science 5-12 or physics 5-12.

2. Completion of at least 12 hours in each of the other three endorsement areas.

(2) Competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

**13.28(18) Social sciences.**

*a. American government.* 5-12. Completion of 24 semester hours in American government or 30 semester hours in the broad area of social sciences to include 15 semester hours in American government.

*b. American history.* 5-12. Completion of 24 semester hours in American history or 30 semester hours in the broad area of social sciences to include 15 semester hours in American history.

*c. Anthropology.* 5-12. Completion of 24 semester hours in anthropology or 30 semester hours in the broad area of social sciences to include 15 semester hours in anthropology.

*d. Economics.* 5-12. Completion of 24 semester hours in economics or 30 semester hours in the broad area of social sciences to include 15 semester hours in economics, or 30 semester hours in the broad area of business to include 15 semester hours in economics.

*e. Geography.* 5-12. Completion of 24 semester hours in geography or 30 semester hours in the broad area of social sciences to include 15 semester hours in geography.

*f. History.* K-8. Completion of 24 semester hours in history to include at least 9 semester hours in American history and 9 semester hours in world history.

*g. Psychology.* 5-12. Completion of 24 semester hours in psychology or 30 semester hours in the broad area of social sciences to include 15 semester hours in psychology.

*h. Social studies.* K-8. Completion of 24 semester hours in social studies, to include coursework from at least three of these areas: history, sociology, economics, American government, psychology and geography.

*i. Sociology.* 5-12. Completion of 24 semester hours in sociology or 30 semester hours in the broad area of social sciences to include 15 semester hours in sociology.

*j. World history.* 5-12. Completion of 24 semester hours in world history or 30 semester hours in the broad area of social sciences to include 15 semester hours in world history.

*k. All social sciences.* 5-12. Completion of 51 semester hours in the social sciences to include 9 semester hours in each of American and world history, 9 semester hours in government, 6 semester hours in sociology, 6 semester hours in psychology other than educational psychology, 6 semester hours in geography, and 6 semester hours in economics.

**13.28(19) Speech communication/theatre.**

*a. K-8.* Completion of 20 semester hours in speech communication/theatre to include coursework in speech communication, creative drama or theatre, and oral interpretation.

*b. 5-12.* Completion of 24 semester hours in speech communication/theatre to include coursework in speech communication, oral interpretation, creative drama or theatre, argumentation and debate, and mass media communication.

**13.28(20) English as a second language (ESL).** K-12.

*a. Authorization.* The holder of this endorsement is authorized to teach English as a second language in kindergarten and grades one through twelve.

*b. Program requirements.*

- (1) Degree—baccalaureate, and
- (2) Completion of an approved human relations program, and
- (3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

*c. Content.* Completion of 18 semester hours of coursework in English as a second language to include the following:

- (1) Knowledge of pedagogy to include the following:
  1. Methods and curriculum to include the following:
    - Bilingual and ESL methods.
    - Literacy in native and second language.
    - Methods for subject matter content.
    - Adaptation and modification of curriculum.
  2. Assessment to include language proficiency and academic content.
- (2) Knowledge of linguistics to include the following:
  1. Psycholinguistics and sociolinguistics.
  2. Language acquisition and proficiency to include the following:
    - Knowledge of first and second language proficiency.
    - Knowledge of first and second language acquisition.
    - Language to include structure and grammar of English.
- (3) Knowledge of cultural and linguistic diversity to include the following:
  1. History.
  2. Theory, models, and research.
  3. Policy and legislation.
  - (4) Current issues with transient populations.

*d. Other.* Individuals who were licensed in Iowa prior to October 1, 1988, and were allowed to teach English as a second language without completing the endorsement requirements must complete

the endorsement requirements by July 1, 2012, in order to teach or continue to teach English as a second language. A waiver provision is available through the board of educational examiners for individuals who have been successfully teaching English as a second language.

**13.28(21) Elementary school teacher librarian.**

*a. Authorization.* The holder of this endorsement is authorized to serve as a teacher librarian in kindergarten and grades one through eight.

*b. Program requirements.*

- (1) Degree—baccalaureate.
- (2) Completion of an approved human relations program.
- (3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

*c. Content—prior to September 1, 2012.* The following requirements apply for endorsements issued prior to September 1, 2012. Completion of 24 semester hours in school library coursework to include the following:

- (1) Knowledge of materials and literature in all formats for elementary children.
- (2) Selection, utilization and evaluation of library resources and equipment.
- (3) Design and production of instructional materials.
- (4) Acquisition, cataloging and classification of library materials.
- (5) Information literacy, reference services and networking.
- (6) Planning, evaluation and administration of school library programs.
- (7) Practicum in an elementary school media center/library.

*d. Content—effective on and after September 1, 2012.* The following requirements apply for endorsements issued on and after September 1, 2012. Completion of 24 semester hours in school library coursework to include the following:

- (1) Literacy and reading. This requirement includes the following competencies:
  1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy in children.
  2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading among children, based on familiarity with selection tools and current trends in literature for children.
- (2) Information and knowledge. This requirement includes the following competencies:
  1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.
  2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.
  3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.
  4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.
  5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.
  6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.
  7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.
- (3) Program administration and leadership. This requirement includes the following competencies:
  1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.
  2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.

3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users.

4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

(4) Practicum. This requirement includes the following competencies:

1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the elementary level.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the elementary level.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the elementary level.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula at the elementary level.

**13.28(22) Secondary school teacher librarian.**

a. *Authorization.* The holder of this endorsement is authorized to serve as a teacher librarian in grades five through twelve.

b. *Program requirements.*

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

c. *Content—prior to September 1, 2012.* The following requirements apply for endorsements issued prior to September 1, 2012. Completion of 24 semester hours in school library coursework to include the following:

(1) Knowledge of materials and literature in all formats for adolescents.

(2) Selection, utilization and evaluation of library resources and equipment.

(3) Design and production of instructional materials.

(4) Acquisition, cataloging and classification of library materials.

(5) Information literacy, reference services and networking.

(6) Planning, evaluation and administration of school library programs.

(7) Practicum in a secondary school media center/library.

d. *Content—effective on and after September 1, 2012.* The following requirements apply for endorsements issued on and after September 1, 2012. Completion of 24 semester hours in school library coursework to include the following:

(1) Literacy and reading. This requirement includes the following competencies:

1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy in young adults.

2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading among young adults, based on familiarity with selection tools and current trends in literature for young adults.

(2) Information and knowledge. This requirement includes the following competencies:

1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.

2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.

3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.

4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.

5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.

6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.

7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.

(3) Program administration and leadership. This requirement includes the following competencies:

1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.

2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.

3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users.

4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

(4) Practicum. This requirement includes the following competencies:

1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the secondary level.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the secondary level.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the secondary level.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula at the secondary level.

**13.28(23) School teacher librarian.** PK-12.

*a. Authorization.* The holder of this endorsement is authorized to serve as a teacher librarian in prekindergarten through grade twelve. The applicant must be the holder of or eligible for the initial license.

*b. Program requirements.* Degree—master's.

*c. Content—prior to September 1, 2012.* The following requirements apply for endorsements issued prior to September 1, 2012. Completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements. This sequence is to be at least 30 semester hours in school library coursework, to include the following:

(1) Planning, evaluation and administration of school library programs.

(2) Curriculum development and teaching and learning strategies.

(3) Instructional development and communication theory.

(4) Selection, evaluation and utilization of library resources and equipment.

(5) Acquisition, cataloging and classification of library materials.

(6) Design and production of instructional materials.

(7) Methods for instruction and integration of information literacy skills into the school curriculum.

(8) Information literacy, reference services and networking.

(9) Knowledge of materials and literature in all formats for elementary children and adolescents.

(10) Reading, listening and viewing guidance.

(11) Utilization and application of computer technology.

(12) Practicum at both the elementary and secondary levels.

(13) Research in library and information science.

*d. Content—effective on and after September 1, 2012.* The following requirements apply for endorsements issued on and after September 1, 2012. Completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements. This sequence is to be at least 30 semester hours in school library coursework, to include the following:

(1) Literacy and reading. This requirement includes the following competencies:

1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy for youth of all ages.

2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading, based on familiarity with selection tools and current trends in literature for youth of all ages.

3. Practitioners understand how to develop a collection of reading and informational materials in print and digital formats that supports the diverse developmental, cultural, social and linguistic needs of all learners and their communities.

4. Practitioners model and teach reading comprehension strategies to create meaning from text for youth of all ages.

(2) Information and knowledge. This requirement includes the following competencies:

1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.

2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.

3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.

4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.

5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.

6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.

7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.

8. Practitioners understand the process of collecting, interpreting, and using data to develop new knowledge to improve the school library program.

9. Practitioners employ the methods of research in library and information science.

(3) Program administration and leadership. This requirement includes the following competencies:

1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.

2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.

3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users of all ages.

4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

5. Practitioners demonstrate knowledge of best practices related to planning, budgeting (including alternative funding), organizing, and evaluating human and information resources and facilities to ensure equitable access.

6. Practitioners understand strategic planning to ensure that the school library program addresses the needs of diverse communities.

7. Practitioners advocate for school library and information programs, resources, and services among stakeholders.

8. Practitioners promote initiatives and partnerships to further the mission and goals of the school library program.

(4) Practicum. This requirement includes the following competencies:

1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the elementary and secondary levels.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the elementary and secondary levels.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the elementary and secondary levels.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula.

**13.28(24) Talented and gifted teacher.**

*a. Authorization.* The holder of this endorsement is authorized to serve as a teacher or a coordinator of programs for the talented and gifted from the prekindergarten level through grade twelve. This authorization does not permit general classroom teaching at any level except that level or area for which the holder is eligible or holds the specific endorsement.

*b. Program requirements—content.* Completion of 12 undergraduate or graduate semester hours of coursework in the area of the talented and gifted to include the following:

- (1) Psychology of the gifted.
  1. Social needs.
  2. Emotional needs.
- (2) Programming for the gifted.
  1. Prekindergarten-12 identification.
  2. Differentiation strategies.
  3. Collaborative teaching skills.
  4. Program goals and performance measures.
  5. Program evaluation.
- (3) Practicum experience in gifted programs.

NOTE: Teachers in specific subject areas will not be required to hold this endorsement if they teach gifted students in their respective endorsement areas.

*c. Other.* Individuals who were licensed in Iowa prior to August 31, 1995, and were allowed to teach talented and gifted classes without completing the endorsement requirements must complete the endorsement requirements by July 1, 2012, in order to teach or continue to teach talented and gifted classes. A waiver provision is provided through the board of educational examiners for individuals who have been successfully teaching students who are talented and gifted.

**13.28(25) American Sign Language endorsement.**

*a. Authorization.* The holder of this endorsement is authorized to teach American Sign Language in kindergarten and grades one through twelve.

*b. Program requirements.*

- (1) Degree—baccalaureate.
- (2) Completion of an approved human relations program.
- (3) Completion of the professional education core.

*c. Content.* Completion of 18 semester hours of coursework in American Sign Language to include the following:

- (1) Second language acquisition.
- (2) Sociology of the deaf community.
- (3) Linguistic structure of American Sign Language.
- (4) Language teaching methodology specific to American Sign Language.
- (5) Teaching the culture of deaf people.
- (6) Assessment of students in an American Sign Language program.

*d. Other.* Be the holder of or be eligible for one other teaching endorsement listed in rules 282—13.26(272) and 282—13.27(272) and this rule.

**13.28(26) Elementary counselor.**

*a. Authorization.* The holder of this endorsement has not completed the professional education core (subrule 13.18(4)) but is authorized to serve as a school guidance counselor in kindergarten and grades one through eight.

*b. Program requirements.*

- (1) Master's degree from an accredited institution of higher education.
- (2) Completion of an approved human relations component.

- (3) Completion of an approved exceptional learner component.
- c. Content.* Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements to include the following:
- (1) Nature and needs of individuals at all developmental levels.
    1. Develop strategies for facilitating development through the transition from childhood to adolescence and from adolescence to young adulthood.
    2. Apply knowledge of learning and personality development to assist students in developing their full potential.
  - (2) Social and cultural foundations.
    1. Demonstrate awareness of and sensitivity to the unique social, cultural, and economic circumstances of students and their racial/ethnic, gender, age, physical, and learning differences.
    2. Demonstrate sensitivity to the nature and the functioning of the student within the family, school and community contexts.
    3. Demonstrate the counseling and consultation skills needed to facilitate informed and appropriate action in response to the needs of students.
  - (3) Fostering of relationships.
    1. Employ effective counseling and consultation skills with students, parents, colleagues, administrators, and others.
    2. Communicate effectively with parents, colleagues, students and administrators.
    3. Counsel students in the areas of personal, social, academic, and career development.
    4. Assist families in helping their children address the personal, social, and emotional concerns and problems that may impede educational progress.
    5. Implement developmentally appropriate counseling interventions with children and adolescents.
    6. Demonstrate the ability to negotiate and move individuals and groups toward consensus or conflict resolution or both.
    7. Refer students for specialized help when appropriate.
    8. Value the well-being of the students as paramount in the counseling relationship.
  - (4) Group work.
    1. Implement developmentally appropriate interventions involving group dynamics, counseling theories, group counseling methods and skills, and other group work approaches.
    2. Apply knowledge of group counseling in implementing appropriate group processes for elementary, middle school, and secondary students.
  - (5) Career development, education, and postsecondary planning.
    1. Assist students in the assessment of their individual strengths, weaknesses, and differences, including those that relate to academic achievement and future plans.
    2. Apply knowledge of career assessment and career choice programs.
    3. Implement occupational and educational placement, follow-up and evaluation.
    4. Develop a counseling network and provide resources for use by students in personalizing the exploration of postsecondary educational opportunities.
  - (6) Assessment and evaluation.
    1. Demonstrate individual and group approaches to assessment and evaluation.
    2. Demonstrate an understanding of the proper administration and uses of standardized tests.
    3. Apply knowledge of test administration, scoring, and measurement concerns.
    4. Apply evaluation procedures for monitoring student achievement.
    5. Apply assessment information in program design and program modifications to address students' needs.
    6. Apply knowledge of legal and ethical issues related to assessment and student records.
  - (7) Professional orientation.
    1. Apply knowledge of history, roles, organizational structures, ethics, standards, and credentialing.
    2. Maintain a high level of professional knowledge and skills.

3. Apply knowledge of professional and ethical standards to the practice of school counseling.
4. Articulate the counselor role to school personnel, parents, community, and students.
- (8) School counseling skills.
  1. Design, implement, and evaluate a comprehensive, developmental school guidance program.
  2. Implement and evaluate specific strategies designed to meet program goals and objectives.
  3. Consult and coordinate efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives.
  4. Provide information appropriate to the particular educational transition and assist students in understanding the relationship that their curricular experiences and academic achievements will have on subsequent educational opportunities.
  5. Assist parents and families in order to provide a supportive environment in which students can become effective learners and achieve success in pursuit of appropriate educational goals.
  6. Provide training, orientation, and consultation assistance to faculty, administrators, staff, and school officials to assist them in responding to the social, emotional, and educational development of all students.
  7. Collaborate with teachers, administrators, and other educators in ensuring that appropriate educational experiences are provided that allow all students to achieve success.
  8. Assist in the process of identifying and addressing the needs of the exceptional student.
  9. Apply knowledge of legal and ethical issues related to child abuse and mandatory reporting.
  10. Advocate for the educational needs of students and work to ensure that these needs are addressed at every level of the school experience.
  11. Promote use of counseling and guidance activities and programs involving the total school community to provide a positive school climate.
- (9) Classroom management.
  1. Apply effective classroom management strategies as demonstrated in classroom guidance and large group guidance lessons.
  2. Consult with teachers and parents about effective classroom management and behavior management strategies.
- (10) Curriculum.
  1. Write classroom lessons including objectives, learning activities, and discussion questions.
  2. Utilize various methods of evaluating what students have learned in classroom lessons.
  3. Demonstrate competency in conducting classroom and other large group activities, utilizing an effective lesson plan design, engaging students in the learning process, and employing age-appropriate classroom management strategies.
  4. Design a classroom unit of developmentally appropriate learning experiences.
  5. Demonstrate knowledge in writing standards and benchmarks for curriculum.
- (11) Learning theory.
  1. Identify and consult with teachers about how to create a positive learning environment utilizing such factors as effective classroom management strategies, building a sense of community in the classroom, and cooperative learning experiences.
  2. Identify and consult with teachers regarding teaching strategies designed to motivate students using small group learning activities, experiential learning activities, student mentoring programs, and shared decision-making opportunities.
  3. Demonstrate knowledge of child and adolescent development and identify developmentally appropriate teaching and learning strategies.
- (12) Teaching and counseling practicum. The school counselor demonstrates competency in conducting classroom sessions with elementary and middle school students. The practicum consisting of a minimum of 500 contact hours provides opportunities for the prospective counselor, under the supervision of a licensed professional school counselor, to engage in a variety of activities in which a regularly employed school counselor would be expected to participate including, but not limited to, individual counseling, group counseling, developmental classroom guidance, and consultation.

**13.28(27) Secondary counselor.**

*a. Authorization.* The holder of this endorsement has not completed the professional education core (subrule 13.18(4)) but is authorized to serve as a school guidance counselor in grades five through twelve.

*b. Program requirements.*

- (1) Master's degree from an accredited institution of higher education.
- (2) Completion of an approved human relations component.
- (3) Completion of an approved exceptional learner component.

*c. Content.* Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements to include the following:

- (1) Nature and needs of individuals at all developmental levels.
  1. Develop strategies for facilitating development through the transition from childhood to adolescence and from adolescence to young adulthood.
  2. Apply knowledge of learning and personality development to assist students in developing their full potential.
- (2) Social and cultural foundations.
  1. Demonstrate awareness of and sensitivity to the unique social, cultural, and economic circumstances of students and their racial/ethnic, gender, age, physical, and learning differences.
  2. Demonstrate sensitivity to the nature and the functioning of the student within the family, school and community contexts.
  3. Demonstrate the counseling and consultation skills needed to facilitate informed and appropriate action in response to the needs of students.
- (3) Fostering of relationships.
  1. Employ effective counseling and consultation skills with students, parents, colleagues, administrators, and others.
  2. Communicate effectively with parents, colleagues, students and administrators.
  3. Counsel students in the areas of personal, social, academic, and career development.
  4. Assist families in helping their children address the personal, social, and emotional concerns and problems that may impede educational progress.
  5. Implement developmentally appropriate counseling interventions with children and adolescents.
  6. Demonstrate the ability to negotiate and move individuals and groups toward consensus or conflict resolution or both.
  7. Refer students for specialized help when appropriate.
  8. Value the well-being of the students as paramount in the counseling relationship.
- (4) Group work.
  1. Implement developmentally appropriate interventions involving group dynamics, counseling theories, group counseling methods and skills, and other group work approaches.
  2. Apply knowledge of group counseling in implementing appropriate group processes for elementary, middle school, and secondary students.
- (5) Career development, education, and postsecondary planning.
  1. Assist students in the assessment of their individual strengths, weaknesses, and differences, including those that relate to academic achievement and future plans.
  2. Apply knowledge of career assessment and career choice programs.
  3. Implement occupational and educational placement, follow-up and evaluation.
  4. Develop a counseling network and provide resources for use by students in personalizing the exploration of postsecondary educational opportunities.
- (6) Assessment and evaluation.
  1. Demonstrate individual and group approaches to assessment and evaluation.
  2. Demonstrate an understanding of the proper administration and uses of standardized tests.
  3. Apply knowledge of test administration, scoring, and measurement concerns.
  4. Apply evaluation procedures for monitoring student achievement.

5. Apply assessment information in program design and program modifications to address students' needs.
6. Apply knowledge of legal and ethical issues related to assessment and student records.
- (7) Professional orientation.
  1. Apply knowledge of history, roles, organizational structures, ethics, standards, and credentialing.
  2. Maintain a high level of professional knowledge and skills.
  3. Apply knowledge of professional and ethical standards to the practice of school counseling.
  4. Articulate the counselor role to school personnel, parents, community, and students.
- (8) School counseling skills.
  1. Design, implement, and evaluate a comprehensive, developmental school guidance program.
  2. Implement and evaluate specific strategies designed to meet program goals and objectives.
  3. Consult and coordinate efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives.
  4. Provide information appropriate to the particular educational transition and assist students in understanding the relationship that their curricular experiences and academic achievements will have on subsequent educational opportunities.
  5. Assist parents and families in order to provide a supportive environment in which students can become effective learners and achieve success in pursuit of appropriate educational goals.
  6. Provide training, orientation, and consultation assistance to faculty, administrators, staff, and school officials to assist them in responding to the social, emotional, and educational development of all students.
  7. Collaborate with teachers, administrators, and other educators in ensuring that appropriate educational experiences are provided that allow all students to achieve success.
  8. Assist in the process of identifying and addressing the needs of the exceptional student.
  9. Apply knowledge of legal and ethical issues related to child abuse and mandatory reporting.
  10. Advocate for the educational needs of students and work to ensure that these needs are addressed at every level of the school experience.
  11. Promote use of counseling and guidance activities and programs involving the total school community to provide a positive school climate.
- (9) Classroom management.
  1. Apply effective classroom management strategies as demonstrated in classroom guidance and large group guidance lessons.
  2. Consult with teachers and parents about effective classroom management and behavior management strategies.
- (10) Curriculum.
  1. Write classroom lessons including objectives, learning activities, and discussion questions.
  2. Utilize various methods of evaluating what students have learned in classroom lessons.
  3. Demonstrate competency in conducting classroom and other large group activities, utilizing an effective lesson plan design, engaging students in the learning process, and employing age-appropriate classroom management strategies.
  4. Design a classroom unit of developmentally appropriate learning experiences.
  5. Demonstrate knowledge in writing standards and benchmarks for curriculum.
- (11) Learning theory.
  1. Identify and consult with teachers about how to create a positive learning environment utilizing such factors as effective classroom management strategies, building a sense of community in the classroom, and cooperative learning experiences.
  2. Identify and consult with teachers regarding teaching strategies designed to motivate students using small group learning activities, experiential learning activities, student mentoring programs, and shared decision-making opportunities.
  3. Demonstrate knowledge of child and adolescent development and identify developmentally appropriate teaching and learning strategies.

(12) Teaching and counseling practicum. The school counselor demonstrates competency in conducting classroom sessions with middle and secondary school students. The practicum consisting of a minimum of 500 contact hours provides opportunities for the prospective counselor, under the supervision of a licensed professional school counselor, to engage in a variety of activities in which a regularly employed school counselor would be expected to participate including, but not limited to, individual counseling, group work, developmental classroom guidance and consultation.

**13.28(28) School nurse endorsement.** The school nurse endorsement does not authorize general classroom teaching, although it does authorize the holder to teach health at all grade levels. Alternatively, a nurse may obtain a statement of professional recognition (SPR) from the board of educational examiners, in accordance with the provisions set out in 282—Chapter 16, Statements of Professional Recognition (SPR).

*a. Authorization.* The holder of this endorsement is authorized to provide service as a school nurse at the prekindergarten and kindergarten levels and in grades one through twelve.

*b. Program requirements.*

- (1) Degree—baccalaureate, and
- (2) Completion of an approved human relations program, and
- (3) Completion of the professional education core. See subrules 13.18(3) and 13.18(4).

*c. Content.*

(1) Organization and administration of school nurse services including the appraisal of the health needs of children and youth.

(2) School-community relationships and resources/coordination of school and community resources to serve the health needs of children and youth.

(3) Knowledge and understanding of the health needs of exceptional children.

(4) Health education.

*d. Other.* Hold a license as a registered nurse issued by the Iowa board of nursing.

**13.28(29) Athletic coach.** K-12. An applicant for the coaching endorsement must hold a teacher's license with one of the teaching endorsements.

*a. Authorization.* The holder of this endorsement may serve as a head coach or an assistant coach in kindergarten and grades one through twelve.

*b. Program requirements.*

(1) One semester hour college or university course in the structure and function of the human body in relation to physical activity, and

(2) One semester hour college or university course in human growth and development of children and youth as related to physical activity, and

(3) Two semester hour college or university course in athletic conditioning, care and prevention of injuries and first aid as related to physical activity, and

(4) One semester hour college or university course in the theory of coaching interscholastic athletics.

[ARC 7986B, IAB 7/29/09, effective 9/2/09; ARC 8248B, IAB 11/4/09, effective 10/12/09; ARC 8403B, IAB 12/16/09, effective 1/20/10; ARC 9070B, IAB 9/8/10, effective 10/13/10; ARC 9071B, IAB 9/8/10, effective 10/13/10; ARC 9210B, IAB 11/3/10, effective 12/8/10; ARC 9211B, IAB 11/3/10, effective 12/8/10; ARC 9212B, IAB 11/3/10, effective 12/8/10; ARC 9838B, IAB 11/2/11, effective 12/7/11; ARC 9839B, IAB 11/2/11, effective 12/7/11]

## **282—13.29(272) Adding, removing or reinstating a teaching endorsement.**

**13.29(1) Adding an endorsement.** After the issuance of a teaching license, an individual may add other endorsements to that license upon proper application, provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

*a. Options.* To add an endorsement, the applicant must follow one of these options:

(1) Option 1. Receive the Iowa teacher education institution's recommendation that the current approved program requirements for the endorsement have been met.

(2) Option 2. Receive verification from the Iowa teacher education institution that the minimum state requirements for the endorsement have been met in lieu of the institution's approved program.

(3) Option 3. Receive verification from a state-approved and regionally accredited institution that the Iowa minimum requirements for the endorsement have been met.

(4) Option 4. Apply for a review of the transcripts by the board of educational examiners' staff to determine if all Iowa requirements have been met. The applicant must submit documentation that all of the Iowa requirements have been met by filing transcripts and supporting documentation for review. The fee for the transcript evaluation is in 282—Chapter 12. This fee shall be in addition to the fee for adding the endorsement.

*b. Additional requirements for adding an endorsement.*

(1) In addition to meeting the requirements listed in rules 282—13.18(272) and 282—13.28(272), applicants for endorsements shall have completed a methods class appropriate for teaching the general subject area of the endorsement added.

(2) Practitioners who are adding an elementary or early childhood endorsement and have not student taught on the elementary or early childhood level shall complete a teaching practicum appropriate for teaching at the level of the new endorsement.

(3) Practitioners who are adding a secondary teaching endorsement and have not student taught on the secondary level shall complete a teaching practicum appropriate for teaching at the level of the new endorsement.

(4) Practitioners holding the K-8 endorsement in the content area of the 5-12 endorsement being added may satisfy the requirement for the secondary methods class and the teaching practicum by completing all required coursework and presenting verification of competence. This verification of competence shall be signed by a licensed evaluator who has observed and formally evaluated the performance of the applicant at the secondary level. This verification of competence may be submitted at any time during the term of the Class B license. The practitioner must obtain a Class B license while practicing with the 5-12 endorsement.

**13.29(2)** *Removal of an endorsement; reinstatement of removed endorsement.*

*a. Removal of an endorsement.* A practitioner may remove an endorsement from the practitioner's license as follows:

(1) To remove an endorsement, the practitioner shall meet the following conditions:

1. A practitioner who holds a standard or master educator license is eligible to request removal of an endorsement from the license if the practitioner has not taught in the subject or assignment area of the endorsement in the five years prior to the request for removal of the endorsement, and

2. The practitioner must submit a notarized written application form furnished by the board of educational examiners to remove an endorsement at the time of licensure renewal (licensure renewal is limited to one calendar year prior to the expiration date of the current license), and

3. The application must be signed by the superintendent or designee in the district in which the practitioner is under contract. The superintendent's signature shall serve as notification and acknowledgment of the practitioner's intent to remove an endorsement from the practitioner's license. The absence of the superintendent's or designee's signature does not impede the removal process.

(2) The endorsement shall be removed from the license at the time of application.

(3) If a practitioner is not employed and submits an application, the provisions of 13.29(2) "a"(1)"3" shall not be required.

(4) If a practitioner submits an application that does not meet the criteria listed in 13.29(2) "a"(1)"1" to "3," the application will be rendered void and the practitioner will forfeit the processing fee.

(5) The executive director has the authority to approve or deny the request for removal. Any denial is subject to the appeal process set forth in rule 282—11.35(272).

*b. Reinstatement of a removed endorsement.*

(1) If the practitioner wants to add the removed endorsement at a future date, all coursework for the endorsement must be completed within the five years preceding the application to add the endorsement.

(2) The practitioner must meet the current endorsement requirements when making application.

**282—13.30(272) Licenses—issue dates, corrections, duplicates, and fraud.**

**13.30(1)** *Issue date on original license.* A license is valid only from and after the date of issuance.

**13.30(2)** *Correcting licenses.* If a licensee notifies board staff of a typographical or clerical error on the license within 30 days of the date of the board's mailing of a license, a corrected license shall be issued without charge to the licensee. If notification of a typographical or clerical error is made more than 30 days after the date of the board's mailing of a license, a corrected license shall be issued upon receipt of the fee for issuance of a duplicate license. For purposes of this rule, typographical or clerical errors include misspellings, errors in the expiration date of a license, errors in the type of license issued, and the omission or misidentification of the endorsements for which application was made. A licensee requesting the addition of an endorsement not included on the initial application must submit a new application and the appropriate application fee.

**13.30(3)** *Duplicate licenses.* Upon application and payment of the fee set out in 282—Chapter 12, a duplicate license shall be issued.

**13.30(4)** *Fraud in procurement or renewal of licenses.* Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

These rules are intended to implement Iowa Code chapter 272.

Filed 12/23/08, Notice 10/8/08—published 1/14/09, effective 2/18/09]

[Filed 12/24/08, Notice 10/22/08—published 1/14/09, effective 2/18/09]

[Filed ARC 7869B (Notice ARC 7600B, IAB 2/25/09), IAB 6/17/09, effective 7/22/09]

[Filed ARC 7987B (Notice ARC 7751B, IAB 5/6/09), IAB 7/29/09, effective 9/2/09]

[Filed ARC 7986B (Notice ARC 7744B, IAB 5/6/09), IAB 7/29/09, effective 9/2/09]

[Filed ARC 8133B (Notice ARC 7778B, IAB 5/20/09), IAB 9/9/09, effective 10/14/09]

[Filed ARC 8134B (Notice ARC 7860B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]

[Filed ARC 8138B (Notice ARC 7871B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]

[Filed ARC 8139B (Notice ARC 7872B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]

[Filed Emergency ARC 8248B, IAB 11/4/09, effective 10/12/09]

[Filed ARC 8400B (Notice ARC 8125B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 8401B (Notice ARC 8121B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 8402B (Notice ARC 8126B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 8403B (Notice ARC 8129B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 8604B (Notice ARC 8250B, IAB 11/4/09), IAB 3/10/10, effective 4/14/10]

[Filed ARC 8610B (Notice ARC 8249B, IAB 11/4/09), IAB 3/10/10, effective 4/14/10]

[Filed ARC 8607B (Notice ARC 8408B, IAB 12/16/09), IAB 3/10/10, effective 4/14/10]

[Filed ARC 8688B (Notice ARC 8436B, IAB 1/13/10), IAB 4/7/10, effective 5/12/10]

[Filed ARC 8957B (Notice ARC 8686B, IAB 4/7/10), IAB 7/28/10, effective 9/1/10]

[Filed ARC 9072B (Notice ARC 8822B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9070B (Notice ARC 8824B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9071B (Notice ARC 8825B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9207B (Notice ARC 8969B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]

[Filed ARC 9205B (Notice ARC 8961B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]

[Filed ARC 9206B (Notice ARC 8968B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]

[Filed ARC 9210B (Notice ARC 8965B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]

[Filed ARC 9211B (Notice ARC 8966B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]

[Filed ARC 9212B (Notice ARC 8967B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]

[Filed ARC 9573B (Notice ARC 9382B, IAB 2/23/11), IAB 6/29/11, effective 8/3/11]

[Filed ARC 9838B (Notice ARC 9663B, IAB 8/10/11), IAB 11/2/11, effective 12/7/11]

[Filed ARC 9839B (Notice ARC 9662B, IAB 8/10/11), IAB 11/2/11, effective 12/7/11]

[Filed ARC 9840B (Notice ARC 9661B, IAB 8/10/11), IAB 11/2/11, effective 12/7/11]

**HUMAN SERVICES DEPARTMENT[441]**

Rules transferred from Social Services Department[770] to Human Services Department[498],  
see 1983 Iowa Acts, Senate File 464, effective July 1, 1983.

Rules transferred from agency number [498] to [441] to conform with the reorganization  
numbering scheme in general, IAC Supp. 2/11/87.

## TITLE I

## GENERAL DEPARTMENTAL PROCEDURES

## CHAPTER 1

## DEPARTMENTAL ORGANIZATION AND PROCEDURES

- 1.1(17A) Director
- 1.2(17A) Council
- 1.3(17A) Organization at state level
- 1.4(17A) Field operations structure
- 1.5 Reserved
- 1.6(17A) Mental health and developmental disabilities commission
- 1.7(17A) Governor's developmental disabilities council (governor's DD council)
- 1.8(17A,217) Waivers of administrative rules (hereinafter referred to as exceptions to policy)
- 1.9 Reserved
- 1.10(17A,514I) HAWK-I board

## CHAPTER 2

CONTRACTING OUT DEPARTMENT OF HUMAN SERVICES  
EMPLOYEES AND PROPERTY

- 2.1(23A,225C) Definitions
- 2.2(23A,225C) Contracts for use of the services of department employees
- 2.3(23A,225C) Contract provisions
- 2.4(23A,225C) Leasing of space at state institutions
- 2.5(23A,225C) Requirements prior to leasing

## CHAPTER 3

## DEPARTMENT PROCEDURE FOR RULE MAKING

- 3.1(17A) Applicability
- 3.2(17A) Advice on possible rules before notice of proposed rule adoption
- 3.3(17A) Public rule-making docket
- 3.4(17A) Notice of proposed rule making
- 3.5(17A) Public participation
- 3.6(17A) Regulatory analysis
- 3.7(17A,25B) Fiscal impact statement
- 3.8(17A) Time and manner of rule adoption
- 3.9(17A) Variance between adopted rule and published notice of proposed rule adoption
- 3.10(17A) Exemptions from public rule-making procedures
- 3.11(17A) Concise statement of reasons
- 3.12(17A) Contents, style, and form of rule
- 3.13(17A) Department rule-making record
- 3.14(17A) Filing of rules
- 3.15(17A) Effectiveness of rules prior to publication
- 3.16(17A) Review by department of rules

## CHAPTER 4

## PETITIONS FOR RULE MAKING

- 4.1(17A) Petition for rule making
- 4.2(17A) Briefs

- 4.3(17A) Inquiries
- 4.4(17A) Agency consideration

#### CHAPTER 5 DECLARATORY ORDERS

- 5.1(17A) Petition for declaratory order
- 5.2(17A) Notice of petition
- 5.3(17A) Intervention
- 5.4(17A) Briefs
- 5.5(17A) Inquiries
- 5.6(17A) Service and filing of petitions and other papers
- 5.7(17A) Consideration
- 5.8(17A) Action on petition
- 5.9(17A) Refusal to issue order
- 5.10(17A) Contents of declaratory order—effective date
- 5.11(17A) Copies of orders
- 5.12(17A) Effect of a declaratory order

#### CHAPTER 6 Reserved

#### CHAPTER 7 APPEALS AND HEARINGS

- 7.1(17A) Definitions
- 7.2 Reserved
- 7.3(17A) Presiding officer
- 7.4(17A) Notification of hearing procedures
- 7.5(17A) The right to appeal
- 7.6(17A) Informing persons of their rights
- 7.7(17A) Notice of intent to approve, deny, terminate, reduce, or suspend assistance or deny reinstatement of assistance
- 7.8(17A) Opportunity for hearing
- 7.9(17A) Continuation of assistance pending a final decision on appeal
- 7.10(17A) Procedural considerations
- 7.11(17A) Information and referral for legal services
- 7.12(17A) Subpoenas
- 7.13(17A) Rights of appellants during hearings
- 7.14(17A) Limitation of persons attending
- 7.15(17A) Medical examination
- 7.16(17A) The appeal decision
- 7.17(17A) Exhausting administrative remedies
- 7.18(17A) Ex parte communication
- 7.19(17A) Accessibility of hearing decisions
- 7.20(17A) Right of judicial review and stays of agency action
- 7.21(17A) Food assistance hearings and appeals
- 7.22 Reserved
- 7.23(17A) Contested cases with no factual dispute
- 7.24(17A) Emergency adjudicative proceedings

CHAPTER 8  
PAYMENT OF SMALL CLAIMS

8.1(217) Authorization to reimburse

CHAPTER 9  
PUBLIC RECORDS AND FAIR  
INFORMATION PRACTICES

9.1(17A,22) Definitions  
 9.2(17A,22) Statement of policy  
 9.3(17A,22) Requests for access to records  
 9.4(17A,22) Access to confidential records  
 9.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examinations  
 9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records  
 9.7(17A,22,228) Consent to disclosure by the subject of a confidential record  
 9.8(17A,22) Notice to suppliers of information  
 9.9(17A,22) Release to subject  
 9.10(17A,22) Use and disclosure without consent of the subject  
 9.11(22) Availability of records  
 9.12(22,252G) Personally identifiable information  
 9.13(217) Distribution of informational materials  
 9.14(17A,22) Special policies and procedures for protected health information  
 9.15(17A,22) Person who may exercise rights of the subject

CHAPTER 10  
Reserved

CHAPTER 11  
COLLECTION OF PUBLIC ASSISTANCE DEBTS

11.1(217) Definitions  
 11.2(217) Establishment of claim  
 11.3(217) Application of payment  
 11.4(217) Setoff against state income tax refund, rebate, or other state payments, including, for example, state employee wages  
 11.5(234) Setoff against federal income tax refund or other federal payments, including, for example, federal employee wages

CHAPTER 12  
VOLUNTEER SERVICES

12.1(234) Definition  
 12.2(234) Allocation of block grant funds  
 12.3(234) Requirements for volunteers  
 12.4(234) Volunteer service programs  
 12.5(234) Services and benefits available to volunteers

CHAPTER 13  
PROGRAM EVALUATION

13.1(234,239B,249A) Definitions  
 13.2(234,239B,249A) Review of public assistance records by the department  
 13.3(234,239B,249A) Who shall be reviewed  
 13.4(234,239B,249A) Notification of review  
 13.5(234,239B,249A) Review procedure

- 13.6(234,239B,249A) Failure to cooperate
- 13.7(234,239B,249A) Report of findings
- 13.8(234,239B,249A) Federal rereview

CHAPTER 14

OFFSET OF COUNTY DEBTS OWED DEPARTMENT

- 14.1(217,234) Definitions
- 14.2(217,234) Identifying counties with liabilities
- 14.3(217,234) List of counties with amounts owed
- 14.4(217,234) Notification to county regarding offset
- 14.5(217,234) Implementing the final decision
- 14.6(217,234) Offset completed

CHAPTER 15

RESOLUTION OF LEGAL SETTLEMENT DISPUTES

- 15.1(225C) Definitions
- 15.2(225C) Assertion of legal settlement dispute
- 15.3(225C) Response to dispute notification
- 15.4(225C) Contested case hearing
- 15.5(225C) Change in determination

TITLE II  
Reserved

CHAPTERS 16 to 21

Reserved

TITLE III  
*MENTAL HEALTH*

CHAPTER 22

STANDARDS FOR SERVICES TO PERSONS WITH MENTAL ILLNESS,  
CHRONIC MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL  
DISABILITIES, OR BRAIN INJURY

- 22.1(225C) Definitions
- 22.2(225C) Principles
- 22.3(225C) General guidelines for service delivery
- 22.4(225C) Services
- 22.5(225C) Compliance hearing

CHAPTER 23

Reserved

CHAPTER 24

ACCREDITATION OF PROVIDERS OF SERVICES TO PERSONS WITH MENTAL ILLNESS,  
MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

- 24.1(225C) Definitions
- 24.2(225C) Standards for policy and procedures
- 24.3(225C) Standards for organizational activities
- 24.4(225C) Standards for services
- 24.5(225C) Accreditation
- 24.6(225C) Deemed status
- 24.7(225C) Complaint process
- 24.8(225C) Appeal procedure
- 24.9(225C) Exceptions to policy

CHAPTER 25  
DISABILITY SERVICES MANAGEMENT

DIVISION I  
DETERMINATION OF STATE PAYMENT AMOUNT

25.1 to 25.10      Reserved

DIVISION II  
COUNTY MANAGEMENT PLAN

25.11(331)      Definitions  
25.12(331)      County management plan—general criteria  
25.13(331)      Policies and procedures manual  
25.14(331)      Policies and procedures manual review  
25.15(331)      Amendments  
25.16(331)      Reconsideration  
25.17(331)      Management plan annual review  
25.18(331)      Strategic plan  
25.19(331)      Technical assistance  
25.20(331)      Consumer financial eligibility and payment responsibility  
25.21 to 25.40      Reserved

DIVISION III  
MINIMUM DATA SET

25.41(331)      Minimum data set  
25.42 to 25.50      Reserved

DIVISION IV  
INCENTIVE AND EFFICIENCY POOL FUNDING

25.51(77GA, HF2545)      Desired results areas  
25.52(77GA, HF2545)      Methodology for applying for incentive funding  
25.53(77GA, HF2545)      Methodology for awarding incentive funding  
25.54(77GA, HF2545)      Subsequent year performance factors  
25.55(77GA, HF2545)      Phase-in provisions  
25.56 to 25.60      Reserved

DIVISION V  
RISK POOL FUNDING

25.61(426B)      Definitions  
25.62(426B)      Risk pool board  
25.63(426B)      Application process  
25.64(426B)      Methodology for awarding risk pool funding  
25.65(426B)      Repayment provisions  
25.66(426B)      Appeals  
25.67 to 25.70      Reserved

DIVISION VI  
TOBACCO SETTLEMENT FUND RISK POOL FUNDING

25.71(78GA, ch1221)      Definitions  
25.72(78GA, ch1221)      Risk pool board  
25.73(78GA, ch1221)      Rate-setting process  
25.74(78GA, ch1221)      Application process  
25.75(78GA, ch1221)      Methodology for awarding tobacco settlement fund risk pool funding  
25.76(78GA, ch1221)      Repayment provisions  
25.77(78GA, ch1221)      Appeals  
25.78 to 25.80      Reserved

DIVISION VII  
COMMUNITY MENTAL HEALTH CENTER WAIVER REQUEST

25.81(225C) Waiver request

CHAPTERS 26 and 27  
Reserved

CHAPTER 28  
POLICIES FOR ALL INSTITUTIONS

28.1(218) Definitions  
 28.2(218,222) Selection of facility  
 28.3(222,230) Evidence of legal settlement  
 28.4(225C,229) Grievances  
 28.5(217,218) Photographing and recording of individuals and use of cameras  
 28.6(217,218) Interviews and statements  
 28.7(218) Use of grounds, facilities, or equipment  
 28.8(218) Tours of institution  
 28.9(218) Donations  
 28.10 and 28.11 Reserved  
 28.12(217) Release of confidential information  
 28.13(218) Applying county institutional credit balances

CHAPTER 29  
MENTAL HEALTH INSTITUTES

29.1(218) Catchment areas  
 29.2(218,229) Voluntary admissions  
 29.3(229,230) Certification of settlement  
 29.4(218,230) Charges for care  
 29.5(229) Authorization for treatment  
 29.6(217,228,229) Rights of individuals  
 29.7(218) Visiting

CHAPTER 30  
STATE RESOURCE CENTERS

30.1(218,222) Catchment areas  
 30.2(218,222) Admission  
 30.3(222) Certification of settlement  
 30.4(222) Liability for support  
 30.5(217,218,225C) Rights of individuals  
 30.6(218) Visiting

CHAPTER 31  
CIVIL COMMITMENT UNIT

31.1(229A) Definitions  
 31.2(229A) Visitation  
 31.3(229A) Group visitation  
 31.4(229A) Grievances  
 31.5(229A) Photographing and recording individuals  
 31.6(229A) Release of information  
 31.7(229A) Communication with individuals  
 31.8(229A) Building and grounds  
 31.9(8,218) Gifts and bequests  
 31.10(229A) Cost of care

## CHAPTERS 32 and 33

Reserved

## CHAPTER 34

## ALTERNATIVE DIAGNOSTIC FACILITIES

- 34.1(225C) Definitions
- 34.2(225C) Function
- 34.3(225C) Standards

## CHAPTER 35

Reserved

## CHAPTER 36

## FACILITY ASSESSMENTS

## DIVISION I

## ASSESSMENT FEE FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

- 36.1(249A) Assessment of fee
- 36.2(249A) Determination and payment of fee for facilities certified to participate in the Medicaid program
- 36.3(249A) Determination and payment of fee for facilities not certified to participate in the Medicaid program
- 36.4(249A) Termination of fee assessment
- 36.5 Reserved

## DIVISION II

## QUALITY ASSURANCE ASSESSMENT FOR NURSING FACILITIES

- 36.6(249L) Assessment
- 36.7(249L) Determination and payment of assessment
- 36.8 and 36.9 Reserved

## DIVISION III

## HEALTH CARE ACCESS ASSESSMENT FOR HOSPITALS

- 36.10(83GA,SF2388) Application of assessment
- 36.11(83GA,SF2388) Determination and payment of assessment
- 36.12(83GA,SF2388) Termination of health care access assessment

## CHAPTER 37

Reserved

## CHAPTER 38

## DEVELOPMENTAL DISABILITIES BASIC STATE GRANT

- 38.1(225C,217) Definitions
- 38.2(225C,217) Program eligibility
- 38.3(225C,217) Application under competitive process
- 38.4(225C,217) Competitive project awards
- 38.5(225C,217) Sole source or emergency selection project awards
- 38.6(225C,217) Field-initiated proposals
- 38.7(225C,217) Notification
- 38.8(225C,217) Request for reconsideration
- 38.9(225C,217) Contracts
- 38.10 Reserved
- 38.11(225C,217) Reallocation of funds
- 38.12(225C,217) Conflict of interest policy

CHAPTER 39

Reserved

TITLE IV

*FAMILY INVESTMENT PROGRAM*

CHAPTER 40

APPLICATION FOR AID

DIVISION I

FAMILY INVESTMENT PROGRAM—CONTROL GROUP

40.1 to 40.20 Reserved

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

- 40.21(239B) Definitions
- 40.22(239B) Application
- 40.23(239B) Date of application
- 40.24(239B) Procedure with application
- 40.25(239B) Time limit for decision
- 40.26(239B) Effective date of grant
- 40.27(239B) Continuing eligibility
- 40.28(239B) Referral for investigation

CHAPTER 41

GRANTING ASSISTANCE

DIVISION I

FAMILY INVESTMENT PROGRAM—  
CONTROL GROUP

41.1 to 41.20 Reserved

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

- 41.21(239B) Eligibility factors specific to child
- 41.22(239B) Eligibility factors specific to payee
- 41.23(239B) Home, residence, citizenship, and alienage
- 41.24(239B) Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) program
- 41.25(239B) Uncategorized factors of eligibility
- 41.26(239B) Resources
- 41.27(239B) Income
- 41.28(239B) Need standards
- 41.29(239B) Composite FIP/SSI cases
- 41.30(239B) Time limits

CHAPTER 42

Reserved

CHAPTER 43

ALTERNATE PAYEES

DIVISION I

FAMILY INVESTMENT PROGRAM—CONTROL GROUP

43.1 to 43.20 Reserved

|                 |   |
|-----------------|---|
|                 | DIVISION II<br>FAMILY INVESTMENT PROGRAM—TREATMENT GROUP                |
| 43.21(239B)     | Conservatorship or guardianship   |
| 43.22 and 43.23 | Reserved  |
| 43.24(239B)     | Emergency payee   |
|                 | CHAPTER 44<br>Reserved  |
|                 | CHAPTER 45<br>PAYMENT   |
|                 | DIVISION I<br>FAMILY INVESTMENT PROGRAM—CONTROL GROUP                   |
| 45.1 to 45.20   | Reserved  |
|                 | DIVISION II<br>FAMILY INVESTMENT PROGRAM—TREATMENT GROUP                |
| 45.21(239B)     | Issuing payment   |
| 45.22(239B)     | Return  |
| 45.23(239B)     | Held warrants   |
| 45.24(239B)     | Underpayment  |
| 45.25(239B)     | Deceased payees   |
| 45.26(239B)     | Limitation on payment   |
| 45.27(239B)     | Rounding of need standard and payment amount                            |
|                 | CHAPTER 46<br>OVERPAYMENT RECOVERY                                      |
|                 | DIVISION I<br>FAMILY INVESTMENT PROGRAM—CONTROL GROUP                   |
| 46.1 to 46.20   | Reserved  |
|                 | DIVISION II<br>FAMILY INVESTMENT PROGRAM—TREATMENT GROUP                |
| 46.21(239B)     | Definitions   |
| 46.22(239B)     | Monetary standards  |
| 46.23(239B)     | Notification and appeals  |
| 46.24(239B)     | Determination of overpayments   |
| 46.25(239B)     | Source of recoupment  |
| 46.26           | Reserved  |
| 46.27(239B)     | Procedures for recoupment   |
| 46.28           | Reserved  |
| 46.29(239B)     | Fraudulent misrepresentation of residence                               |
|                 | CHAPTER 47<br>DIVERSION INITIATIVES                                     |
|                 | DIVISION I<br>PROMOTING AWARENESS OF THE BENEFITS OF A HEALTHY MARRIAGE |
| 47.1(234)       | Eligibility criteria  |
| 47.2(234)       | Notice and eligibility period   |
| 47.3 to 47.20   | Reserved  |
|                 | DIVISION II<br>FAMILY SELF-SUFFICIENCY GRANTS PROGRAM                   |
| 47.21(239B)     | Definitions   |
| 47.22(239B)     | Availability of the family self-sufficiency grants program              |
| 47.23(239B)     | General criteria  |

- 47.24(239B) Assistance available in family self-sufficiency grants
- 47.25(239B) Application, notification, and appeals
- 47.26(239B) Approved local plans for family self-sufficiency grants

CHAPTERS 48 and 49  
Reserved

TITLE V  
*STATE SUPPLEMENTARY ASSISTANCE*

CHAPTER 50  
APPLICATION FOR ASSISTANCE

- 50.1(249) Definitions
- 50.2(249) Application procedures
- 50.3(249) Approval of application and effective date of eligibility
- 50.4(249) Reviews
- 50.5(249) Application under conditional benefits

CHAPTER 51  
ELIGIBILITY

- 51.1(249) Application for other benefits
- 51.2(249) Supplementation
- 51.3(249) Eligibility for residential care
- 51.4(249) Dependent relatives
- 51.5(249) Residence
- 51.6(249) Eligibility for supplement for Medicare and Medicaid eligibles
- 51.7(249) Income from providing room and board
- 51.8(249) Furnishing of social security number
- 51.9(249) Recovery

CHAPTER 52  
PAYMENT

- 52.1(249) Assistance standards

CHAPTER 53  
Reserved

CHAPTER 54  
FACILITY PARTICIPATION

- 54.1(249) Application and contract agreement
- 54.2(249) Maintenance of case records
- 54.3(249) Financial and statistical report
- 54.4(249) Goods and services provided
- 54.5(249) Personal needs account
- 54.6(249) Case activity report
- 54.7(249) Billing procedures
- 54.8(249) Audits

TITLE VI  
*GENERAL PUBLIC ASSISTANCE PROVISIONS*

CHAPTERS 55 and 56  
Reserved

CHAPTER 57  
INTERIM ASSISTANCE REIMBURSEMENT

- 57.1(249) Definitions  
57.2(249) Requirements for reimbursement  
57.3(249) Certificate of authority

CHAPTER 58  
EMERGENCY ASSISTANCE

DIVISION I  
IOWA DISASTER AID INDIVIDUAL ASSISTANCE GRANT PROGRAM

- 58.1(29C) Definitions  
58.2(29C) Program implementation  
58.3(29C) Application for assistance  
58.4(29C) Eligibility criteria  
58.5(29C) Eligible categories of assistance  
58.6(29C) Eligibility determination and payment  
58.7(29C) Contested cases  
58.8(29C) Discontinuance of program  
58.9 to 58.20 Reserved

DIVISION II  
FAMILY INVESTMENT PROGRAM—EMERGENCY ASSISTANCE

- 58.21 to 58.40 Reserved

DIVISION III  
TEMPORARY MEASURES RELATED TO DISASTERS

- 58.41(217) Purpose  
58.42(234,237A,239B,249,249A,249J,514I) Extension of scheduled reporting and review requirements  
58.43(237A) Need for child care services  
58.44(249A,249J,514I) Premium payments  
58.45(249A) Citizenship and identity  
58.46 to 58.50 Reserved

DIVISION IV  
IOWANS HELPING IOWANS UNMET NEEDS DISASTER ASSISTANCE PROGRAM

- 58.51(234) Definitions  
58.52(234) Program implementation  
58.53(234) Application for assistance  
58.54(234) Eligibility criteria  
58.55(234) Eligible categories of assistance  
58.56(234) Eligibility determination and payment  
58.57(234) Contested cases  
58.58(234) Discontinuance of program  
58.59 and 58.60 Reserved

DIVISION V  
TICKET TO HOPE PROGRAM

- 58.61(234) Definitions  
58.62(234) Application process  
58.63(234) Eligibility criteria  
58.64(234) Provider participation  
58.65(234) Provider reimbursement  
58.66(234) Reconsideration  
58.67(234) Appeal  
58.68(234) Discontinuance of program

## CHAPTER 59

Reserved

## CHAPTER 60

## REFUGEE CASH ASSISTANCE

|            |   |
|------------|---|
| 60.1(217)  | Alienage requirements   |
| 60.2(217)  | Application procedures  |
| 60.3(217)  | Effective date of grant   |
| 60.4(217)  | Accepting other assistance  |
| 60.5(217)  | Eligibility factors   |
| 60.6(217)  | Students in institutions of higher education  |
| 60.7(217)  | Time limit for eligibility  |
| 60.8(217)  | Criteria for exemption from registration for employment services, registration, and refusal to register |
| 60.9(217)  | Work and training requirements  |
| 60.10(217) | Uncategorized factors of eligibility  |
| 60.11(217) | Temporary absence from home   |
| 60.12(217) | Application   |
| 60.13(217) | Continuing eligibility  |
| 60.14(217) | Alternate payees  |
| 60.15(217) | Payment   |
| 60.16(217) | Overpayment recovery  |

## CHAPTER 61

## REFUGEE SERVICES PROGRAM

|                 |   |
|-----------------|---|
| 61.1(217)       | Definitions   |
| 61.2(217)       | Authority   |
| 61.3(217)       | Eligibility for refugee services  |
| 61.4(217)       | Planning and coordinating the placement of refugees in advance of their arrival |
| 61.5(217)       | Services of the department available for refugees                               |
| 61.6(217)       | Provision of services   |
| 61.7(217)       | Application for services  |
| 61.8(217)       | Adverse service actions   |
| 61.9(217)       | Client appeals  |
| 61.10(217)      | Refugee sponsors  |
| 61.11(217)      | Adverse actions regarding sponsor applications                                  |
| 61.12(217)      | Administrative review of denial of sponsorship application                      |
| 61.13(217)      | Refugee resettlement moneys   |
| 61.14(217)      | Unaccompanied refugee minors program  |
| 61.15(217,622A) | Interpreters and translators for legal proceedings                              |
| 61.16(217)      | Pilot recredentialing services  |
| 61.17(217)      | Targeted assistance grants  |
| 61.18(217)      | Iowa refugee services foundation  |

## CHAPTERS 62 to 64

Reserved

TITLE VII  
FOOD PROGRAMS

CHAPTER 65  
FOOD ASSISTANCE PROGRAM ADMINISTRATION

DIVISION I

|                 |   |
|-----------------|---|
| 65.1(234)       | Definitions   |
| 65.2(234)       | Application   |
| 65.3(234)       | Administration of program                                     |
| 65.4(234)       | Issuance  |
| 65.5(234)       | Simplified reporting  |
| 65.6(234)       | Delays in certification                                       |
| 65.7            | Reserved  |
| 65.8(234)       | Deductions  |
| 65.9(234)       | Treatment centers and group living arrangements               |
| 65.10           | Reserved  |
| 65.11(234)      | Discrimination complaint                                      |
| 65.12(234)      | Appeals   |
| 65.13(234)      | Joint processing  |
| 65.14           | Reserved  |
| 65.15(234)      | Proration of benefits   |
| 65.16(234)      | Complaint system  |
| 65.17(234)      | Involvement in a strike                                       |
| 65.18 and 65.19 | Reserved  |
| 65.20(234)      | Notice of expiration issuance                                 |
| 65.21(234)      | Claims  |
| 65.22(234)      | Verification  |
| 65.23(234)      | Prospective budgeting   |
| 65.24(234)      | Inclusion of foster children in household                     |
| 65.25(234)      | Effective date of change                                      |
| 65.26(234)      | Eligible students   |
| 65.27(234)      | Voluntary quit or reduction in hours of work                  |
| 65.28(234)      | Work requirements   |
| 65.29(234)      | Income  |
| 65.30(234)      | Resources   |
| 65.31(234)      | Homeless meal providers                                       |
| 65.32(234)      | Basis for allotment   |
| 65.33(234)      | Dependent care deduction                                      |
| 65.34 to 65.36  | Reserved  |
| 65.37(234)      | Eligibility of noncitizens                                    |
| 65.38(234)      | Income deductions   |
| 65.39(234)      | Categorical eligibility                                       |
| 65.40           | Reserved  |
| 65.41(234)      | Actions on changes increasing benefits                        |
| 65.42 and 65.43 | Reserved  |
| 65.44(234)      | Reinstatement   |
| 65.45           | Reserved  |
| 65.46(234)      | Disqualifications   |
| 65.47 to 65.49  | Reserved  |
| 65.50(234)      | No increase in benefits                                       |
| 65.51(234)      | State income and eligibility verification system              |
| 65.52(234)      | Systematic alien verification for entitlements (SAVE) program |

CHAPTER 66  
EMERGENCY FOOD ASSISTANCE PROGRAM

|            |                                      |
|------------|--------------------------------------|
| 66.1(234)  | Definitions                          |
| 66.2(234)  | Application to be a TEFAP contractor |
| 66.3(234)  | Contracts                            |
| 66.4(234)  | Distribution                         |
| 66.5(234)  | Household eligibility                |
| 66.6(234)  | Reimbursement for allowable costs    |
| 66.7(234)  | Commodity losses and claims          |
| 66.8(234)  | State monitoring                     |
| 66.9(234)  | Limits on unrelated activities       |
| 66.10(234) | Complaints                           |

CHAPTERS 67 to 74

Reserved

TITLE VIII

*MEDICAL ASSISTANCE*

CHAPTER 75  
CONDITIONS OF ELIGIBILITY

DIVISION I

GENERAL CONDITIONS OF ELIGIBILITY, COVERAGE GROUPS, AND SSI-RELATED PROGRAMS

|                |  |
|----------------|--|
| 75.1(249A)     | Persons covered  |
| 75.2(249A)     | Medical resources  |
| 75.3(249A)     | Acceptance of other financial benefits   |
| 75.4(249A)     | Medical assistance lien  |
| 75.5(249A)     | Determination of countable income and resources for persons in a medical institution |
| 75.6(249A)     | Entrance fee for continuing care retirement community or life care community         |
| 75.7(249A)     | Furnishing of social security number   |
| 75.8(249A)     | Medical assistance corrective payments   |
| 75.9(249A)     | Treatment of Medicaid qualifying trusts  |
| 75.10(249A)    | Residency requirements   |
| 75.11(249A)    | Citizenship or alienage requirements   |
| 75.12(249A)    | Inmates of public institutions   |
| 75.13(249A)    | Categorical relatedness  |
| 75.14(249A)    | Establishing paternity and obtaining support   |
| 75.15(249A)    | Disqualification for long-term care assistance due to substantial home equity        |
| 75.16(249A)    | Client participation in payment for medical institution care                         |
| 75.17(249A)    | Verification of pregnancy  |
| 75.18(249A)    | Continuous eligibility for pregnant women  |
| 75.19(249A)    | Continuous eligibility for children  |
| 75.20(249A)    | Disability requirements for SSI-related Medicaid                                     |
| 75.21(249A)    | Health insurance premium payment (HIPP) program                                      |
| 75.22(249A)    | AIDS/HIV health insurance premium payment program                                    |
| 75.23(249A)    | Disposal of assets for less than fair market value after August 10, 1993             |
| 75.24(249A)    | Treatment of trusts established after August 10, 1993                                |
| 75.25(249A)    | Definitions  |
| 75.26          | Reserved   |
| 75.27(249A)    | AIDS/HIV settlement payments   |
| 75.28 to 75.49 | Reserved   |

DIVISION II  
ELIGIBILITY FACTORS SPECIFIC TO COVERAGE GROUPS RELATED TO  
THE FAMILY MEDICAL ASSISTANCE PROGRAM (FMAP)

- 75.50(249A) Definitions
- 75.51 Reserved
- 75.52(249A) Continuing eligibility
- 75.53(249A) Iowa residency policies specific to FMAP and FMAP-related coverage groups
- 75.54(249A) Eligibility factors specific to child
- 75.55(249A) Eligibility factors specific to specified relatives
- 75.56(249A) Resources
- 75.57(249A) Income
- 75.58(249A) Need standards
- 75.59(249A) Persons who may be voluntarily excluded from the eligible group when determining eligibility for the family medical assistance program (FMAP) and FMAP-related coverage groups
- 75.60(249A) Pending SSI approval

CHAPTER 76  
APPLICATION AND INVESTIGATION

- 76.1(249A) Application
- 76.2(249A) Information and verification procedure
- 76.3(249A) Time limit for decision
- 76.4(249A) Notification of decision
- 76.5(249A) Effective date
- 76.6(249A) Certification for services
- 76.7(249A) Reinvestigation
- 76.8(249A) Investigation by quality control or the department of inspections and appeals
- 76.9(249A) Member lock-in
- 76.10(249A) Client responsibilities
- 76.11(249A) Automatic redetermination
- 76.12(249A) Recovery
- 76.13(249A) Health care data match program

CHAPTER 77  
CONDITIONS OF PARTICIPATION FOR PROVIDERS  
OF MEDICAL AND REMEDIAL CARE

- 77.1(249A) Physicians
- 77.2(249A) Retail pharmacies
- 77.3(249A) Hospitals
- 77.4(249A) Dentists
- 77.5(249A) Podiatrists
- 77.6(249A) Optometrists
- 77.7(249A) Opticians
- 77.8(249A) Chiropractors
- 77.9(249A) Home health agencies
- 77.10(249A) Medical equipment and appliances, prosthetic devices and medical supplies
- 77.11(249A) Ambulance service
- 77.12(249A) Behavioral health intervention
- 77.13(249A) Hearing aid dispensers
- 77.14(249A) Audiologists
- 77.15(249A) Community mental health centers
- 77.16(249A) Screening centers
- 77.17(249A) Physical therapists

|             |   |
|-------------|---|
| 77.18(249A) | Orthopedic shoe dealers and repair shops  |
| 77.19(249A) | Rehabilitation agencies   |
| 77.20(249A) | Independent laboratories  |
| 77.21(249A) | Rural health clinics  |
| 77.22(249A) | Psychologists   |
| 77.23(249A) | Maternal health centers   |
| 77.24(249A) | Ambulatory surgical centers   |
| 77.25(249A) | Home- and community-based habilitation services                                     |
| 77.26(249A) | Behavioral health services  |
| 77.27(249A) | Birth centers   |
| 77.28(249A) | Area education agencies   |
| 77.29(249A) | Case management provider organizations  |
| 77.30(249A) | HCBS ill and handicapped waiver service providers                                   |
| 77.31(249A) | Occupational therapists   |
| 77.32(249A) | Hospice providers   |
| 77.33(249A) | HCBS elderly waiver service providers   |
| 77.34(249A) | HCBS AIDS/HIV waiver service providers  |
| 77.35(249A) | Federally qualified health centers  |
| 77.36(249A) | Advanced registered nurse practitioners   |
| 77.37(249A) | Home- and community-based services intellectual disability waiver service providers |
| 77.38(249A) | Assertive community treatment   |
| 77.39(249A) | HCBS brain injury waiver service providers  |
| 77.40(249A) | Lead inspection agencies  |
| 77.41(249A) | HCBS physical disability waiver service providers                                   |
| 77.42       | Reserved  |
| 77.43(249A) | Infant and toddler program providers  |
| 77.44(249A) | Local education agency services providers   |
| 77.45(249A) | Indian health service 638 facilities  |
| 77.46(249A) | HCBS children's mental health waiver service providers                              |

#### CHAPTER 78

#### AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL SERVICES

|             |  |
|-------------|--|
| 78.1(249A)  | Physicians' services   |
| 78.2(249A)  | Prescribed outpatient drugs  |
| 78.3(249A)  | Inpatient hospital services  |
| 78.4(249A)  | Dentists   |
| 78.5(249A)  | Podiatrists  |
| 78.6(249A)  | Optometrists   |
| 78.7(249A)  | Opticians  |
| 78.8(249A)  | Chiropractors  |
| 78.9(249A)  | Home health agencies   |
| 78.10(249A) | Durable medical equipment (DME), prosthetic devices and medical supplies |
| 78.11(249A) | Ambulance service  |
| 78.12(249A) | Behavioral health intervention   |
| 78.13(249A) | Nonemergency medical transportation                                      |
| 78.14(249A) | Hearing aids   |
| 78.15(249A) | Orthopedic shoes   |
| 78.16(249A) | Community mental health centers  |
| 78.17(249A) | Physical therapists  |
| 78.18(249A) | Screening centers  |

|             |   |
|-------------|---|
| 78.19(249A) | Rehabilitation agencies   |
| 78.20(249A) | Independent laboratories  |
| 78.21(249A) | Rural health clinics  |
| 78.22(249A) | Family planning clinics   |
| 78.23(249A) | Other clinic services   |
| 78.24(249A) | Psychologists   |
| 78.25(249A) | Maternal health centers   |
| 78.26(249A) | Ambulatory surgical center services   |
| 78.27(249A) | Home- and community-based habilitation services   |
| 78.28(249A) | List of medical services and equipment requiring prior approval, preprocedure review or preadmission review |
| 78.29(249A) | Behavioral health services  |
| 78.30(249A) | Birth centers   |
| 78.31(249A) | Hospital outpatient services  |
| 78.32(249A) | Area education agencies   |
| 78.33(249A) | Case management services  |
| 78.34(249A) | HCBS ill and handicapped waiver services  |
| 78.35(249A) | Occupational therapist services   |
| 78.36(249A) | Hospice services  |
| 78.37(249A) | HCBS elderly waiver services  |
| 78.38(249A) | HCBS AIDS/HIV waiver services   |
| 78.39(249A) | Federally qualified health centers  |
| 78.40(249A) | Advanced registered nurse practitioners   |
| 78.41(249A) | HCBS intellectual disability waiver services  |
| 78.42(249A) | Pharmacies administering influenza vaccine to children  |
| 78.43(249A) | HCBS brain injury waiver services   |
| 78.44(249A) | Lead inspection services  |
| 78.45(249A) | Assertive community treatment   |
| 78.46(249A) | Physical disability waiver service  |
| 78.47(249A) | Pharmaceutical case management services   |
| 78.48       | Reserved  |
| 78.49(249A) | Infant and toddler program services   |
| 78.50(249A) | Local education agency services   |
| 78.51(249A) | Indian health service 638 facility services   |
| 78.52(249A) | HCBS children's mental health waiver services   |

#### CHAPTER 79

##### OTHER POLICIES RELATING TO PROVIDERS OF MEDICAL AND REMEDIAL CARE

|             |  |
|-------------|--|
| 79.1(249A)  | Principles governing reimbursement of providers of medical and health services             |
| 79.2(249A)  | Sanctions against provider of care   |
| 79.3(249A)  | Maintenance of records by providers of service   |
| 79.4(249A)  | Reviews and audits   |
| 79.5(249A)  | Nondiscrimination on the basis of handicap   |
| 79.6(249A)  | Provider participation agreement   |
| 79.7(249A)  | Medical assistance advisory council  |
| 79.8(249A)  | Requests for prior authorization   |
| 79.9(249A)  | General provisions for Medicaid coverage applicable to all Medicaid providers and services |
| 79.10(249A) | Requests for preadmission review   |
| 79.11(249A) | Requests for preprocedure surgical review  |
| 79.12(249A) | Advance directives   |

|             |  |
|-------------|--|
| 79.13(249A) | Requirements for enrolled Medicaid providers supplying laboratory services |
| 79.14(249A) | Provider enrollment  |
| 79.15(249A) | Education about false claims recovery                                      |
| 79.16(249A) | Electronic health record incentive program                                 |

## CHAPTER 80

## PROCEDURE AND METHOD OF PAYMENT

|            |   |
|------------|---|
| 80.1       | Reserved  |
| 80.2(249A) | Submission of claims                                      |
| 80.3(249A) | Payment from other sources                                |
| 80.4(249A) | Time limit for submission of claims and claim adjustments |
| 80.5(249A) | Authorization process                                     |
| 80.6(249A) | Payment to provider—exception                             |

## CHAPTER 81

## NURSING FACILITIES

DIVISION I  
GENERAL POLICIES

|                |  |
|----------------|--|
| 81.1(249A)     | Definitions  |
| 81.2           | Reserved   |
| 81.3(249A)     | Initial approval for nursing facility care                         |
| 81.4(249A)     | Arrangements with residents  |
| 81.5(249A)     | Discharge and transfer   |
| 81.6(249A)     | Financial and statistical report and determination of payment rate |
| 81.7(249A)     | Continued review   |
| 81.8           | Reserved   |
| 81.9(249A)     | Records  |
| 81.10(249A)    | Payment procedures   |
| 81.11(249A)    | Billing procedures   |
| 81.12(249A)    | Closing of facility  |
| 81.13(249A)    | Conditions of participation for nursing facilities                 |
| 81.14(249A)    | Audits   |
| 81.15          | Reserved   |
| 81.16(249A)    | Nurse aide requirements and training and testing programs          |
| 81.17          | Reserved   |
| 81.18(249A)    | Sanctions  |
| 81.19          | Reserved   |
| 81.20(249A)    | Out-of-state facilities  |
| 81.21(249A)    | Outpatient services  |
| 81.22(249A)    | Rates for Medicaid eligibles                                       |
| 81.23(249A)    | State-funded personal needs supplement                             |
| 81.24 to 81.30 | Reserved   |

DIVISION II  
ENFORCEMENT OF COMPLIANCE

|             |   |
|-------------|---|
| 81.31(249A) | Definitions   |
| 81.32(249A) | General provisions  |
| 81.33(249A) | Factors to be considered in selecting remedies            |
| 81.34(249A) | Available remedies  |
| 81.35(249A) | Selection of remedies                                     |
| 81.36(249A) | Action when there is immediate jeopardy                   |
| 81.37(249A) | Action when there is no immediate jeopardy                |
| 81.38(249A) | Action when there is repeated substandard quality of care |

|             |  |
|-------------|--|
| 81.39(249A) | Temporary management   |
| 81.40(249A) | Denial of payment for all new admissions   |
| 81.41(249A) | Secretarial authority to deny all payments   |
| 81.42(249A) | State monitoring   |
| 81.43(249A) | Directed plan of correction  |
| 81.44(249A) | Directed in-service training   |
| 81.45(249A) | Closure of a facility or transfer of residents, or both  |
| 81.46(249A) | Civil money penalties—basis for imposing penalty   |
| 81.47(249A) | Civil money penalties—when penalty is collected  |
| 81.48(249A) | Civil money penalties—notice of penalty  |
| 81.49(249A) | Civil money penalties—waiver of hearing, reduction of penalty amount                                       |
| 81.50(249A) | Civil money penalties—amount of penalty  |
| 81.51(249A) | Civil money penalties—effective date and duration of penalty   |
| 81.52(249A) | Civil money penalties—due date for payment of penalty  |
| 81.53(249A) | Use of penalties collected by the department   |
| 81.54(249A) | Continuation of payments to a facility with deficiencies   |
| 81.55(249A) | State and federal disagreements involving findings not in agreement when there is<br>no immediate jeopardy |
| 81.56(249A) | Duration of remedies   |
| 81.57(249A) | Termination of provider agreement  |

#### CHAPTER 82

##### INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

|             |  |
|-------------|--|
| 82.1(249A)  | Definition   |
| 82.2(249A)  | Licensing and certification  |
| 82.3(249A)  | Conditions of participation for intermediate care facilities for the mentally retarded |
| 82.4        | Reserved   |
| 82.5(249A)  | Financial and statistical report   |
| 82.6(249A)  | Eligibility for services   |
| 82.7(249A)  | Initial approval for ICF/MR care   |
| 82.8(249A)  | Determination of need for continued stay   |
| 82.9(249A)  | Arrangements with residents  |
| 82.10(249A) | Discharge and transfer   |
| 82.11(249A) | Continued stay review  |
| 82.12(249A) | Quality of care review   |
| 82.13(249A) | Records  |
| 82.14(249A) | Payment procedures   |
| 82.15(249A) | Billing procedures   |
| 82.16(249A) | Closing of facility  |
| 82.17(249A) | Audits   |
| 82.18(249A) | Out-of-state facilities  |
| 82.19(249A) | State-funded personal needs supplement   |

#### CHAPTER 83

##### MEDICAID WAIVER SERVICES

###### DIVISION I—HCBS ILL AND HANDICAPPED WAIVER SERVICES

|            |                         |
|------------|-------------------------|
| 83.1(249A) | Definitions             |
| 83.2(249A) | Eligibility             |
| 83.3(249A) | Application             |
| 83.4(249A) | Financial participation |
| 83.5(249A) | Redetermination         |
| 83.6(249A) | Allowable services      |

83.7(249A) Service plan  
 83.8(249A) Adverse service actions  
 83.9(249A) Appeal rights  
 83.10 to 83.20 Reserved

DIVISION II—HCBS ELDERLY WAIVER SERVICES

83.21(249A) Definitions  
 83.22(249A) Eligibility  
 83.23(249A) Application  
 83.24(249A) Client participation  
 83.25(249A) Redetermination  
 83.26(249A) Allowable services  
 83.27(249A) Service plan  
 83.28(249A) Adverse service actions  
 83.29(249A) Appeal rights  
 83.30(249A) Enhanced services  
 83.31 to 83.40 Reserved

DIVISION III—HCBS AIDS/HIV WAIVER SERVICES

83.41(249A) Definitions  
 83.42(249A) Eligibility  
 83.43(249A) Application  
 83.44(249A) Financial participation  
 83.45(249A) Redetermination  
 83.46(249A) Allowable services  
 83.47(249A) Service plan  
 83.48(249A) Adverse service actions  
 83.49(249A) Appeal rights  
 83.50 to 83.59 Reserved

DIVISION IV—HCBS INTELLECTUAL DISABILITY WAIVER SERVICES

83.60(249A) Definitions  
 83.61(249A) Eligibility  
 83.62(249A) Application  
 83.63(249A) Client participation  
 83.64(249A) Redetermination  
 83.65 Reserved  
 83.66(249A) Allowable services  
 83.67(249A) Service plan  
 83.68(249A) Adverse service actions  
 83.69(249A) Appeal rights  
 83.70(249A) County reimbursement  
 83.71 Reserved  
 83.72(249A) Rent subsidy program  
 83.73 to 83.80 Reserved

DIVISION V—BRAIN INJURY WAIVER SERVICES

83.81(249A) Definitions  
 83.82(249A) Eligibility  
 83.83(249A) Application  
 83.84(249A) Client participation  
 83.85(249A) Redetermination  
 83.86(249A) Allowable services  
 83.87(249A) Service plan

- 83.88(249A) Adverse service actions
- 83.89(249A) Appeal rights
- 83.90(249A) County reimbursement
- 83.91 to 83.100 Reserved

DIVISION VI—PHYSICAL DISABILITY WAIVER SERVICES

- 83.101(249A) Definitions
- 83.102(249A) Eligibility
- 83.103(249A) Application
- 83.104(249A) Client participation
- 83.105(249A) Redetermination
- 83.106(249A) Allowable services
- 83.107(249A) Individual service plan
- 83.108(249A) Adverse service actions
- 83.109(249A) Appeal rights
- 83.110 to 83.120 Reserved

DIVISION VII—HCBS CHILDREN’S MENTAL HEALTH WAIVER SERVICES

- 83.121(249A) Definitions
- 83.122(249A) Eligibility
- 83.123(249A) Application
- 83.124(249A) Financial participation
- 83.125(249A) Redetermination
- 83.126(249A) Allowable services
- 83.127(249A) Service plan
- 83.128(249A) Adverse service actions
- 83.129(249A) Appeal rights

CHAPTER 84

EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

- 84.1(249A) Definitions
- 84.2(249A) Eligibility
- 84.3(249A) Screening services
- 84.4(249A) Referral
- 84.5(249A) Follow up

CHAPTER 85

SERVICES IN PSYCHIATRIC INSTITUTIONS

DIVISION I  
PSYCHIATRIC HOSPITALS

- 85.1(249A) Acute care in psychiatric hospitals
- 85.2(249A) Out-of-state placement
- 85.3(249A) Eligibility of persons under the age of 21
- 85.4(249A) Eligibility of persons aged 65 and over
- 85.5(249A) Client participation
- 85.6(249A) Responsibilities of hospitals
- 85.7(249A) Psychiatric hospital reimbursement
- 85.8(249A,81GA,ch167) Eligibility of persons aged 21 through 64
- 85.9 to 85.20 Reserved

DIVISION II  
PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

- 85.21(249A) Conditions for participation
- 85.22(249A) Eligibility of persons under the age of 21

|                |  |
|----------------|--|
| 85.23(249A)    | Client participation   |
| 85.24(249A)    | Responsibilities of facilities                                 |
| 85.25(249A)    | Reimbursement to psychiatric medical institutions for children |
| 85.26(249A)    | Outpatient day treatment for persons aged 20 or under          |
| 85.27 to 85.40 | Reserved   |

DIVISION III  
NURSING FACILITIES FOR PERSONS WITH MENTAL ILLNESS

|             |   |
|-------------|---|
| 85.41(249A) | Conditions of participation             |
| 85.42(249A) | Out-of-state placement                  |
| 85.43(249A) | Eligibility of persons aged 65 and over |
| 85.44(249A) | Client participation                    |
| 85.45(249A) | Responsibilities of nursing facility    |
| 85.46(249A) | Policies governing reimbursement        |
| 85.47(249A) | State-funded personal needs supplement  |

CHAPTER 86  
HEALTHY AND WELL KIDS IN IOWA (HAWK-I) PROGRAM

|             |  |
|-------------|--|
| 86.1(514I)  | Definitions                            |
| 86.2(514I)  | Eligibility factors                    |
| 86.3(514I)  | Application process                    |
| 86.4(514I)  | Coordination with Medicaid             |
| 86.5(514I)  | Effective date of coverage             |
| 86.6(514I)  | Selection of a plan                    |
| 86.7(514I)  | Cancellation                           |
| 86.8(514I)  | Premiums and copayments                |
| 86.9(514I)  | Annual reviews of eligibility          |
| 86.10(514I) | Reporting changes                      |
| 86.11(514I) | Notice requirements                    |
| 86.12(514I) | Appeals and fair hearings              |
| 86.13(514I) | Third-party administrator              |
| 86.14(514I) | Covered services                       |
| 86.15(514I) | Participating health and dental plans  |
| 86.16(514I) | Clinical advisory committee            |
| 86.17(514I) | Use of donations to the HAWK-I program |
| 86.18(505)  | Health insurance data match program    |
| 86.19(514I) | Recovery                               |
| 86.20(514I) | Supplemental dental-only coverage      |

CHAPTER 87  
STATE-FUNDED FAMILY PLANNING PROGRAM

|                    |   |
|--------------------|---|
| 87.1(82GA,ch1187)  | Definitions                             |
| 87.2(82GA,ch1187)  | Eligibility                             |
| 87.3(82GA,ch1187)  | Application                             |
| 87.4(82GA,ch1187)  | Effective date                          |
| 87.5(82GA,ch1187)  | Period of eligibility and reapplication |
| 87.6(82GA,ch1187)  | Reporting changes                       |
| 87.7(82GA,ch1187)  | Allocation of funds                     |
| 87.8(82GA,ch1187)  | Availability of services                |
| 87.9(82GA,ch1187)  | Payment of covered services             |
| 87.10(82GA,ch1187) | Submission of claims                    |

CHAPTER 88  
MANAGED HEALTH CARE PROVIDERS

DIVISION I  
HEALTH MAINTENANCE ORGANIZATION

|                |   |
|----------------|---|
| 88.1(249A)     | Definitions   |
| 88.2(249A)     | Participation   |
| 88.3(249A)     | Enrollment  |
| 88.4(249A)     | Disenrollment   |
| 88.5(249A)     | Covered services  |
| 88.6(249A)     | Emergency and urgent care services  |
| 88.7(249A)     | Access to service   |
| 88.8(249A)     | Grievance procedures  |
| 88.9(249A)     | Records and reports   |
| 88.10(249A)    | Marketing   |
| 88.11(249A)    | Patient education   |
| 88.12(249A)    | Reimbursement   |
| 88.13(249A)    | Quality assurance   |
| 88.14(249A)    | Contracts with federally qualified health centers (FQHCs) and rural health clinics (RHCs) |
| 88.15 to 88.20 | Reserved  |

DIVISION II  
PREPAID HEALTH PLANS

|                |                      |
|----------------|----------------------|
| 88.21(249A)    | Definitions          |
| 88.22(249A)    | Participation        |
| 88.23(249A)    | Enrollment           |
| 88.24(249A)    | Disenrollment        |
| 88.25(249A)    | Covered services     |
| 88.26(249A)    | Emergency services   |
| 88.27(249A)    | Access to service    |
| 88.28(249A)    | Grievance procedures |
| 88.29(249A)    | Records and reports  |
| 88.30(249A)    | Marketing            |
| 88.31(249A)    | Patient education    |
| 88.32(249A)    | Payment to the PHP   |
| 88.33(249A)    | Quality assurance    |
| 88.34 to 88.40 | Reserved             |

DIVISION III  
MEDICAID PATIENT MANAGEMENT

|                |   |
|----------------|---|
| 88.41(249A)    | Definitions   |
| 88.42(249A)    | Eligible recipients                                 |
| 88.43(249A)    | Project area  |
| 88.44(249A)    | Eligible providers                                  |
| 88.45(249A)    | Contracting for the provision of patient management |
| 88.46(249A)    | Enrollment and changes in enrollment                |
| 88.47(249A)    | Disenrollment                                       |
| 88.48(249A)    | Services  |
| 88.49(249A)    | Grievance procedure                                 |
| 88.50(249A)    | Payment   |
| 88.51(249A)    | Utilization review and quality assessment           |
| 88.52(249A)    | Marketing   |
| 88.53 to 88.60 | Reserved  |

DIVISION IV  
IOWA PLAN FOR BEHAVIORAL HEALTH

|                |  |
|----------------|--|
| 88.61(249A)    | Definitions                                |
| 88.62(249A)    | Participation                              |
| 88.63(249A)    | Enrollment                                 |
| 88.64(249A)    | Disenrollment                              |
| 88.65(249A)    | Covered services                           |
| 88.66(249A)    | Emergency services                         |
| 88.67(249A)    | Access to service                          |
| 88.68(249A)    | Review of contractor decisions and actions |
| 88.69(249A)    | Records and reports                        |
| 88.70(249A)    | Marketing                                  |
| 88.71(249A)    | Enrollee education                         |
| 88.72(249A)    | Payment to the contractor                  |
| 88.73(249A)    | Claims payment                             |
| 88.74(249A)    | Quality assurance                          |
| 88.75(249A)    | Iowa Plan advisory committee               |
| 88.76 to 88.80 | Reserved                                   |

DIVISION V  
PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY

|             |  |
|-------------|--|
| 88.81(249A) | Scope and definitions                            |
| 88.82(249A) | PACE organization application and waiver process |
| 88.83(249A) | PACE program agreement                           |
| 88.84(249A) | Enrollment and disenrollment                     |
| 88.85(249A) | Program services                                 |
| 88.86(249A) | Access to PACE services                          |
| 88.87(249A) | Program administrative requirements              |
| 88.88(249A) | Payment  |

CHAPTER 89  
DEBTS DUE FROM TRANSFERS OF ASSETS

|             |                                      |
|-------------|--------------------------------------|
| 89.1(249F)  | Definitions                          |
| 89.2(249F)  | Creation of debt                     |
| 89.3(249F)  | Exceptions                           |
| 89.4(249F)  | Presumption of intent                |
| 89.5(249F)  | Notice of debt                       |
| 89.6(249F)  | No timely request of a hearing       |
| 89.7(249F)  | Timely request for a hearing         |
| 89.8(249F)  | Department-requested hearing         |
| 89.9(249F)  | Filing and docketing of the order    |
| 89.10(249F) | Exemption from Iowa Code chapter 17A |

CHAPTER 90  
TARGETED CASE MANAGEMENT

|            |                                   |
|------------|-----------------------------------|
| 90.1(249A) | Definitions                       |
| 90.2(249A) | Eligibility                       |
| 90.3(249A) | Determination of need for service |
| 90.4(249A) | Application                       |
| 90.5(249A) | Service provision                 |
| 90.6(249A) | Terminating services              |
| 90.7(249A) | Appeal rights                     |
| 90.8(249A) | Provider requirements             |

CHAPTER 91  
MEDICARE DRUG SUBSIDY

|            |                           |
|------------|---------------------------|
| 91.1(249A) | Definitions               |
| 91.2(249A) | Application               |
| 91.3(249A) | Eligibility determination |
| 91.4(249A) | Notice of decision        |
| 91.5(249A) | Effective date            |
| 91.6(249A) | Changes in circumstances  |
| 91.7(249A) | Reinvestigation           |
| 91.8(249A) | Appeals                   |

CHAPTER 92  
IOWACARE

|                  |  |
|------------------|--|
| 92.1(249A,249J)  | Definitions                            |
| 92.2(249A,249J)  | Eligibility                            |
| 92.3(249A,249J)  | Application                            |
| 92.4(249A,249J)  | Application processing                 |
| 92.5(249A,249J)  | Determining income eligibility         |
| 92.6(249A,249J)  | Effective date                         |
| 92.7(249A,249J)  | Financial participation                |
| 92.8(249A,249J)  | Benefits                               |
| 92.9(249A,249J)  | Claims and reimbursement methodologies |
| 92.10(249A,249J) | Reporting changes                      |
| 92.11(249A,249J) | Reapplication                          |
| 92.12(249A,249J) | Terminating eligibility                |
| 92.13(249A,249J) | Recovery                               |
| 92.14(249A,249J) | Discontinuance of the program          |
| 92.15(249A,249J) | Right to appeal                        |

TITLE IX  
*WORK INCENTIVE DEMONSTRATION*

CHAPTER 93  
PROMISE JOBS PROGRAM

|             |   |
|-------------|---|
| 93.1(239B)  | Definitions   |
| 93.2(239B)  | Program administration  |
| 93.3(239B)  | Registration and referral                                     |
| 93.4(239B)  | The family investment agreement (FIA)                         |
| 93.5(239B)  | Assessment  |
| 93.6(239B)  | Job readiness and job search activities                       |
| 93.7(239B)  | Work activities   |
| 93.8(239B)  | Education and training activities                             |
| 93.9(239B)  | Other FIA activities  |
| 93.10(239B) | Required documentation and verification                       |
| 93.11(239B) | Supportive payments   |
| 93.12(239B) | Recovery of PROMISE JOBS expense payments                     |
| 93.13(239B) | Resolution of participation issues                            |
| 93.14(239B) | Problems that may provide good cause for participation issues |
| 93.15(239B) | Right of appeal   |
| 93.16(239B) | Resolution of a limited benefit plan                          |
| 93.17(239B) | Worker displacement grievance procedure                       |

CHAPTER 94  
Reserved

TITLE X  
*SUPPORT RECOVERY*

CHAPTER 95  
COLLECTIONS

|               |   |
|---------------|---|
| 95.1(252B)    | Definitions   |
| 95.2(252B)    | Child support recovery eligibility and services   |
| 95.3(252B)    | Crediting of current and delinquent support   |
| 95.4(252B)    | Prepayment of support   |
| 95.5(252B)    | Lump sum settlement   |
| 95.6(252B)    | Offset against state income tax refund or rebate  |
| 95.7(252B)    | Offset against federal income tax refund and federal nontax payment                             |
| 95.8(96)      | Child support offset of unemployment insurance benefits   |
| 95.9 to 95.11 | Reserved  |
| 95.12(252B)   | Procedures for providing information to consumer reporting agencies                             |
| 95.13(17A)    | Appeals   |
| 95.14(252B)   | Termination of services   |
| 95.15(252B)   | Child support recovery unit attorney  |
| 95.16(252B)   | Handling and use of federal 1099 information  |
| 95.17(252B)   | Effective date of support   |
| 95.18(252B)   | Continued services available to canceled family investment program (FIP) or Medicaid recipients |
| 95.19(252B)   | Cooperation of public assistance recipients in establishing and obtaining support               |
| 95.20(252B)   | Cooperation of public assistance applicants in establishing and obtaining support               |
| 95.21(252B)   | Cooperation in establishing and obtaining support in nonpublic assistance cases                 |
| 95.22(252B)   | Charging pass-through fees  |
| 95.23(252B)   | Reimbursing assistance with collections of assigned support                                     |
| 95.24(252B)   | Child support account   |
| 95.25(252B)   | Emancipation verification   |

CHAPTER 96  
INFORMATION AND RECORDS

|            |  |
|------------|--|
| 96.1(252B) | Access to information and records from other sources |
| 96.2(252B) | Refusal to comply with written request or subpoena   |
| 96.3(252B) | Procedure for refusal                                |
| 96.4(252B) | Conference conducted                                 |
| 96.5(252B) | Fine assessed  |
| 96.6(252B) | Objection to fine or failure to pay                  |

CHAPTER 97  
COLLECTION SERVICES CENTER

|            |                                     |
|------------|-------------------------------------|
| 97.1(252B) | Definitions                         |
| 97.2(252B) | Transfer of records and payments    |
| 97.3(252B) | Support payment records             |
| 97.4(252B) | Method of payment                   |
| 97.5(252D) | Electronic transmission of payments |
| 97.6(252B) | Authorization of payment            |
| 97.7(252B) | Processing misdirected payments     |

CHAPTER 98  
SUPPORT ENFORCEMENT SERVICES

DIVISION I  
MEDICAL SUPPORT ENFORCEMENT

|               |  |
|---------------|--|
| 98.1(252E)    | Definitions                              |
| 98.2(252E)    | Provision of services                    |
| 98.3(252E)    | Establishing medical support             |
| 98.4(252E)    | Accessibility of the health benefit plan |
| 98.5(252E)    | Health benefit plan information          |
| 98.6(252E)    | Insurer authorization                    |
| 98.7(252E)    | Enforcement                              |
| 98.8(252E)    | Contesting the order                     |
| 98.9 to 98.20 | Reserved                                 |

DIVISION II  
INCOME WITHHOLDING  
PART A  
DELINQUENT SUPPORT PAYMENTS

|                 |                       |
|-----------------|-----------------------|
| 98.21(252D)     | When applicable       |
| 98.22 and 98.23 | Reserved              |
| 98.24(252D)     | Amount of withholding |
| 98.25 to 98.30  | Reserved              |

PART B  
IMMEDIATE INCOME WITHHOLDING

|             |   |
|-------------|---|
| 98.31(252D) | Effective date  |
| 98.32(252D) | Withholding automatic   |
| 98.33       | Reserved  |
| 98.34(252D) | Approval of request for immediate income withholding                |
| 98.35(252D) | Modification or termination of withholding                          |
| 98.36(252D) | Immediate income withholding amounts                                |
| 98.37(252D) | Immediate income withholding amounts when current support has ended |
| 98.38       | Reserved  |

PART C  
INCOME WITHHOLDING—GENERAL PROVISIONS

|                  |  |
|------------------|--|
| 98.39(252D,252E) | Provisions for medical support         |
| 98.40(252D,252E) | Maximum amounts to be withheld         |
| 98.41(252D)      | Multiple obligations                   |
| 98.42(252D)      | Notice to employer and obligor         |
| 98.43(252D)      | Contesting the withholding             |
| 98.44(252D)      | Termination of order                   |
| 98.45(252D)      | Modification of income withholding     |
| 98.46(252D)      | Refunds of amounts improperly withheld |
| 98.47(252D)      | Additional information about hardship  |
| 98.48 to 98.50   | Reserved                               |

DIVISION III  
REVIEW AND ADJUSTMENT OF CHILD SUPPORT OBLIGATIONS

|                |          |
|----------------|----------|
| 98.51 to 98.60 | Reserved |
|----------------|----------|

DIVISION IV  
PUBLICATION OF NAMES

|                |                      |
|----------------|----------------------|
| 98.61(252B)    | List for publication |
| 98.62(252B)    | Releasing the list   |
| 98.63 to 98.70 | Reserved             |

DIVISION V  
ADMINISTRATIVE SEEK EMPLOYMENT ORDERS

|                |                                      |
|----------------|--------------------------------------|
| 98.71(252B)    | Seek employment order                |
| 98.72(252B)    | Effective date of order              |
| 98.73(252B)    | Method and requirements of reporting |
| 98.74(252B)    | Reasons for noncompliance            |
| 98.75(252B)    | Method of service                    |
| 98.76(252B)    | Duration of order                    |
| 98.77 to 98.80 | Reserved                             |

DIVISION VI  
DEBTOR OFFSET

|                |   |
|----------------|---|
| 98.81(252B)    | Offset against payment owed to a person by a state agency |
| 98.82 to 98.90 | Reserved  |

DIVISION VII  
ADMINISTRATIVE LEVY

|                 |   |
|-----------------|---|
| 98.91(252I)     | Administrative levy                       |
| 98.92           | Reserved                                  |
| 98.93(252I)     | Verification of accounts                  |
| 98.94(252I)     | Notice to financial institution           |
| 98.95(252I)     | Notice to support obligor                 |
| 98.96(252I)     | Responsibilities of financial institution |
| 98.97(252I)     | Challenging the administrative levy       |
| 98.98 to 98.100 | Reserved                                  |

DIVISION VIII  
LICENSE SANCTION

|                  |  |
|------------------|--|
| 98.101(252J)     | Referral for license sanction                      |
| 98.102(252J)     | Reasons for exemption                              |
| 98.103(252J)     | Notice of potential sanction of license            |
| 98.104(252J)     | Conference   |
| 98.105(252J)     | Payment agreement                                  |
| 98.106(252J)     | Staying the process due to full payment of support |
| 98.107(252J)     | Duration of license sanction                       |
| 98.108 to 98.120 | Reserved   |

DIVISION IX  
EXTERNAL ENFORCEMENT

|              |   |
|--------------|---|
| 98.121(252B) | Difficult-to-collect arrearages   |
| 98.122(252B) | Enforcement services by private attorney entitled to state compensation |

CHAPTER 99  
SUPPORT ESTABLISHMENT AND ADJUSTMENT SERVICES

DIVISION I  
CHILD SUPPORT GUIDELINES

|                     |                           |
|---------------------|---------------------------|
| 99.1(234,252B,252H) | Income considered         |
| 99.2(234,252B)      | Allowable deductions      |
| 99.3(234,252B)      | Determining net income    |
| 99.4(234,252B)      | Applying the guidelines   |
| 99.5(234,252B)      | Deviation from guidelines |
| 99.6 to 99.9        | Reserved                  |

DIVISION II  
PATERNITY ESTABLISHMENT  
PART A  
JUDICIAL PATERNITY ESTABLISHMENT

99.10(252A) Temporary support  
99.11 to 99.20 Reserved

PART B  
ADMINISTRATIVE PATERNITY ESTABLISHMENT

99.21(252F) When paternity may be established administratively  
99.22(252F) Mother's certified statement  
99.23(252F) Notice of alleged paternity and support debt  
99.24(252F) Conference to discuss paternity and support issues  
99.25(252F) Amount of support obligation  
99.26(252F) Court hearing  
99.27(252F) Paternity contested  
99.28(252F) Paternity test results challenge  
99.29(252F) Agreement to entry of paternity and support order  
99.30(252F) Entry of order establishing paternity only  
99.31(252F) Exception to time limit  
99.32(252F) Genetic test costs assessed  
99.33 to 99.35 Reserved

PART C  
PATERNITY DISESTABLISHMENT

99.36(598,600B) Definitions  
99.37(598,600B) Communication between parents  
99.38(598,600B) Continuation of enforcement  
99.39(598,600B) Satisfaction of accrued support  
99.40 Reserved

DIVISION III  
ADMINISTRATIVE ESTABLISHMENT OF SUPPORT

99.41(252C) Establishment of an administrative order  
99.42 to 99.60 Reserved

DIVISION IV  
REVIEW AND ADJUSTMENT OF CHILD SUPPORT OBLIGATIONS

99.61(252B,252H) Definitions  
99.62(252B,252H) Review of permanent child support obligations  
99.63(252B,252H) Notice requirements  
99.64(252B,252H) Financial information  
99.65(252B,252H) Review and adjustment of a child support obligation  
99.66(252B,252H) Medical support  
99.67(252B,252H) Confidentiality of financial information  
99.68(252B,252H) Payment of service fees and other court costs  
99.69(252B,252H) Denying requests  
99.70(252B,252H) Withdrawing requests  
99.71(252H) Effective date of adjustment  
99.72 to 99.80 Reserved

DIVISION V  
ADMINISTRATIVE MODIFICATION

99.81(252H) Definitions  
99.82(252H) Availability of service  
99.83(252H) Modification of child support obligations  
99.84(252H) Notice requirements

|                 |  |
|-----------------|--|
| 99.85(252H)     | Financial information                          |
| 99.86(252H)     | Challenges to the proposed modification action |
| 99.87(252H)     | Voluntary reduction of income                  |
| 99.88(252H)     | Effective date of modification                 |
| 99.89(252H)     | Confidentiality of financial information       |
| 99.90(252H)     | Payment of fees                                |
| 99.91(252H)     | Denying requests                               |
| 99.92(252H)     | Withdrawing requests                           |
| 99.93 to 99.100 | Reserved                                       |

DIVISION VI  
SUSPENSION AND REINSTATEMENT OF SUPPORT

|              |  |
|--------------|--|
| 99.101(252B) | Definitions                                  |
| 99.102(252B) | Availability of service                      |
| 99.103(252B) | Basis for suspension of support              |
| 99.104(252B) | Request for assistance to suspend            |
| 99.105(252B) | Order suspending support                     |
| 99.106(252B) | Suspension of enforcement of current support |
| 99.107(252B) | Request for reinstatement                    |
| 99.108(252B) | Reinstatement                                |
| 99.109(252B) | Reinstatement of enforcement of support      |
| 99.110(252B) | Temporary suspension becomes final           |

CHAPTER 100  
CHILD SUPPORT PARENTAL OBLIGATION PILOT PROJECTS

|                       |  |
|-----------------------|--|
| 100.1(17A,80GA,HF667) | Definitions  |
| 100.2(17A,80GA,HF667) | Incentives   |
| 100.3(17A,80GA,HF667) | Application to be a funded pilot project             |
| 100.4(17A,80GA,HF667) | Selection of projects                                |
| 100.5(17A,80GA,HF667) | Termination of pilot projects                        |
| 100.6(17A,80GA,HF667) | Reports and records                                  |
| 100.7(17A,80GA,HF667) | Appeals  |
| 100.8(17A,80GA,HF667) | Continued application of rules and sunset provisions |

TITLE XI  
*CHILDREN'S INSTITUTIONS*

CHAPTER 101  
IOWA JUVENILE HOME

|               |  |
|---------------|--|
| 101.1(218)    | Definitions                                |
| 101.2(218)    | Standards                                  |
| 101.3(218)    | Admission                                  |
| 101.4(218)    | Plan of care                               |
| 101.5(218)    | Communication with individuals             |
| 101.6(218)    | Photographing and recording of individuals |
| 101.7(218)    | Employment of individual                   |
| 101.8(218)    | Temporary home visits                      |
| 101.9(218)    | Grievances                                 |
| 101.10(218)   | Alleged child abuse                        |
| 101.11(233B)  | Cost of care                               |
| 101.12(218)   | Buildings and grounds                      |
| 101.13(8,218) | Gifts and bequests                         |

CHAPTER 102  
Reserved

CHAPTER 103  
STATE TRAINING SCHOOL

|               |  |
|---------------|--|
| 103.1(218)    | Definitions                                |
| 103.2(218)    | Admission                                  |
| 103.3(218)    | Plan of care                               |
| 103.4(218)    | Communication with individuals             |
| 103.5(218)    | Photographing and recording of individuals |
| 103.6(218)    | Employment of individual                   |
| 103.7(218)    | Temporary home visits                      |
| 103.8(218)    | Grievances                                 |
| 103.9(692A)   | Sex offender registration                  |
| 103.10(218)   | Alleged child abuse                        |
| 103.11(233A)  | Cost of care                               |
| 103.12(218)   | Buildings and grounds                      |
| 103.13(8,218) | Gifts and bequests                         |

CHAPTER 104  
Reserved

TITLE XII  
*LICENSING AND APPROVED STANDARDS*

CHAPTER 105  
JUVENILE DETENTION  
AND SHELTER CARE HOMES

|             |  |
|-------------|--|
| 105.1(232)  | Definitions                                  |
| 105.2(232)  | Buildings and grounds                        |
| 105.3(232)  | Personnel policies                           |
| 105.4(232)  | Procedures manual                            |
| 105.5(232)  | Staff  |
| 105.6(232)  | Intake procedures                            |
| 105.7(232)  | Assessments                                  |
| 105.8(232)  | Program services                             |
| 105.9(232)  | Medication management and administration     |
| 105.10(232) | Control room—juvenile detention home only    |
| 105.11(232) | Clothing                                     |
| 105.12(232) | Staffings                                    |
| 105.13(232) | Child abuse                                  |
| 105.14(232) | Daily log                                    |
| 105.15(232) | Children's rights                            |
| 105.16(232) | Discipline                                   |
| 105.17(232) | Case files                                   |
| 105.18(232) | Discharge                                    |
| 105.19(232) | Approval                                     |
| 105.20(232) | Provisional approval                         |
| 105.21(232) | Mechanical restraint—juvenile detention only |
| 105.22(232) | Chemical restraint                           |

CHAPTER 106  
SAFETY STANDARDS FOR CHILDREN'S CENTERS

|             |   |
|-------------|---|
| 106.1(237B) | Definitions   |
| 106.2(237B) | Application of the standards  |
| 106.3(237B) | Providing for basic needs   |
| 106.4(237B) | Protection from mistreatment, physical abuse, sexual abuse, and neglect |

|              |                          |
|--------------|--------------------------|
| 106.5(237B)  | Record checks            |
| 106.6(237B)  | Seclusion and restraints |
| 106.7(237B)  | Health                   |
| 106.8(237B)  | Safety                   |
| 106.9(237B)  | Emergencies              |
| 106.10(237B) | Buildings                |

#### CHAPTER 107

##### CERTIFICATION OF ADOPTION INVESTIGATORS

|             |  |
|-------------|--|
| 107.1(600)  | Introduction                                     |
| 107.2(600)  | Definitions                                      |
| 107.3(600)  | Application                                      |
| 107.4(600)  | Requirements for certification                   |
| 107.5(600)  | Granting, denial, or revocation of certification |
| 107.6(600)  | Certificate                                      |
| 107.7(600)  | Renewal of certification                         |
| 107.8(600)  | Investigative services                           |
| 107.9(600)  | Retention of adoption records                    |
| 107.10(600) | Reporting of violations                          |
| 107.11(600) | Appeals  |

#### CHAPTER 108

##### LICENSING AND REGULATION OF CHILD-PLACING AGENCIES

|             |  |
|-------------|--|
| 108.1(238)  | Definitions                                    |
| 108.2(238)  | Licensing procedure                            |
| 108.3(238)  | Administration and organization                |
| 108.4(238)  | Staff qualifications                           |
| 108.5(238)  | Staffing requirements                          |
| 108.6(238)  | Personnel administration                       |
| 108.7(238)  | Foster care services                           |
| 108.8(238)  | Foster home studies                            |
| 108.9(238)  | Adoption services                              |
| 108.10(238) | Supervised apartment living placement services |

#### CHAPTER 109

##### CHILD CARE CENTERS

|              |                                     |
|--------------|-------------------------------------|
| 109.1(237A)  | Definitions                         |
| 109.2(237A)  | Licensure procedures                |
| 109.3(237A)  | Inspection and evaluation           |
| 109.4(237A)  | Administration                      |
| 109.5(237A)  | Parental participation              |
| 109.6(237A)  | Personnel                           |
| 109.7(237A)  | Professional growth and development |
| 109.8(237A)  | Staff ratio requirements            |
| 109.9(237A)  | Records                             |
| 109.10(237A) | Health and safety policies          |
| 109.11(237A) | Physical facilities                 |
| 109.12(237A) | Activity program requirements       |
| 109.13(237A) | Extended evening care               |
| 109.14(237A) | Get-well center                     |
| 109.15(237A) | Food services                       |

CHAPTER 110  
CHILD DEVELOPMENT HOMES

|              |   |
|--------------|---|
| 110.1(237A)  | Definitions   |
| 110.2(237A)  | Application for registration                                  |
| 110.3(237A)  | Renewal   |
| 110.4(237A)  | Number of children  |
| 110.5(237A)  | Standards   |
| 110.6(237A)  | Compliance checks   |
| 110.7(234)   | Registration decision   |
| 110.8(237A)  | Additional requirements for child development home category A |
| 110.9(237A)  | Additional requirements for child development home category B |
| 110.10(237A) | Additional requirements for child development home category C |
| 110.11(237A) | Complaints  |
| 110.12(237A) | Registration actions for nonpayment of child support          |
| 110.13(237A) | Transition exception  |
| 110.14(237A) | Prohibition from involvement with child care                  |

CHAPTER 111  
FAMILY-LIFE HOMES

|             |   |
|-------------|---|
| 111.1(249)  | Definitions   |
| 111.2(249)  | Application for certification                       |
| 111.3(249)  | Provisions pertaining to the certificate            |
| 111.4(249)  | Physical standards                                  |
| 111.5(249)  | Personal characteristics of family-life home family |
| 111.6(249)  | Health of family                                    |
| 111.7(249)  | Planned activities and personal effects             |
| 111.8(249)  | Client eligibility                                  |
| 111.9(249)  | Medical examinations, records, and care of a client |
| 111.10(249) | Placement agreement                                 |
| 111.11(249) | Legal liabilities                                   |
| 111.12(249) | Emergency care and release of client                |
| 111.13(249) | Information about client to be confidential         |

CHAPTER 112  
LICENSING AND REGULATION OF CHILD FOSTER CARE FACILITIES

|             |                                    |
|-------------|------------------------------------|
| 112.1(237)  | Applicability                      |
| 112.2(237)  | Definitions                        |
| 112.3(237)  | Application for license            |
| 112.4(237)  | License                            |
| 112.5(237)  | Denial                             |
| 112.6(237)  | Revocation                         |
| 112.7(237)  | Provisional license                |
| 112.8(237)  | Adverse actions                    |
| 112.9(237)  | Suspension                         |
| 112.10(232) | Mandatory reporting of child abuse |

CHAPTER 113  
LICENSING AND REGULATION OF FOSTER FAMILY HOMES

|            |                                      |
|------------|--------------------------------------|
| 113.1(237) | Applicability                        |
| 113.2(237) | Definitions                          |
| 113.3(237) | Licensing procedure                  |
| 113.4(237) | Provisions pertaining to the license |
| 113.5(237) | Physical standards                   |

|             |   |
|-------------|---|
| 113.6(237)  | Sanitation, water, and waste disposal             |
| 113.7(237)  | Safety  |
| 113.8(237)  | Foster parent training                            |
| 113.9(237)  | Involvement of kin                                |
| 113.10(237) | Information on the foster child                   |
| 113.11(237) | Health of foster family                           |
| 113.12(237) | Characteristics of foster parents                 |
| 113.13(237) | Record checks                                     |
| 113.14(237) | Reference checks                                  |
| 113.15(237) | Unannounced visits                                |
| 113.16(237) | Planned activities and personal effects           |
| 113.17(237) | Medical examinations and health care of the child |
| 113.18(237) | Training and discipline of foster children        |
| 113.19(237) | Emergency care and release of children            |
| 113.20(237) | Changes in foster family home                     |

#### CHAPTER 114

#### LICENSING AND REGULATION OF ALL GROUP LIVING FOSTER CARE FACILITIES FOR CHILDREN

|             |   |
|-------------|---|
| 114.1(237)  | Applicability   |
| 114.2(237)  | Definitions   |
| 114.3(237)  | Physical standards  |
| 114.4(237)  | Sanitation, water, and waste disposal                           |
| 114.5(237)  | Safety  |
| 114.6(237)  | Organization and administration                                 |
| 114.7(237)  | Policies and record-keeping requirements                        |
| 114.8(237)  | Staff   |
| 114.9(237)  | Intake procedures   |
| 114.10(237) | Program services  |
| 114.11(237) | Case files  |
| 114.12(237) | Drug utilization and control                                    |
| 114.13(237) | Children's rights   |
| 114.14(237) | Personal possessions  |
| 114.15(237) | Religion—culture  |
| 114.16(237) | Work or vocational experiences                                  |
| 114.17(237) | Family involvement  |
| 114.18(237) | Children's money  |
| 114.19(237) | Child abuse   |
| 114.20(237) | Discipline  |
| 114.21(237) | Illness, accident, death, or absence from the facility          |
| 114.22(237) | Records   |
| 114.23(237) | Unannounced visits  |
| 114.24(237) | Standards for private juvenile shelter care and detention homes |

#### CHAPTER 115

#### LICENSING AND REGULATION OF COMPREHENSIVE RESIDENTIAL FACILITIES FOR CHILDREN

|            |                            |
|------------|----------------------------|
| 115.1(237) | Applicability              |
| 115.2(237) | Definitions                |
| 115.3(237) | Information upon admission |
| 115.4(237) | Staff                      |
| 115.5(237) | Program services           |

- 115.6(237) Restraints
- 115.7(237) Control room
- 115.8(237) Locked cottages
- 115.9(237) Mechanical restraint
- 115.10(237) Chemical restraint

CHAPTER 116  
LICENSING AND REGULATION OF RESIDENTIAL FACILITIES  
FOR MENTALLY RETARDED CHILDREN

- 116.1(237) Applicability
- 116.2(237) Definitions
- 116.3(237) Qualifications of staff
- 116.4(237) Staff to client ratio
- 116.5(237) Program components
- 116.6(237) Restraint

CHAPTER 117  
FOSTER PARENT TRAINING

- 117.1(237) Required preservice training
- 117.2(237) Required orientation
- 117.3(237) Application materials for in-service training
- 117.4(237) Application process for in-service training
- 117.5(237) Application decisions
- 117.6(237) Application conference available
- 117.7(237) Required in-service training
- 117.8(237) Specific in-service training required
- 117.9(237) Foster parent training expenses

CHAPTER 118  
CHILD CARE QUALITY RATING SYSTEM

- 118.1(237A) Definitions
- 118.2(237A) Application for quality rating
- 118.3(237A) Rating standards for child care centers and preschools (sunsetting on July 31, 2011)
- 118.4(237A) Rating criteria for child development homes (sunsetting on July 31, 2011)
- 118.5(237A) Rating standards for child care centers, preschools, and programs operating under the authority of an accredited school district or nonpublic school
- 118.6(237A) Rating criteria for child development homes
- 118.7(237A) Award of quality rating
- 118.8(237A) Adverse actions

CHAPTER 119  
RECORD CHECK EVALUATIONS FOR HEALTH CARE PROGRAMS

- 119.1(135C) Definitions
- 119.2(135C) When record check evaluations are requested
- 119.3(135C) Request for evaluation
- 119.4(135C) Completion of evaluation
- 119.5(135C) Appeal rights

CHAPTERS 120 to 129  
Reserved

TITLE XIII  
SERVICE ADMINISTRATION

CHAPTER 130  
GENERAL PROVISIONS

|            |                         |
|------------|-------------------------|
| 130.1(234) | Definitions             |
| 130.2(234) | Application             |
| 130.3(234) | Eligibility             |
| 130.4(234) | Fees                    |
| 130.5(234) | Adverse service actions |
| 130.6(234) | Social casework         |
| 130.7(234) | Case plan               |
| 130.8      | Reserved                |
| 130.9(234) | Entitlement             |

CHAPTER 131  
SOCIAL CASEWORK

|            |                   |
|------------|-------------------|
| 131.1(234) | Definitions       |
| 131.2(234) | Eligibility       |
| 131.3(234) | Service provision |
| 131.4      | Reserved          |
| 131.5(234) | Adverse actions   |

CHAPTER 132  
Reserved

CHAPTER 133  
IV-A EMERGENCY ASSISTANCE PROGRAM

|            |                               |
|------------|-------------------------------|
| 133.1(235) | Definitions                   |
| 133.2(235) | Application                   |
| 133.3(235) | Eligibility                   |
| 133.4(235) | Method of service provision   |
| 133.5(235) | Duration of services          |
| 133.6(235) | Discontinuance of the program |

CHAPTERS 134 to 141  
Reserved

CHAPTER 142  
INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

|            |                           |
|------------|---------------------------|
| 142.1(238) | Compact agreement         |
| 142.2(238) | Compact administrator     |
| 142.3(238) | Article II(d)             |
| 142.4(238) | Article III(a)            |
| 142.5(238) | Article III(a) procedures |
| 142.6(238) | Article III(c)            |
| 142.7(238) | Article VIII(a)           |
| 142.8(238) | Applicability             |

CHAPTER 143  
INTERSTATE COMPACT ON JUVENILES

|            |  |
|------------|--|
| 143.1(232) | Compact agreement                                |
| 143.2(232) | Compact administrator                            |
| 143.3(232) | Sending a juvenile out of Iowa under the compact |

- 143.4(232) Receiving cases in Iowa under the interstate compact  
 143.5(232) Runaways

## CHAPTERS 144 to 149

Reserved

### TITLE XIV

#### *GRANT/CONTRACT/PAYMENT ADMINISTRATION*

## CHAPTER 150 PURCHASE OF SERVICE

### DIVISION I

TERMS AND CONDITIONS FOR IOWA PURCHASE OF SOCIAL SERVICES AGENCY AND  
 INDIVIDUAL CONTRACTS, IOWA PURCHASE OF ADMINISTRATIVE SUPPORT, AND  
 IOWA DONATIONS OF FUNDS CONTRACT AND PROVISIONS FOR PUBLIC ACCESS TO CONTRACTS

- 150.1(234) Definitions  
 150.2(234) Categories of contracts  
 150.3(234) Iowa purchase of social services agency contract  
 150.4(234) Iowa purchase of social services contract—individual providers  
 150.5(234) Iowa purchase of administrative support  
 150.6 to 150.8 Reserved  
 150.9(234) Public access to contracts

## CHAPTER 151

### JUVENILE COURT SERVICES DIRECTED PROGRAMS

#### DIVISION I

##### GENERAL PROVISIONS

- 151.1(232) Definitions  
 151.2(232) Administration of funds for court-ordered services and graduated sanction services  
 151.3(232) Administration of juvenile court services programs within each judicial district  
 151.4(232) Billing and payment  
 151.5(232) Appeals  
 151.6(232) District program reviews and audits  
 151.7 to 151.19 Reserved

#### DIVISION II

##### COURT-ORDERED SERVICES

- 151.20(232) Juvenile court services responsibilities  
 151.21(232) Certification process  
 151.22(232) Expenses  
 151.23 to 151.29 Reserved

#### DIVISION III

##### GRADUATED SANCTION SERVICES

- 151.30(232) Life skills  
 151.31(232) School-based supervision  
 151.32(232) Supervised community treatment  
 151.33(232) Tracking, monitoring, and outreach  
 151.34(232) Administration of graduated sanction services  
 151.35(232) Contract development for graduated sanction services

## CHAPTER 152

### FOSTER GROUP CARE CONTRACTING

- 152.1(234) Definitions  
 152.2(234) Conditions of participation  
 152.3(234) Determination of rates

|             |                                 |
|-------------|---------------------------------|
| 152.4(234)  | Initiation of contract proposal |
| 152.5(234)  | Contract                        |
| 152.6(234)  | Client eligibility and referral |
| 152.7(234)  | Billing procedures              |
| 152.8(234)  | Contract management             |
| 152.9(234)  | Provider reviews                |
| 152.10(234) | Sanctions against providers     |
| 152.11(234) | Appeals of departmental actions |

CHAPTER 153  
FUNDING FOR LOCAL SERVICES

DIVISION I  
SOCIAL SERVICES BLOCK GRANT

|                  |                                      |
|------------------|--------------------------------------|
| 153.1(234)       | Definitions                          |
| 153.2(234)       | Development of preexpenditure report |
| 153.3(234)       | Amendment to preexpenditure report   |
| 153.4(234)       | Service availability                 |
| 153.5(234)       | Allocation of block grant funds      |
| 153.6 and 153.7  | Reserved                             |
| 153.8(234)       | Expenditure of supplemental funds    |
| 153.9 and 153.10 | Reserved                             |

DIVISION II  
DECATEGORIZATION OF CHILD WELFARE AND JUVENILE JUSTICE FUNDING

|                  |  |
|------------------|--|
| 153.11(232)      | Definitions  |
| 153.12(232)      | Implementation requirements  |
| 153.13(232)      | Role and responsibilities of decategorization project governance boards                  |
| 153.14(232)      | Realignment of decategorization project boundaries                                       |
| 153.15(232)      | Decategorization services funding pool   |
| 153.16(232)      | Relationship of decategorization funding pool to other department child welfare funding  |
| 153.17(232)      | Relationship of decategorization funding pool to juvenile court services funding streams |
| 153.18(232)      | Requirements for annual services plan  |
| 153.19(232)      | Requirements for annual progress report  |
| 153.20 to 153.30 | Reserved   |

DIVISION III  
MENTAL ILLNESS, MENTAL RETARDATION, AND  
DEVELOPMENTAL DISABILITIES—LOCAL SERVICES

|                  |          |
|------------------|----------|
| 153.31 to 153.50 | Reserved |
|------------------|----------|

DIVISION IV  
STATE PAYMENT PROGRAM FOR LOCAL MENTAL HEALTH, MENTAL RETARDATION, AND  
DEVELOPMENTAL DISABILITIES SERVICES TO ADULTS WITHOUT LEGAL SETTLEMENT

|             |   |
|-------------|---|
| 153.51(331) | Definitions                                   |
| 153.52(331) | Eligibility requirements                      |
| 153.53(331) | Application procedure                         |
| 153.54(331) | Eligibility determination                     |
| 153.55(331) | Eligible services                             |
| 153.56(331) | Program administration                        |
| 153.57(331) | Reduction, denial, or termination of benefits |
| 153.58(331) | Appeals                                       |

CHAPTER 154  
Reserved

CHAPTER 155  
CHILD ABUSE PREVENTION PROGRAM

- 155.1(235A) Definitions  
 155.2(235A) Contract for program administration  
 155.3(235A) Awarding of grants

CHAPTER 156  
PAYMENTS FOR FOSTER CARE

- 156.1(234) Definitions  
 156.2(234) Foster care recovery  
 156.3 to 156.5 Reserved  
 156.6(234) Rate of maintenance payment for foster family care  
 156.7 Reserved  
 156.8(234) Additional payments  
 156.9(234) Rate of payment for foster group care  
 156.10(234) Payment for reserve bed days  
 156.11(234) Emergency care  
 156.12(234) Supervised apartment living  
 156.13 Reserved  
 156.14(234,252C) Voluntary placements  
 156.15(234) Child's earnings  
 156.16(234) Trust funds and investments  
 156.17(234) Preadoptive homes  
 156.18 Reserved  
 156.19(237) Rate of payment for care in a residential care facility  
 156.20(234) Eligibility for foster care payment

CHAPTER 157  
Reserved

CHAPTER 158  
FOSTER HOME INSURANCE FUND

- 158.1(237) Payments from the foster home insurance fund  
 158.2(237) Payment limits  
 158.3(237) Claim procedures  
 158.4(237) Time frames for filing claims  
 158.5(237) Appeals

CHAPTER 159  
CHILD CARE RESOURCE AND REFERRAL SERVICES

- 159.1(237A) Definitions  
 159.2(237A) Availability of funds  
 159.3(237A) Participation requirements  
 159.4(237A) Request for proposals for project grants  
 159.5(237A) Selection of proposals

CHAPTER 160  
ADOPTION OPPORTUNITY GRANT PROGRAM

- 160.1(234) Definitions  
 160.2(234) Availability of grant funds  
 160.3(234) Project eligibility  
 160.4(234) Request for proposals for project grants  
 160.5(234) Selection of proposals

|             |                        |
|-------------|------------------------|
| 160.6(234)  | Project contracts      |
| 160.7(234)  | Records                |
| 160.8(234)  | Evaluation of projects |
| 160.9(234)  | Termination            |
| 160.10(234) | Appeals                |

## CHAPTER 161

## IOWA SENIOR LIVING TRUST FUND

|             |  |
|-------------|--|
| 161.1(249H) | Definitions  |
| 161.2(249H) | Funding and operation of trust fund                  |
| 161.3(249H) | Allocations from the senior living trust fund        |
| 161.4(249H) | Participation by government-owned nursing facilities |

## CHAPTER 162

NURSING FACILITY CONVERSION  
AND LONG-TERM CARE SERVICES  
DEVELOPMENT GRANTS

|             |                           |
|-------------|---------------------------|
| 162.1(249H) | Definitions               |
| 162.2(249H) | Availability of grants    |
| 162.3(249H) | Grant eligibility         |
| 162.4(249H) | Grant application process |
| 162.5(249H) | Grant dispersal stages    |
| 162.6(249H) | Project contracts         |
| 162.7(249H) | Grantee responsibilities  |
| 162.8(249H) | Offset                    |
| 162.9(249H) | Appeals                   |

## CHAPTER 163

ADOLESCENT PREGNANCY PREVENTION AND SERVICES  
TO PREGNANT AND PARENTING ADOLESCENTS  
PROGRAMS

|             |  |
|-------------|--|
| 163.1(234)  | Definitions                                    |
| 163.2(234)  | Availability of grants for projects            |
| 163.3(234)  | Project eligibility                            |
| 163.4(234)  | Request for proposals for pilot project grants |
| 163.5(234)  | Selection of proposals                         |
| 163.6(234)  | Project contracts                              |
| 163.7(234)  | Records  |
| 163.8(234)  | Evaluation                                     |
| 163.9(234)  | Termination of contract                        |
| 163.10(234) | Appeals  |

## CHAPTER 164

## IOWA HOSPITAL TRUST FUND

|             |  |
|-------------|--|
| 164.1(249I) | Definitions                              |
| 164.2(249I) | Funding and operation of trust fund      |
| 164.3(249I) | Allocations from the hospital trust fund |
| 164.4(249I) | Participation by public hospitals        |

## CHAPTER 165

Reserved

CHAPTER 166  
QUALITY IMPROVEMENT INITIATIVE GRANTS

|             |                              |
|-------------|------------------------------|
| 166.1(249A) | Definitions                  |
| 166.2(249A) | Availability of grants       |
| 166.3(249A) | Requirements for applicants  |
| 166.4(249A) | Requirements for initiatives |
| 166.5(249A) | Applications                 |
| 166.6(249A) | Awarding of grants           |
| 166.7(249A) | Grant requirements           |

CHAPTER 167  
JUVENILE DETENTION REIMBURSEMENT

DIVISION I  
ANNUAL REIMBURSEMENT PROGRAM

|            |                                 |
|------------|---------------------------------|
| 167.1(232) | Definitions                     |
| 167.2(232) | Availability of funds           |
| 167.3(232) | Eligible facilities             |
| 167.4(232) | Available reimbursement         |
| 167.5(232) | Submission of voucher           |
| 167.6(232) | Reimbursement by the department |

CHAPTER 168  
CHILD CARE EXPANSION PROGRAMS

|            |                          |
|------------|--------------------------|
| 168.1(234) | Definitions              |
| 168.2(234) | Availability of funds    |
| 168.3(234) | Eligibility requirements |
| 168.4(234) | Request for proposals    |
| 168.5(234) | Selection of proposals   |
| 168.6(234) | Appeals                  |
| 168.7(234) | Contracts                |
| 168.8(234) | Reporting requirements   |
| 168.9(234) | Termination of contract  |

CHAPTER 169  
FUNDING FOR EMPOWERMENT AREAS

|           |  |
|-----------|--|
| 169.1(7I) | Definitions                                    |
| 169.2(7I) | Use of funds                                   |
| 169.3(7I) | Eligibility for funding                        |
| 169.4(7I) | Funding availability                           |
| 169.5(7I) | Community empowerment areas' responsibilities  |
| 169.6(7I) | Iowa empowerment board's responsibilities      |
| 169.7(7I) | Department of human services' responsibilities |
| 169.8(7I) | Revocation of funding                          |
| 169.9(7I) | Appeals  |

TITLE XV  
*INDIVIDUAL AND FAMILY SUPPORT  
AND PROTECTIVE SERVICES*

CHAPTER 170  
CHILD CARE SERVICES

|                  |  |
|------------------|--|
| 170.1(237A)      | Definitions                                  |
| 170.2(237A,239B) | Eligibility requirements                     |
| 170.3(237A,239B) | Application and determination of eligibility |

- 170.4(237A) Elements of service provision
- 170.5(237A) Adverse actions
- 170.6(237A) Appeals
- 170.7(237A) Provider fraud
- 170.8 Reserved
- 170.9(237A) Child care assistance overpayments

CHAPTER 171

Reserved

CHAPTER 172

FAMILY-CENTERED CHILD WELFARE SERVICES

DIVISION I  
GENERAL PROVISIONS

- 172.1(234) Definitions
- 172.2(234) Purpose and scope
- 172.3(234) Authorization
- 172.4(234) Reimbursement
- 172.5(234) Client appeals
- 172.6(234) Reviews and audits
- 172.7 to 172.9 Reserved

DIVISION II  
SAFETY PLAN SERVICES

- 172.10(234) Service requirements
- 172.11(234) Contractor selection
- 172.12(234) Service eligibility
- 172.13(234) Service components
- 172.14(234) Monitoring of service delivery
- 172.15(234) Billing and payment
- 172.16 to 172.19 Reserved

DIVISION III  
FAMILY SAFETY, RISK, AND PERMANENCY SERVICES

- 172.20(234) Service requirements
- 172.21(234) Contractor selection
- 172.22(234) Service eligibility
- 172.23(234) Service components
- 172.24(234) Monitoring of service delivery
- 172.25(234) Billing and payment
- 172.26 to 172.29 Reserved

DIVISION IV  
FAMILY-CENTERED SUPPORTIVE SERVICES

- 172.30(234) Service components
- 172.31(234) Contractor selection
- 172.32(234) Service eligibility
- 172.33(234) Monitoring of service delivery
- 172.34(234) Billing and payment

CHAPTERS 173 and 174

Reserved

CHAPTER 175  
ABUSE OF CHILDREN

DIVISION I  
CHILD ABUSE

175.1 to 175.20 Reserved

DIVISION II  
CHILD ABUSE ASSESSMENT

175.21(232,235A) Definitions  
 175.22(232) Receipt of a report of child abuse  
 175.23(232) Sources of report of child abuse  
 175.24(232) Child abuse assessment intake process  
 175.25(232) Child abuse assessment process  
 175.26(232) Completion of a child protective assessment summary  
 175.27(232) Contact with juvenile court or the county attorney  
 175.28(232) Consultation with health practitioners or mental health professionals  
 175.29(232) Consultation with law enforcement  
 175.30(232) Information shared with law enforcement  
 175.31(232) Completion of required correspondence  
 175.32(232,235A) Case records  
 175.33(232,235A) Child protection centers  
 175.34(232) Department-operated facilities  
 175.35(232,235A) Jurisdiction of assessments  
 175.36(235A) Multidisciplinary teams  
 175.37(232) Community education  
 175.38(235) Written authorizations  
 175.39(232) Founded child abuse  
 175.40 Reserved  
 175.41(235A) Access to child abuse information  
 175.42(235A) Person conducting research  
 175.43(235A) Child protection services citizen review panels

CHAPTER 176  
DEPENDENT ADULT ABUSE

176.1(235B) Definitions  
 176.2(235B) Denial of critical care  
 176.3(235B) Appropriate evaluation  
 176.4(235B) Reporters  
 176.5(235B) Reporting procedure  
 176.6(235B) Duties of the department upon receipt of report  
 176.7(235B) Appropriate evaluation or assessment  
 176.8(235B) Immunity from liability for reporters  
 176.9(235B) Registry records  
 176.10(235B) Adult abuse information disseminated  
 176.11(235B) Person conducting research  
 176.12(235B) Examination of information  
 176.13(235B) Dependent adult abuse information registry  
 176.14 Reserved  
 176.15(235B) Multidisciplinary teams  
 176.16(235B) Medical and mental health examinations  
 176.17(235B) Request for correction or expungement

CHAPTER 177  
IN-HOME HEALTH RELATED CARE

|             |                                     |
|-------------|-------------------------------------|
| 177.1(249)  | In-home health related care         |
| 177.2(249)  | Own home                            |
| 177.3(249)  | Service criteria                    |
| 177.4(249)  | Eligibility                         |
| 177.5(249)  | Providers of health care services   |
| 177.6(249)  | Health care plan                    |
| 177.7(249)  | Client participation                |
| 177.8(249)  | Determination of reasonable charges |
| 177.9(249)  | Written agreements                  |
| 177.10(249) | Emergency services                  |
| 177.11(249) | Termination                         |

CHAPTERS 178 to 183  
Reserved

CHAPTER 184  
INDIVIDUAL AND FAMILY DIRECT SUPPORT

DIVISION I  
FAMILY SUPPORT SUBSIDY PROGRAM

|                  |                                 |
|------------------|---------------------------------|
| 184.1(225C)      | Definitions                     |
| 184.2(225C)      | Eligibility requirements        |
| 184.3(225C)      | Application process             |
| 184.4(225C)      | Family support services plan    |
| 184.5            | Reserved                        |
| 184.6(225C)      | Amount of subsidy payment       |
| 184.7(225C)      | Redetermination of eligibility  |
| 184.8(225C)      | Termination of subsidy payments |
| 184.9(225C)      | Appeals                         |
| 184.10 to 184.20 | Reserved                        |

DIVISION II  
COMPREHENSIVE FAMILY SUPPORT PROGRAM

|              |                                 |
|--------------|---------------------------------|
| 184.21(225C) | Definitions                     |
| 184.22(225C) | Eligibility                     |
| 184.23(225C) | Application                     |
| 184.24(225C) | Contractor selection and duties |
| 184.25(225C) | Direct assistance               |
| 184.26(225C) | Appeals                         |
| 184.27(225C) | Parent advisory council         |

CHAPTER 185  
Reserved

CHAPTER 186  
COMMUNITY CARE

|            |                   |
|------------|-------------------|
| 186.1(234) | Definitions       |
| 186.2(234) | Eligibility       |
| 186.3(234) | Services provided |
| 186.4(234) | Appeals           |

CHAPTER 187  
AFTERCARE SERVICES AND SUPPORTS

DIVISION I  
AFTERCARE SERVICES

|                |                                |
|----------------|--------------------------------|
| 187.1(234)     | Purpose                        |
| 187.2(234)     | Eligibility                    |
| 187.3(234)     | Services and supports provided |
| 187.4(234)     | Termination                    |
| 187.5(234)     | Waiting list                   |
| 187.6(234)     | Administration                 |
| 187.7 to 187.9 | Reserved                       |

DIVISION II  
PREPARATION FOR ADULT LIVING (PAL) PROGRAM

|             |                        |
|-------------|------------------------|
| 187.10(234) | Purpose                |
| 187.11(234) | Eligibility            |
| 187.12(234) | Payment                |
| 187.13(234) | Termination of stipend |
| 187.14(234) | Waiting list           |
| 187.15(234) | Administration         |

CHAPTERS 188 to 199  
Reserved

TITLE XVI  
*ALTERNATIVE LIVING*

CHAPTER 200  
ADOPTION SERVICES

|                 |  |
|-----------------|--|
| 200.1(600)      | Definitions  |
| 200.2(600)      | Release of custody services  |
| 200.3(600)      | Application  |
| 200.4(600)      | Adoption services  |
| 200.5(600)      | Termination of parental rights   |
| 200.6 and 200.7 | Reserved   |
| 200.8(600)      | Interstate placements  |
| 200.9           | Reserved   |
| 200.10(600)     | Requests for home studies  |
| 200.11(600)     | Reasons for denial   |
| 200.12(600)     | Removal of child from preadoptive family                               |
| 200.13(600)     | Consents   |
| 200.14(600)     | Requests for access to information for research or treatment           |
| 200.15(600)     | Requests for information for purposes other than research or treatment |
| 200.16(600)     | Appeals  |

CHAPTER 201  
SUBSIDIZED ADOPTIONS

|            |  |
|------------|--|
| 201.1(600) | Administration                                 |
| 201.2(600) | Definitions                                    |
| 201.3(600) | Conditions of eligibility or ineligibility     |
| 201.4(600) | Application                                    |
| 201.5(600) | Negotiation of amount of presubsidy or subsidy |
| 201.6(600) | Types of subsidy                               |
| 201.7(600) | Termination of subsidy                         |

|             |                                       |
|-------------|---------------------------------------|
| 201.8(600)  | Reinstatement of subsidy              |
| 201.9(600)  | New application                       |
| 201.10(600) | Medical assistance based on residency |
| 201.11(600) | Presubsidy recovery                   |

## CHAPTER 202

## FOSTER CARE PLACEMENT AND SERVICES

|              |  |
|--------------|--|
| 202.1(234)   | Definitions  |
| 202.2(234)   | Eligibility  |
| 202.3(234)   | Voluntary placements   |
| 202.4(234)   | Selection of facility  |
| 202.5(234)   | Preplacement   |
| 202.6(234)   | Placement  |
| 202.7(234)   | Out-of-area placements   |
| 202.8(234)   | Out-of-state placements  |
| 202.9(234)   | Supervised apartment living  |
| 202.10(234)  | Services to foster parents   |
| 202.11(234)  | Services to the child  |
| 202.12(234)  | Services to parents  |
| 202.13(234)  | Removal of the child   |
| 202.14(234)  | Termination  |
| 202.15(234)  | Case permanency plan   |
| 202.16(135H) | Department approval of need for a psychiatric medical institution for children |
| 202.17(232)  | Area group care targets  |
| 202.18(235)  | Local transition committees  |

## CHAPTER 203

## IOWA ADOPTION EXCHANGE

|            |  |
|------------|--|
| 203.1(232) | Definitions                                      |
| 203.2(232) | Children to be registered on the exchange system |
| 203.3(232) | Families to be registered on the exchange system |
| 203.4(232) | Matching process                                 |

## CHAPTER 204

## SUBSIDIZED GUARDIANSHIP PROGRAM

|            |                                  |
|------------|----------------------------------|
| 204.1(234) | Definitions                      |
| 204.2(234) | Eligibility                      |
| 204.3(234) | Application                      |
| 204.4(234) | Negotiation of amount of subsidy |
| 204.5(234) | Parental liability               |
| 204.6(234) | Termination of subsidy           |
| 204.7(234) | Reinstatement of subsidy         |
| 204.8(234) | Appeals                          |
| 204.9(234) | Medical assistance               |

CHAPTER 78  
AMOUNT, DURATION AND SCOPE OF  
MEDICAL AND REMEDIAL SERVICES

[Prior to 7/1/83, Social Services[770] Ch 78]

[Prior to 2/11/87, Human Services[498]]

**441—78.1(249A) Physicians' services.** Payment will be approved for all medically necessary services and supplies provided by the physician including services rendered in the physician's office or clinic, the home, in a hospital, nursing home or elsewhere.

Payment shall be made for all services rendered by a doctor of medicine or osteopathy within the scope of this practice and the limitations of state law subject to the following limitations and exclusions:

**78.1(1)** Payment will not be made for:

*a.* Drugs dispensed by a physician or other legally qualified practitioner (dentist, podiatrist, therapeutically certified optometrist, physician assistant, or advanced registered nurse practitioner) unless it is established that there is no licensed retail pharmacy in the community in which the legally qualified practitioner's office is maintained. Payment will not be made for biological supplies and drugs provided free of charge to practitioners by the state department of public health. Rate of payment shall be established as in subrule 78.2(2), but no professional fee shall be paid.

*b.* Routine physical examinations. Rescinded IAB 8/1/07, effective 8/1/07.

*c.* Treatment of certain foot conditions as specified in 78.5(2) "a," "b," and "c."

*d.* Acupuncture treatments.

*e.* Rescinded 9/6/78.

*f.* Unproven or experimental medical and surgical procedures. The criteria in effect in the Medicare program shall be utilized in determining when a given procedure is unproven or experimental in nature.

*g.* Charges for surgical procedures on the "Outpatient/Same Day Surgery List" produced by the Iowa Foundation for Medical Care or associated inpatient care charges when the procedure is performed in a hospital on an inpatient basis unless the physician has secured approval from the hospital's utilization review department prior to the patient's admittance to the hospital. Approval shall be granted only when inpatient care is deemed to be medically necessary based on the condition of the patient or when the surgical procedure is not performed as a routine, primary, independent procedure. The "Outpatient/Same Day Surgery List" shall be published by the department in the provider manuals for hospitals and physicians. The "Outpatient/Same Day Surgery List" shall be developed by the Iowa Foundation for Medical Care, and shall include procedures which can safely and effectively be performed in a doctor's office or on an outpatient basis in a hospital. The Iowa Foundation for Medical Care may add, delete, or modify entries on the "Outpatient/Same Day Surgery List."

**78.1(2)** Drugs and supplies may be covered when prescribed by a legally qualified practitioner as provided in this rule.

*a.* Drugs are covered as provided by rule 441—78.2(249A).

*b.* Medical supplies are payable when ordered by a legally qualified practitioner for a specific rather than incidental use, subject to the conditions specified in rule 441—78.10(249A). When a member is receiving care in a nursing facility or residential care facility, payment will be approved only for the following supplies when prescribed by a legally qualified practitioner:

(1) Colostomy and ileostomy appliances.

(2) Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.

(3) Disposable irrigation trays or sets.

(4) Disposable catheterization trays or sets.

(5) Indwelling Foley catheter.

(6) Disposable saline enemas.

(7) Diabetic supplies including needles and syringes, blood glucose test strips, and diabetic urine test supplies.

*c.* Prescription records are required for all drugs as specified in Iowa Code sections 124.308, 155A.27 and 155A.29. For the purposes of the medical assistance program, prescriptions for medical supplies are required and shall be subject to the same provisions.

*d.* Rescinded IAB 1/30/08, effective 4/1/08.

*e.* All physicians who administer vaccines which are available through the Vaccines for Children program to Medicaid members shall enroll in the Vaccines for Children program. Vaccines available through the Vaccines for Children program shall be obtained from the department of public health for Medicaid members. Physicians shall, however, receive reimbursement for the administration of these vaccines to Medicaid members.

*f.* Nonprescription drugs. Rescinded IAB 1/30/08, effective 4/1/08.

**78.1(3)** Payment will be approved for injections provided they are reasonable, necessary, and related to the diagnosis and treatment of an illness or injury. When billing for an injection, the legally qualified practitioner must specify the brand name of the drug and the manufacturer, the strength of the drug, the amount administered, and the charge of each injection. When the strength and dosage of the drug is not included, payment will be made based on the customary dosage. The following exclusions are applicable.

*a.* Payment will not be approved for injections when they are considered by standards of medical practice not to be specific or effective treatment for the particular condition for which they are administered.

*b.* Payment will not be approved for an injection when administered for a reason other than the treatment of a particular condition, illness, or injury. When injecting an amphetamine or legend vitamin, prior approval must be obtained as specified in 78.1(2)“a”(3).

*c.* Payment will not be approved when injection is not an indicated method of administration according to accepted standards of medical practice.

*d.* Allergenic extract materials provided the patient for self-administration shall not exceed a 90-day supply.

*e.* Payment will not be approved when an injection is determined to fall outside of what is medically reasonable or necessary based on basic standards of medical practice for the required level of care for a particular condition.

*f.* Payment will not be approved for vaccines which are available through the Vaccines for Children program. In lieu of payment, vaccines available through the Vaccines for Children program shall be accessed from the department of public health.

*g.* Payment will not be approved for injections of “covered Part D drugs” as defined by 42 U.S.C. Section 1395w-102(e)(1)-(2) for any “Part D eligible individual” as defined in 42 U.S.C. Section 1395w-101(a)(3)(A), including an individual who is not enrolled in a Part D plan.

**78.1(4)** For the purposes of this program, cosmetic, reconstructive, or plastic surgery is surgery which can be expected primarily to improve physical appearance or which is performed primarily for psychological purposes or which restores form but which does not correct or materially improve the bodily functions. When a surgical procedure primarily restores bodily function, whether or not there is also a concomitant improvement in physical appearance, the surgical procedure does not fall within the provisions set forth in this subrule. Surgeries for the purpose of sex reassignment are not considered as restoring bodily function and are excluded from coverage.

*a.* Coverage under the program is generally not available for cosmetic, reconstructive, or plastic surgery. However, under certain limited circumstances payment for otherwise covered services and supplies may be provided in connection with cosmetic, reconstructive, or plastic surgery as follows:

(1) Correction of a congenital anomaly; or

(2) Restoration of body form following an accidental injury; or

(3) Revision of disfiguring and extensive scars resulting from neoplastic surgery.

(4) Generally, coverage is limited to those cosmetic, reconstructive, or plastic surgery procedures performed no later than 12 months subsequent to the related accidental injury or surgical trauma. However, special consideration for exception will be given to cases involving children who may require a growth period.

*b.* Cosmetic, reconstructive, or plastic surgery performed in connection with certain conditions is specifically excluded. These conditions are:

- (1) Dental congenital anomalies, such as absent tooth buds, malocclusion, and similar conditions.
- (2) Procedures related to transsexualism, hermaphroditism, gender identity disorders, or body dysmorphic disorders.
- (3) Cosmetic, reconstructive, or plastic surgery procedures performed primarily for psychological reasons or as a result of the aging process.
- (4) Breast augmentation mammoplasty, surgical insertion of prosthetic testicles, penile implant procedures, and surgeries for the purpose of sex reassignment.

*c.* When it is determined that a cosmetic, reconstructive, or plastic surgery procedure does not qualify for coverage under the program, all related services and supplies, including any institutional costs, are also excluded.

*d.* Following is a partial list of cosmetic, reconstructive, or plastic surgery procedures which are not covered under the program. This list is for example purposes only and is not considered all inclusive.

- (1) Any procedure performed for personal reasons, to improve the appearance of an obvious feature or part of the body which would be considered by an average observer to be normal and acceptable for the patient's age or ethnic or racial background.
- (2) Cosmetic, reconstructive, or plastic surgical procedures which are justified primarily on the basis of a psychological or psychiatric need.
- (3) Augmentation mammoplasties.
- (4) Face lifts and other procedures related to the aging process.
- (5) Reduction mammoplasties, unless there is medical documentation of intractable pain not amenable to other forms of treatment as the result of increasingly large pendulous breasts.
- (6) Panniculectomy and body sculpture procedures.
- (7) Repair of sagging eyelids, unless there is demonstrated and medically documented significant impairment of vision.
- (8) Rhinoplasties, unless there is evidence of accidental injury occurring within the past six months which resulted in significant obstruction of breathing.
- (9) Chemical peeling for facial wrinkles.
- (10) Dermabrasion of the face.
- (11) Revision of scars resulting from surgery or a disease process, except disfiguring and extensive scars resulting from neoplastic surgery.
- (12) Removal of tattoos.
- (13) Hair transplants.
- (14) Electrolysis.
- (15) Sex reassignment.
- (16) Penile implant procedures.
- (17) Insertion of prosthetic testicles.

*e.* Coverage is available for otherwise covered services and supplies required in the treatment of complications resulting from a noncovered incident or treatment, but only when the subsequent complications represent a separate medical condition such as systemic infection, cardiac arrest, acute drug reaction, or similar conditions. Coverage shall not be extended for any subsequent care or procedure related to the complication that is essentially similar to the initial noncovered care. An example of a complication similar to the initial period of care would be repair of facial scarring resulting from dermabrasion for acne.

**78.1(5)** The legally qualified practitioner's prescription for medical equipment, appliances, or prosthetic devices shall include the patient's diagnosis and prognosis, the reason the item is required, and an estimate in months of the duration of the need. Payment will be made in accordance with rule 78.10(249A).

**78.1(6)** Payment will be approved for the examination to establish the need for orthopedic shoes in accordance with rule 78.15(249A).

**78.1(7)** No payment shall be made for the services of a private duty nurse.

**78.1(8)** Payment for mileage shall be the same as that in effect in part B of Medicare.

**78.1(9)** Payment will be approved for visits to patients in nursing facilities subject to the following conditions:

*a.* Payment will be approved for only one visit to the same patient in a calendar month. Payment for further visits will be made only when the need for the visits is adequately documented by the physician.

*b.* When only one patient is seen in a single visit the allowance shall be based on a follow-up home visit. When more than one patient is seen in a single visit, payment shall be based on a follow-up office visit. In the absence of information on the claim, the carrier will assume that more than one patient was seen, and payment approved on that basis.

*c.* Payment will be approved for mileage in connection with nursing home visits when:

- (1) It is necessary for the physician to travel outside the home community, and
- (2) There are not physicians in the community in which the nursing home is located.

*d.* Payment will be approved for tasks related to a resident receiving nursing facility care which are performed by a physician's employee who is a nurse practitioner, clinical nurse specialist, or physician assistant as specified in 441—paragraph 81.13(13) "e." On-site supervision of the physician is not required for these services.

**78.1(10)** Payment will be approved in independent laboratory when it has been certified as eligible to participate in Medicare.

**78.1(11)** Rescinded, effective 8/1/87.

**78.1(12)** Payment will be made on the same basis as in Medicare for services associated with treatment of chronic renal disease including physician's services, hospital care, renal transplantation, and hemodialysis, whether performed on an inpatient or outpatient basis. Payment will be made for deductibles and coinsurance for those persons eligible for Medicare.

**78.1(13)** Payment will be made to the physician for services rendered by auxiliary personnel employed by the physician and working under the direct personal supervision of the physician, when such services are performed incident to the physician's professional service.

*a.* Auxiliary personnel are nurses, physician's assistants, psychologists, social workers, audiologists, occupational therapists and physical therapists.

*b.* An auxiliary person is considered to be an employee of the physician if the physician:

- (1) Is able to control the manner in which the work is performed, i.e., is able to control when, where and how the work is done. This control need not be actually exercised by the physician.
- (2) Sets work standards.
- (3) Establishes job description.
- (4) Withholds taxes from the wages of the auxiliary personnel.

*c.* Direct personal supervision in the office setting means the physician must be present in the same office suite, not necessarily the same room, and be available to provide immediate assistance and direction.

Direct personal supervision outside the office setting, such as the member's home, hospital, emergency room, or nursing facility, means the physician must be present in the same room as the auxiliary person.

Advanced registered nurse practitioners certified under board of nursing rules 655—Chapter 7 performing services within their scope of practice are exempt from the direct personal supervision requirement for the purpose of reimbursement to the employing physicians. In these exempted circumstances, the employing physicians must still provide general supervision and be available to provide immediate needed assistance by telephone. Advanced registered nurse practitioners who prescribe drugs and medical devices are subject to the guidelines in effect for physicians as specified in rule 441—78.1(249A).

A physician assistant licensed under board of physician assistants' professional licensure rules in 645—Chapter 325 is exempt from the direct personal supervision requirement but the physician must still provide general supervision and be available to provide immediate needed assistance by telephone.

Physician assistants who prescribe drugs and medical devices are subject to the guidelines in effect for physicians as specified in rule 441—78.1(249A).

*d.* Services incident to the professional services of the physician means the service provided by the auxiliary person must be related to the physician's professional service to the member. If the physician has not or will not perform a personal professional service to the member, the clinical records must document that the physician assigned treatment of the member to the auxiliary person.

**78.1(14)** Payment will be made for persons aged 20 and under for nutritional counseling provided by a licensed dietitian employed by or under contract with a physician for a nutritional problem or condition of a degree of severity that nutritional counseling beyond that normally expected as part of the standard medical management is warranted. For persons eligible for the WIC program, a WIC referral is required. Medical necessity for nutritional counseling services exceeding those available through WIC shall be documented.

**78.1(15)** The certification of inpatient hospital care shall be the same as that in effect in part A of Medicare. The hospital admittance record is sufficient for the original certification.

**78.1(16)** No payment will be made for sterilization of an individual under the age of 21 or who is mentally incompetent or institutionalized. Payment will be made for sterilization performed on an individual who is aged 21 or older at the time the informed consent is obtained and who is mentally competent and not institutionalized when all the conditions in this subrule are met.

*a.* The following definitions are pertinent to this subrule:

(1) Sterilization means any medical procedure, treatment, or operation performed for the purpose of rendering an individual permanently incapable of reproducing and which is not a necessary part of the treatment of an existing illness or medically indicated as an accompaniment of an operation on the genital urinary tract. Mental illness or retardation is not considered an illness or injury.

(2) Hysterectomy means a medical procedure or operation to remove the uterus.

(3) Mentally incompetent individual means a person who has been declared mentally incompetent by a federal, state or local court of jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization.

(4) Institutionalized individual means an individual who is involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness, or an individual who is confined under a voluntary commitment in a mental hospital or other facility for the care and treatment of mental illness.

*b.* The sterilization shall be performed as the result of a voluntary request for the services made by the person on whom the sterilization is performed. The person's consent for sterilization shall be documented on:

(1) Form 470-0835 or 470-0835(S), Consent Form, or

(2) An official sterilization consent form from another state's Medicaid program that contains all information found on the Iowa form and complies with all applicable federal regulations.

*c.* The person shall be advised prior to the receipt of consent that no benefits provided under the medical assistance program or other programs administered by the department may be withdrawn or withheld by reason of a decision not to be sterilized.

*d.* The person shall be informed that the consent can be withheld or withdrawn any time prior to the sterilization without prejudicing future care and without loss of other project or program benefits.

*e.* The person shall be given a complete explanation of the sterilization. The explanation shall include:

(1) A description of available alternative methods and the effect and impact of the proposed sterilization including the fact that it must be considered to be an irreversible procedure.

(2) A thorough description of the specific sterilization procedure to be performed and benefits expected.

(3) A description of the attendant discomforts and risks including the type and possible effects of any anesthetic to be used.

(4) An offer to answer any inquiries the person to be sterilized may have concerning the procedure to be performed. The individual shall be provided a copy of the informed consent form in addition to the oral presentation.

*f.* At least 30 days and not more than 180 days shall have elapsed following the signing of the informed consent except in the case of premature delivery or emergency abdominal surgery which occurs not less than 72 hours after the informed consent was signed. The informed consent shall have been signed at least 30 days before the expected delivery date for premature deliveries.

*g.* The information in paragraphs “*b*” through “*f*” shall be effectively presented to a blind, deaf, or otherwise handicapped individual and an interpreter shall be provided when the individual to be sterilized does not understand the language used on the consent form or used by the person obtaining consent. The individual to be sterilized may have a witness of the individual’s choice present when consent is obtained.

*h.* The consent form described in paragraph 78.1(16) “*b*” shall be attached to the claim for payment and shall be signed by:

- (1) The person to be sterilized,
- (2) The interpreter, when one was necessary,
- (3) The physician, and
- (4) The person who provided the required information.

*i.* Informed consent shall not be obtained while the individual to be sterilized is:

- (1) In labor or childbirth, or
- (2) Seeking to obtain or obtaining an abortion, or
- (3) Under the influence of alcohol or other substance that affects the individual’s state of awareness.

*j.* Payment will be made for a medically necessary hysterectomy only when it is performed for a purpose other than sterilization and only when one or more of the following conditions is met:

(1) The individual or representative has signed an acknowledgment that she has been informed orally and in writing from the person authorized to perform the hysterectomy that the hysterectomy will make the individual permanently incapable of reproducing, or

(2) The individual was already sterile before the hysterectomy, the physician has certified in writing that the individual was already sterile at the time of the hysterectomy and has stated the cause of the sterility, or

(3) The hysterectomy was performed as a result of a life-threatening emergency situation in which the physician determined that prior acknowledgment was not possible and the physician includes a description of the nature of the emergency.

**78.1(17) Abortions.** Payment for an abortion or related service is made when Form 470-0836 is completed for the applicable circumstances and is attached to each claim for services. Payment for an abortion is made under one of the following circumstances:

*a.* The physician certifies that the pregnant woman’s life would be endangered if the fetus were carried to term.

*b.* The physician certifies that the fetus is physically deformed, mentally deficient or afflicted with a congenital illness and the physician states the medical indication for determining the fetal condition.

*c.* The pregnancy was the result of rape reported to a law enforcement agency or public or private health agency which may include a family physician within 45 days of the date of occurrence of the incident. The report shall include the name, address, and signature of the person making the report. Form 470-0836 shall be signed by the person receiving the report of the rape.

*d.* The pregnancy was the result of incest reported to a law enforcement agency or public or private health agency including a family physician no later than 150 days after the date of occurrence. The report shall include the name, address, and signature of the person making the report. Form 470-0836 shall be signed by the person receiving the report of incest.

**78.1(18)** Payment and procedure for obtaining eyeglasses, contact lenses, and visual aids, shall be the same as described in 441—78.6(249A). (Cross-reference 78.28(3))

**78.1(19)** Preprocedure review by the Iowa Foundation for Medical Care (IFMC) will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preprocedure surgical review

applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and the published criteria established by the IFMC and the department. If not so approved by the IFMC, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices.

The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. The "Preprocedure Surgical Review List" shall be developed by the department with advice and consultation from the IFMC and appropriate professional organizations and will list the procedures for which prior review is required and the steps that must be followed in requesting such review. The department shall update the "Preprocedure Surgical Review List" annually. (Cross-reference 78.28(1) "e.")

**78.1(20) Transplants.**

a. Payment will be made only for the following organ and tissue transplant services:

(1) Kidney, cornea, skin, and bone transplants.  
(2) Allogeneic bone marrow transplants for the treatment of aplastic anemia, severe combined immunodeficiency disease, Wiskott-Aldrich syndrome, or the following types of leukemia: acute myelocytic leukemia in relapse or remission, chronic myelogenous leukemia, and acute lymphocytic leukemia in remission.

(3) Autologous bone marrow transplants for treatment of the following conditions: acute leukemia in remission with a high probability of relapse when there is no matched donor; resistant non-Hodgkin's lymphomas; lymphomas presenting poor prognostic features; recurrent or refractory neuroblastoma; or advanced Hodgkin's disease when conventional therapy has failed and there is no matched donor.

(4) Liver transplants for persons with extrahepatic biliary artesia or any other form of end-stage liver disease, except that coverage is not provided for persons with a malignancy extending beyond the margins of the liver.

Liver transplants require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1) "f.")

Covered liver transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

(5) Heart transplants. Artificial hearts and ventricular assist devices, either as a permanent replacement for a human heart or as a temporary life-support system until a human heart becomes available for transplants, are not covered. Heart-lung transplants are covered where bilateral or unilateral lung transplantation with repair of a congenital cardiac defect is contraindicated.

Heart transplants and heart-lung transplants described above require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1) "f.") Covered heart transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

(6) Lung transplants. Lung transplants for persons having end-stage pulmonary disease. Lung transplants require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1) "f.") Covered transplants are payable only when performed in a facility that meets the requirements of 78.3(10). Heart-lung transplants are covered consistent with criteria in subparagraph (5) above.

(7) Pancreas transplants for persons with type I diabetes mellitus, as follows:

1. Simultaneous pancreas-kidney transplants and pancreas after kidney transplants are covered.
2. Pancreas transplants alone are covered for persons exhibiting any of the following:
  - A history of frequent, acute, and severe metabolic complications (e.g., hypoglycemia, hyperglycemia, or ketoacidosis) requiring medical attention.
  - Clinical problems with exogenous insulin therapy that are so severe as to be incapacitating.
  - Consistent failure of insulin-based management to prevent acute complications.

The pancreas transplants listed under this subparagraph require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1) "f.")

Covered transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

Transplantation of islet cells or partial pancreatic tissue is not covered.

*b.* Donor expenses incurred directly in connection with a covered transplant are payable. Expenses incurred for complications that arise with respect to the donor are covered only if they are directly and immediately attributed to surgery. Expenses of searching for a donor are not covered.

*c.* All transplants must be medically necessary and meet other general requirements of this chapter for physician and hospital services.

*d.* Payment will not be made for any transplant not specifically listed in paragraph “*a.*”

**78.1(21)** Utilization review. Utilization review shall be conducted of Medicaid members who access more than 24 outpatient visits in any 12-month period from physicians, advanced registered nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. For the purposes of utilization review, the term “physician” does not include a psychiatrist. Refer to rule 441—76.9(249A) for further information concerning the member lock-in program.

**78.1(22)** Risk assessment. Risk assessment, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed at the initial visit during a Medicaid member’s pregnancy.

*a.* If the risk assessment reflects a low-risk pregnancy, the assessment shall be completed again at approximately the twenty-eighth week of pregnancy.

*b.* If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. Enhanced services include health education, social services, nutrition education, and a postpartum home visit. Additional reimbursement shall be provided for obstetrical services related to a high-risk pregnancy. (See description of enhanced services at subrule 78.25(3).)

**78.1(23)** EPSDT care coordination. Rescinded IAB 12/3/08, effective 2/1/09.

**78.1(24)** Topical fluoride varnish. Payment shall be made for application of an FDA-approved topical fluoride varnish, as defined by the Current Dental Terminology, Third Edition (CDT-3), for the purpose of preventing the worsening of early childhood caries in children aged 0 to 36 months of age, when rendered by physicians acting within the scope of their practice, licensure, and other applicable state law, subject to the following provisions and limitations:

*a.* Application of topical fluoride varnish must be provided in conjunction with an early and periodic screening, diagnosis, and treatment (EPSDT) examination which includes a limited oral screening.

*b.* Separate payment shall be available only for application of topical fluoride varnish, which shall be at the same rate of reimbursement paid to dentists for providing this service. Separate payment for the limited oral screening shall not be available, as this service is already part of and paid under the EPSDT screening examination.

*c.* Parents, legal guardians, or other authorized caregivers of children receiving application of topical fluoride varnish as part of an EPSDT screening examination shall be informed by the physician or auxiliary staff employed by and under the physician’s supervision that this application is not a substitute for comprehensive dental care.

*d.* Physicians rendering the services under this subrule shall make every reasonable effort to refer or facilitate referral of these children for comprehensive dental care rendered by a dental professional.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 8714B, IAB 5/5/10, effective 5/1/10]

**441—78.2(249A) Prescribed outpatient drugs.** Payment will be made for “covered outpatient drugs” as defined in 42 U.S.C. Section 1396r-8(k)(2)-(4) subject to the conditions and limitations specified in this rule.

**78.2(1)** *Qualified prescriber.* All drugs are covered only if prescribed by a legally qualified practitioner (physician, dentist, podiatrist, therapeutically certified optometrist, physician assistant, or advanced registered nurse practitioner).

**78.2(2)** *Prescription required.* As a condition of payment for all drugs, including “nonprescription” or “over-the-counter” drugs that may otherwise be dispensed without a prescription, a prescription shall

be transmitted as specified in Iowa Code sections 124.308 and 155A.27, subject to the provisions of Iowa Code section 155A.29 regarding refills. All prescriptions shall be available for audit by the department.

**78.2(3) *Qualified source.*** All drugs are covered only if marketed by manufacturers that have signed a Medicaid rebate agreement with the Secretary of Health and Human Services in accordance with Public Law 101-508 (Omnibus Budget Reconciliation Act of 1990).

**78.2(4) *Prescription drugs.*** Drugs that may be dispensed only upon a prescription are covered subject to the following limitations.

*a.* Prior authorization is required as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A as amended by 2010 Iowa Acts, Senate File 2088, section 347.

(1) For any drug requiring prior authorization, reimbursement will be made for a 72-hour or three-day supply dispensed in an emergency when a prior authorization request cannot be submitted.

(2) Unless the manufacturer or labeler of a mental health prescription drug that has a significant variation in therapeutic or side effect profile from other drugs in the same therapeutic class enters into a contract to provide the state with a supplemental rebate, the drug may be placed on the preferred drug list as nonpreferred, with prior authorization required. However, prior authorization shall not be required for such a drug for a member whose regimen on the drug was established before January 1, 2011, as verified by documented pharmacy claims.

(3) For mental health prescription drugs requiring prior authorization that have a significant variation in therapeutic or side effect profile from other drugs in the same therapeutic class, reimbursement will be made for up to a seven-day supply pending prior authorization. A request for prior authorization shall be deemed approved if the prescriber:

1. Has on file with the department current contact information, including a current fax number, and a signed Form 470-4914, Fax Confidentiality Certificate, and

2. Does not receive a notice of approval or disapproval within 48 hours of a request for prior authorization.

*b.* Payment is not made for:

(1) Drugs whose prescribed use is not for a medically accepted indication as defined by Section 1927(k)(6) of the Social Security Act.

(2) Drugs used for anorexia, weight gain, or weight loss.

(3) Drugs used for cosmetic purposes or hair growth.

(4) Rescinded IAB 11/2/11, effective 11/1/11.

(5) Otherwise covered outpatient drugs if the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or the manufacturer's designee.

(6) Drugs described in Section 107(c)(3) of the Drug Amendments of 1962 and identical, similar, or related drugs (within the meaning of Section 310.6(b)(1) of Title 21 of the Code of Federal Regulations (drugs identified through the Drug Efficacy Study Implementation (DESI) review)).

(7) "Covered Part D drugs" as defined by 42 U.S.C. Section 1395w-102(e)(1)-(2) for any "Part D eligible individual" as defined by 42 U.S.C. Section 1395w-101(a)(3)(A), including a member who is not enrolled in a Medicare Part D plan.

(8) Drugs prescribed for fertility purposes, except when prescribed for a medically accepted indication other than infertility, as defined in subparagraph (1).

(9) Drugs used for the treatment of sexual or erectile dysfunction, except when used to treat a condition other than sexual or erectile dysfunction for which the drug has been approved by the U.S. Food and Drug Administration.

(10) Prescription drugs for which the prescription was executed in written (and nonelectronic) form unless the prescription was executed on a tamper-resistant pad, as required by Section 1903(i)(23) of the Social Security Act (42 U.S.C. Section 1396b(i)(23)).

(11) Drugs used for symptomatic relief of cough and colds, except for nonprescription drugs listed at subrule 78.2(5).

**78.2(5) *Nonprescription drugs.*** The following drugs that may otherwise be dispensed without a prescription are covered subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A:

- Acetaminophen tablets 325 mg, 500 mg
- Acetaminophen elixir 160 mg/5 ml
- Acetaminophen solution 100 mg/ml
- Acetaminophen suppositories 120 mg
- Artificial tears ophthalmic solution
- Artificial tears ophthalmic ointment
- Aspirin tablets 325 mg, 650 mg, 81 mg (chewable)
- Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg
- Aspirin tablets, buffered 325 mg
- Bacitracin ointment 500 units/gm
- Benzoyl peroxide 5%, gel, lotion
- Benzoyl peroxide 10%, gel, lotion
- Calcium carbonate chewable tablets 500 mg, 750 mg, 1000 mg, 1250 mg
- Calcium carbonate suspension 1250 mg/5 ml
- Calcium carbonate tablets 600 mg
- Calcium carbonate-vitamin D tablets 500 mg-200 units
- Calcium carbonate-vitamin D tablets 600 mg-200 units
- Calcium citrate tablets 950 mg (200 mg elemental calcium)
- Calcium gluconate tablets 650 mg
- Calcium lactate tablets 650 mg
- Cetirizine hydrochloride liquid 1 mg/ml
- Cetirizine hydrochloride tablets 5 mg
- Cetirizine hydrochloride tablets 10 mg
- Chlorpheniramine maleate tablets 4 mg
- Clotrimazole vaginal cream 1%
- Diphenhydramine hydrochloride capsules 25 mg
- Diphenhydramine hydrochloride elixir, liquid, and syrup 12.5 mg/5 ml
- Epinephrine racemic solution 2.25%
- Ferrous sulfate tablets 325 mg
- Ferrous sulfate elixir 220 mg/5 ml
- Ferrous sulfate drops 75 mg/0.6 ml
- Ferrous gluconate tablets 325 mg
- Ferrous fumarate tablets 325 mg
- Guaifenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid
- Ibuprofen suspension 100 mg/5 ml
- Ibuprofen tablets 200 mg
- Insulin
- Lactic acid (ammonium lactate) lotion 12%
- Loperamide hydrochloride liquid 1 mg/5 ml
- Loperamide hydrochloride tablets 2 mg
- Loratadine syrup 5 mg/5 ml
- Loratadine tablets 10 mg
- Magnesium hydroxide suspension 400 mg/5 ml
- Magnesium oxide capsule 140 mg (85 mg elemental magnesium)
- Magnesium oxide tablets 400 mg
- Meclizine hydrochloride tablets 12.5 mg, 25 mg oral and chewable
- Miconazole nitrate cream 2% topical and vaginal
- Miconazole nitrate vaginal suppositories, 100 mg
- Multiple vitamin and mineral products with prior authorization

Neomycin-bacitracin-polymyxin ointment  
 Niacin (nicotinic acid) tablets 50 mg, 100 mg, 250 mg, 500 mg  
 Nicotine gum 2 mg, 4 mg  
 Nicotine lozenge 2 mg, 4 mg  
 Nicotine patch 7 mg/day, 14 mg/day and 21 mg/day  
 Pediatric oral electrolyte solutions  
 Permethrin lotion 1%  
 Polyethylene glycol 3350 powder  
 Pseudoephedrine hydrochloride tablets 30 mg, 60 mg  
 Pseudoephedrine hydrochloride liquid 30 mg/5 ml  
 Pyrethrins-piperonyl butoxide liquid 0.33-4%  
 Pyrethrins-piperonyl butoxide shampoo 0.3-3%  
 Pyrethrins-piperonyl butoxide shampoo 0.33-4%  
 Salicylic acid liquid 17%  
 Senna tablets 187 mg  
 Sennosides-docusate sodium tablets 8.6 mg-50 mg  
 Sennosides syrup 8.8 mg/5 ml  
 Sennosides tablets 8.6 mg  
 Sodium bicarbonate tablets 325 mg  
 Sodium bicarbonate tablets 650 mg  
 Sodium chloride hypertonic ophthalmic ointment 5%  
 Sodium chloride hypertonic ophthalmic solution 5%  
 Tolnaftate 1% cream, solution, powder

Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A.

**78.2(6)** *Quantity prescribed and dispensed.*

*a.* When it is not therapeutically contraindicated, the legally qualified practitioner shall prescribe a quantity of prescription medication sufficient for up to a 31-day supply. Oral contraceptives may be prescribed in 90-day quantities.

*b.* Oral solid forms of covered nonprescription items shall be prescribed and dispensed in a minimum quantity of 100 units per prescription or the currently available consumer package size except when dispensed via a unit-dose system.

**78.2(7)** *Lowest cost item.* The pharmacist shall dispense the lowest cost item in stock that meets the requirements of the practitioner as shown on the prescription.

**78.2(8)** *Consultation.* In accordance with Public Law 101-508 (Omnibus Budget Reconciliation Act of 1990), a pharmacist shall offer to discuss information regarding the use of the medication with each Medicaid member or the caregiver of a member presenting a prescription. The consultation is not required if the person refuses the consultation. Standards for the content of the consultation shall be found in rules of the Iowa board of pharmacy.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 8097B, IAB 9/9/09, effective 11/1/09; ARC 9175B, IAB 11/3/10, effective 1/1/11; ARC 9699B, IAB 9/7/11, effective 9/1/11; ARC 9834B, IAB 11/2/11, effective 11/1/11]

**441—78.3(249A) Inpatient hospital services.** Payment for inpatient hospital admission is approved when it meets the criteria for inpatient hospital care as determined by the Iowa Foundation for Medical Care (IFMC). All cases are subject to random retrospective review and may be subject to a more intensive retrospective review if abuse is suspected. In addition, transfers, outliers, and readmissions within 31 days are subject to random review. Readmissions to the same facility due to premature discharge shall not be paid a new DRG. Selected admissions and procedures are subject to a 100 percent review before the services are rendered. Medicaid payment for inpatient hospital admissions and continued stays are approved when the admissions and continued stays are determined to meet the criteria for inpatient hospital care. (Cross-reference 78.28(5)) The criteria are available from IFMC, 6000 Westown Parkway,

Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices. No payment will be made for waiver days.

See rule 441—78.31(249A) for policies regarding payment of hospital outpatient services.

If the recipient is eligible for inpatient or outpatient hospital care through the Medicare program, payment will be made for deductibles and coinsurance as set out in 441—subrule 79.1(22).

The DRG payment calculations include any special services required by the hospital, including a private room.

**78.3(1)** Payment for Medicaid-certified physical rehabilitation units will be approved for the day of admission but not the day of discharge or death.

**78.3(2)** No payment will be approved for private duty nursing.

**78.3(3)** Certification of inpatient hospital care shall be the same as that in effect in part A of Medicare. The hospital admittance records are sufficient for the original certification.

**78.3(4)** Services provided for intestinal or gastric bypass surgery for treatment of obesity requires prior approval, which must be obtained by the attending physician before surgery is performed.

**78.3(5)** Payment will be approved for drugs provided inpatients subject to the same provisions specified in 78.2(1) and 78.2(4)“b”(1) to (10) except for 78.2(4)“b”(7). The basis of payment for drugs administered to inpatients is through the DRG reimbursement.

*a.* Payment will be approved for drugs and supplies provided outpatients subject to the same provisions specified in 78.2(1) through 78.2(4) except for 78.2(4)“b”(7). The basis of payment for drugs provided outpatients is through a combination of Medicaid-determined fee schedules and ambulatory payment classification, pursuant to 441—subrule 79.1(16).

*b.* Hospitals that wish to administer vaccines which are available through the Vaccines for Children program to Medicaid members shall enroll in the Vaccines for Children program. In lieu of payment, vaccines available through the Vaccines for Children program shall be accessed from the department of public health for Medicaid members.

**78.3(6)** Payment for nursing care provided by a hospital shall be made to those hospitals which have been certified by the department of inspections and appeals as meeting the standards for a nursing facility.

**78.3(7)** Payment for inpatient hospital tests for purposes of diagnosis and treatment shall be made only when the tests are specifically ordered for the diagnosis and treatment of a particular patient's condition by the attending physician or other licensed practitioner acting within the scope of practice as defined by law, who is responsible for that patient's diagnosis or treatment.

**78.3(8)** Rescinded IAB 2/6/91, effective 4/1/91.

**78.3(9)** Payment will be made for sterilizations in accordance with 78.1(16).

**78.3(10)** Payment will be approved for organ and tissue transplant services, as specified in subrule 78.1(20). Kidney, cornea, skin, bone, allogeneic bone marrow, autologous bone marrow, heart, liver, and lung transplants are covered as specified in subrule 78.1(20). Lung transplants are payable at Medicare-designated lung transplant centers only. Heart and liver transplants are payable when performed at facilities that meet the following criteria:

*a. Recipient selection and education.*

(1) *Selection.* The transplant center must have written criteria based on medical need for transplantation for final facility selection of recipients. These criteria should include an equitable, consistent and practical protocol for selection of recipients. The criteria must be at least as strict as those specified by Medicare.

(2) *Education.* The transplant center will provide a written plan for recipient education. It shall include educational plans for recipient, family and significant others during all phases of the program. These phases shall include:

Intake.

Preparation and waiting period.

Preadmission.

Hospitalization.

Discharge planning.

Follow-up.

*b. Staffing and resource commitment.*

(1) *Transplant surgeon.* The transplant center must have on staff a qualified transplant surgeon.

The surgeon must have received at least one year of training at a transplant center approved by the American Society of Transplant Surgeons under the direction of an experienced transplant surgeon and must have had at least two years of experience in all facets of transplant surgery specific to the surgeon's specialty. This experience must include management of recipients' presurgical and postsurgical care and actual experience as a member of a transplant team at the institution. The transplant surgeon will have an understanding of the principles of and demonstrated expertise in the use of immunosuppressive therapy.

The transplant surgeon will be certified by the American Board of Thoracic Surgery or equivalent for heart transplants and the American Board of Surgery or equivalent for liver transplants.

The transplant surgeon will be the defined leader of a stable, established transplant team that has a strong commitment to the transplant program.

(2) *Transplant team.* The transplant team will be clearly defined with leadership and corresponding responsibilities of all team members identified.

The team should consist of:

A surgeon director.

A board-certified internist or pediatrician with training and expertise in organ transplantation medicine and clinical use of immunosuppressive regimens.

The transplant center will assume responsibility for initial training and continuing education of the transplant team and ancillary personnel. The center will maintain records that demonstrate competency in achieving, maintaining and improving skills in the distinct areas of expertise of each of the team members.

(3) *Physicians.* The transplant center will have on staff or available for consultation physicians with the following areas of expertise:

Anesthesiology.

Cardiology.

Dialysis.

Gastroenterology.

Hepatology.

Immunology.

Infectious diseases.

Nephrology.

Neurology.

Pathology.

Pediatrics.

Psychiatry.

Pulmonary medicine.

Radiology.

Rehabilitation medicine.

Liaison with the recipient's permanent physician is established for the purpose of providing continuity and management of the recipient's long-term care.

(4) *Support personnel and resources.* The center must have a commitment of sufficient resources and planning for implementation and operation of the transplant program. Indicators of the commitment will include the following:

Persons with expertise in the following areas available at the transplant center:

Anesthesiology.

Blood bank services.

Cardiology.

Cardiovascular surgery.

Dialysis.

Dietary services.

Gastroenterology.

Infection control.

Laboratory services (pathology, microbiology, immunology, tissue typing, and monitoring of immunosuppressive drugs).

Legal counsel familiar with transplantation laws and regulations.

Nursing service department with staff available who have expertise in the care of transplant recipients, especially in managing immunosuppressed patients and hemodynamic support.

Respiratory therapy.

Pharmaceutical services.

Physical therapy.

Psychiatry.

Psycho-social.

The center will have active cardiovascular, medical, and surgical programs with the ability and willingness to perform diagnostic and evaluative procedures appropriate to transplants on an emergency and ongoing basis.

The center will have designated an adequate number of intensive care and general service beds to support the transplant center.

(5) *Laboratory.* Each transplant center must have direct local 24-hour per day access to histocompatibility testing facilities. These facilities must meet the Standards for Histocompatibility Testing set forth by the Committee on Quality Assurance and Standards of the American Society for Histocompatibility and Immunogenetics (ASHI). As specified by ASHI, the director of the facility shall hold a doctoral degree in biological science, or be a physician, and subsequent to graduation shall have had four years' experience in immunology, two of which were devoted to formal training in human histocompatibility testing, documented to be professionally competent by external measures such as national proficiency testing, participation in national or international workshops or publications in peer-reviewed journals. The laboratory must successfully participate in a regional or national testing program.

*c. Experience and survival rates.*

(1) *Experience.* Centers will be given a minimum volume requirement of 12 heart or 12 liver transplants that should be met within one year. Due to special considerations such as patient case mix or donor availability, an additional one year conditional approval may be given if the minimum volume is not met the first year.

For approval of an extrarenal organ transplant program it is highly desirable that the institution: 1. has available a complete team of surgeons, physicians, and other specialists with specific experience in transplantation of that organ, or 2. has an established approved renal transplant program at that institution and personnel with expertise in the extrarenal organ system itself.

(2) *Survival rates.* The transplant center will achieve a record of acceptable performance consistent with the performance and outcomes at other successful designated transplant centers. The center will collect and maintain recipient and graft survival and complication rates. A level of satisfactory success and safety will be demonstrated with bases for substantial probability of continued performance at an acceptable level.

To encourage a high level of performance, transplant programs must achieve and maintain a minimum one-year patient survival rate of 70 percent for heart transplants and 50 percent for liver transplants.

*d. Organ procurement.* The transplant center will participate in a nationwide organ procurement and typing network.

Detailed plans must exist for organ procurement yielding viable transplantable organs in reasonable numbers, meeting established legal and ethical criteria.

The transplant center must be a member of the National Organ Procurement and Transplant Network.

*e. Maintenance of data, research, review and evaluation.*

(1) *Maintenance of data.* The transplant center will collect and maintain data on the following:

Risk and benefit.

Morbidity and mortality.

Long-term survival.

Quality of life.

Recipient demographic information.

These data should be maintained in the computer at the transplant center monthly.

The transplant center will submit the above data to the United Network of Organ Sharing yearly.

(2) *Research.* The transplant center will have a plan for and a commitment to research.

Ongoing research regarding the transplanted organs is required.

The transplant center will have a program in graduate medical education or have a formal agreement with a teaching institution for affiliation with a graduate medical education program.

(3) *Review and evaluation.* The transplant center will have a plan for ongoing evaluation of the transplantation program.

The transplant center will have a detailed plan for review and evaluation of recipient selection, preoperative, operative, postoperative and long-term management of the recipient.

The transplant center will conduct concurrent ongoing studies to ensure high quality services are provided in the transplantation program.

The transplant center will provide information to members of the transplant team and ancillary staff regarding the findings of the quality assurance studies. This information will be utilized to provide education geared toward interventions to improve staff performance and reduce complications occurring in the transplant process.

The transplant center will maintain records of all quality assurance and peer review activities concerning the transplantation program to document identification of problems or potential problems, intervention, education and follow-up.

*f. Application procedure.* A Medicare-designated heart, liver, or lung transplant facility needs only to submit evidence of this designation to the Iowa Medicaid enterprise provider services unit. The application procedure for other heart and liver facilities is as follows:

(1) An original and two copies of the application must be submitted on 8½ by 11 inch paper, signed by a person authorized to do so. The facility must be a participating hospital under Medicaid and must specify its provider number, and the name and telephone number of a contact person should there be questions regarding the application.

(2) Information and data must be clearly stated, well organized and appropriately indexed to aid in its review against the criteria specified in this rule. Each page must be numbered.

(3) To the extent possible, the application should be organized into five sections corresponding to each of the five major criteria and addressing, in order, each of the subcriteria identified.

(4) The application should be mailed to the Iowa Medicaid enterprise provider services unit.

*g. Review and approval of facilities.* An organized review committee will be established to evaluate performance and survival statistics and make recommendations regarding approval as a designated transplant center based on acceptable performance standards established by the review organization and approved by the Medicaid agency.

There will be established protocol for the systematic evaluation of patient outcome including survival statistics.

Once a facility applies for approval and is approved as a heart or liver transplant facility for Medicaid purposes, it is obliged to report immediately to the department any events or changes which would affect its approved status. Specifically, a facility must report any significant decrease in its experience level or survival rates, the transplantation of patients who do not meet its patient selection criteria, the loss of key members of the transplant team, or any other major changes that could affect the performance of heart or liver transplants at the facility. Changes from the terms of approval may lead to withdrawal of approval for Medicaid coverage of heart or liver transplants performed at the facility.

**78.3(11)** Payment will be approved for inpatient hospital care rendered a patient in connection with dental treatment only when the mental, physical, or emotional condition of the patient prevents the dentist from providing this necessary care in the office.

**78.3(12)** Payment will be approved for an assessment fee as specified in 441—paragraphs 79.1(16)“a” and “r” to determine if a medical emergency exists.

Medical emergency is defined as a sudden or unforeseen occurrence or combination of circumstances presenting a substantial risk to an individual's health unless immediate medical treatment is given.

The determination of whether a medical emergency exists will be based on the patient's medical condition including presenting symptoms and medical history prior to treatment or evaluation.

**78.3(13)** Payment for patients in acute hospital beds who are determined by IFMC to require the skilled nursing care level of care shall be made at an amount equal to the sum of the direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16)“f”(3) plus the non-direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16)“f”(3), with the rate component limits being revised July 1, 2001, and every second year thereafter. This rate is effective (a) as of the date of notice by IFMC that the lower level of care is required or (b) for the days IFMC determines in an outlier review that the lower level of care was required.

**78.3(14)** Payment for patients in acute hospital beds who are determined by IFMC to require nursing facility level of care shall be made at an amount equal to the sum of the direct care rate component limit for Medicaid nursing facilities pursuant to 441—subparagraph 81.6(16)“f”(1) plus the non-direct care rate component limit for Medicaid nursing facilities pursuant to 441—subparagraph 81.6(16)“f”(1), with the rate component limits being revised July 1, 2001, and every second year thereafter. This rate is effective (a) as of the date of notice by IFMC that the lower level of care is required or (b) for the days IFMC determines in an outlier review that the lower level of care was required.

**78.3(15)** Payment for inpatient hospital charges associated with surgical procedures on the “Outpatient/Same Day Surgery List” produced by the Iowa Foundation for Medical Care shall be made only when attending physician has secured approval from the hospital's utilization review department prior to admittance to the hospital. Approval shall be granted when inpatient care is deemed to be medically necessary based on the condition of the patient or when the surgical procedure is not performed as a routine, primary, independent procedure. The “Outpatient/Same Day Surgery List” shall be published by the department in the provider manuals for hospitals and physicians. The “Outpatient/Same Day Surgery List” shall be developed by the Iowa Foundation for Medical Care, and shall include procedures which can safely and effectively be performed in a doctor's office or on an outpatient basis in a hospital. The Iowa Foundation for Medical Care may add, delete or modify entries on the “Outpatient/Same Day Surgery List.”

**78.3(16)** Payment will be made for medically necessary skilled nursing care when provided by a hospital participating in the swing-bed program certified by the department of inspections and appeals and approved by the U.S. Department of Health and Human Services. Payment shall be at an amount equal to the sum of the direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16)“f”(3) and the non-direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16)“f”(3), with the rate component limits being revised July 1, 2001, and every second year thereafter.

**78.3(17)** Rescinded IAB 8/9/89, effective 10/1/89.

**78.3(18)** Preprocedure review by the IFMC is required if hospitals are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices. (Cross-reference 78.28(5))

**78.3(19)** Rescinded IAB 10/8/97, effective 12/1/97.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.4(249A) Dentists.** Payment will be made for medical and surgical services furnished by a dentist to the extent these services may be performed under state law either by doctors of medicine, osteopathy, dental surgery or dental medicine and would be covered if furnished by doctors of medicine or osteopathy. Payment will also be made for the following dental procedures subject to the exclusions for services to adults 21 years of age and older set forth in subrule 78.4(14):

**78.4(1) Preventive services.** Payment shall be made for the following preventive services:

a. Oral prophylaxis, including necessary scaling and polishing, is payable only once in a six-month period except for persons who, because of physical or mental disability, need more frequent care. Documentation supporting the need for oral prophylaxis performed more than once in a six-month period must be maintained.

b. Topical application of fluoride is payable once in a six-month period except for people who need more frequent applications because of physical or mental disability. (This does not include the use of fluoride prophylaxis paste as fluoride treatment.)

c. Pit and fissure sealants are payable for placement on deciduous and permanent posterior teeth only. Reimbursement for sealants is restricted to work performed on members through 18 years of age and on members who have a physical or mental disability that impairs their ability to maintain adequate oral hygiene. Replacement sealants are covered when medically necessary, as documented in the patient record.

**78.4(2) Diagnostic services.** Payment shall be made for the following diagnostic services:

a. A comprehensive oral evaluation is payable once per patient per dentist in a three-year period when the patient has not seen that dentist during the three-year period.

b. A periodic oral examination is payable once in a six-month period.

c. A complete mouth radiograph survey consisting of a minimum of 14 periapical films and bite-wing films is a payable service once in a five-year period, except when medically necessary to evaluate development, and to detect anomalies, injuries and diseases. Complete mouth radiograph surveys are not payable under the age of six. A panoramic-type radiography with bitewings is considered the same as a complete mouth radiograph survey.

d. Supplemental bitewing films are payable only once in a 12-month period.

e. Single periapical films are payable when necessary.

f. Intraoral radiograph, occlusal.

g. Extraoral radiograph.

h. Posterior-anterior and lateral skull and facial bone radiograph, survey film.

i. Temporomandibular joint radiograph.

j. Cephalometric film.

k. Diagnostic casts are payable only for orthodontic cases or when requested by the Iowa Medicaid enterprise medical services unit's dental consultant.

**78.4(3) Restorative services.** Payment shall be made for the following restorative services:

a. Treatment of dental caries is payable in those areas which require immediate attention. Restoration of incipient or nonactive carious lesions are not payable. Carious activity may be considered incipient when there is no penetration of the dento-enamel junction as demonstrated in diagnostic radiographs.

b. Amalgam alloy and composite resin-type filling materials are reimbursable only once for the same restoration in a two-year period.

c. Rescinded IAB 5/1/02, effective 7/1/02.

d. Two laboratory-fabricated crowns using nonprecious materials, other than stainless steel, are payable per member in a 12-month period. Additional laboratory-fabricated crowns using nonprecious materials, other than stainless steel, are payable when prior authorization has been obtained. Noble metals are payable for crowns when members are allergic to all other restorative materials. Stainless steel crowns are payable when a more conservative procedure would not be serviceable. (Cross-reference 78.28(2) "e")

e. Cast post and core, steel post and composite or amalgam in addition to a crown is payable when a tooth is functional and the integrity of the tooth would be jeopardized by no post support.

f. Payment as indicated will be made for the following restorative procedures:

(1) Amalgam or acrylic buildups are considered part of the preparation for the completed restoration.

(2) One, two, or more restorations on one surface of a tooth shall be paid as a one-surface restoration, i.e., mesial occlusal pit and distal occlusal pit of a maxillary molar or mesial and distal occlusal pits of a lower bicuspid.

(3) Occlusal lingual groove of a maxillary molar that extends from the distal occlusal pit and down the distolingual groove will be paid as a two-surface restoration. This restoration and a mesial occlusal pit restoration on the same tooth will be paid as one, two-surface restoration.

(4) Rescinded IAB 5/1/02, effective 7/1/02.

(5) A two-surface anterior composite restoration will be payable as a one-surface restoration if it involved the lingual surface.

(6) Tooth preparation, temporary restorations, cement bases, pulp capping, impressions, local anesthesia and inhaled anesthesia are included in the restorative fee and may not be billed separately.

(7) Pin retention will be paid on a per-tooth basis and in addition to the final restoration.

(8) More than four surfaces on an amalgam restoration will be reimbursed as a “four-surface” amalgam.

(9) An amalgam restoration is not payable following a sedative filling in the same tooth unless the sedative filling was placed more than 30 days previously.

**78.4(4) Periodontal services.** Payment may be made for the following periodontal services:

a. Full-mouth debridement to enable comprehensive periodontal evaluation and diagnosis is payable once every 24 months. This procedure is not payable on the same date of service when other prophylaxis or periodontal services are performed.

b. Periodontal scaling and root planing is payable when prior approval has been received. A request for approval must be accompanied by a plan for treatment, a completed copy of a periodontal probe chart that exhibits pocket depths, history and radiograph(s). Payment for periodontal scaling and root planing will be approved when interproximal and subgingival calculus is evident in X-rays or when justified and documented that curettage, scaling or root planing is required in addition to routine prophylaxis. (Cross-reference 78.28(2)“a”(1))

c. Periodontal surgical procedures which include gingivoplasty, osseous surgery, and osseous allograft are payable services when prior approval has been received. A request for approval must be accompanied by a plan for treatment, a completed copy of a periodontal probe chart that exhibits pocket depths, history and radiograph(s). Payment for these surgical procedures will be approved after periodontal scaling and root planing has been provided, a reevaluation examination has been completed, and the patient has demonstrated reasonable oral hygiene, unless the patient is unable to demonstrate reasonable oral hygiene because of physical or mental disability or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.28(2)“a”(2))

d. Pedicle soft tissue graft and free soft tissue graft are payable services with prior approval based on a written narrative describing medical necessity. (Cross-reference 78.28(2)“a”(3))

e. Periodontal maintenance therapy which includes oral prophylaxis, measurement of pocket depths and limited root planing and scaling is a payable service when prior approval has been received. A request for approval must be accompanied by a periodontal treatment plan, a completed copy of a periodontal probe chart which exhibits pocket depths, periodontal history and radiograph(s). Payment for periodontal maintenance therapy may be approved after periodontal scaling and root planing or periodontal surgical procedures have been provided. Periodontal maintenance therapy may be approved once per three-month interval for moderate to advanced cases if the condition would deteriorate without treatment. (Cross-reference 78.28(2)“a”(4))

f. Payment as indicated will be made for the following periodontal services:

(1) Periodontal scaling and root planing, gingivoplasty, osseous surgery will be paid per quadrant.

(2) Gingivoplasty will be paid per tooth.

(3) Osseous allograft will be paid as a single site if one site is involved, or if more than one site is involved, payment will be made for multiple sites.

**78.4(5) Endodontic services.** Payment shall be made for the following endodontic services:

a. Root canal treatments on permanent anterior and posterior teeth when extensive posttreatment restorative procedures are not necessary and when missing teeth do not jeopardize the integrity or function of the dental arches.

b. Vital pulpotomies. Cement bases, pulp capping, and insulating liners are considered part of the restoration and may not be billed separately.

c. Surgical endodontic treatment is payable when prior approval has been received. Payment for an apicoectomy, performed as a separate surgical procedure; an apicoectomy, performed in conjunction with endodontic procedure; an apical curettage; a root resection; or excision of hyperplastic tissue will be approved when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. Surgical endodontic procedures may be indicated when:

(1) Conventional root canal treatment cannot be successfully completed because canals cannot be negotiated, debrided or obturated due to calcifications, blockages, broken instruments, severe curvatures, and dilacerated roots.

(2) Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross-reference 78.28(2) "d")

d. Endodontic retreatment when prior authorization has been received. Authorization for retreatment of a tooth with previous endodontic treatment shall be granted when the conventional treatment has been completed, a reasonable time has elapsed, and failure has been demonstrated with a radiograph and narrative history.

**78.4(6) Oral surgery—medically necessary.** Payment shall be made for medically necessary oral surgery services furnished by dentists to the extent that these services may be performed under state law either by doctors of medicine, osteopathy, dental surgery or dental medicine and would be covered if furnished by doctors of medicine or osteopathy, as defined in rule 441—78.1(249A). These services will be reimbursed in a manner consistent with the physician's reimbursement policy. The following surgical procedures are also payable when performed by a dentist:

- a. Extractions, both surgical and nonsurgical.
- b. Impaction (soft tissue impaction, upper or lower) that requires an incision of overlying soft tissue and the removal of the tooth.
- c. Impaction (partial bony impaction, upper or lower) that requires incision of overlying soft tissue, elevation of a flap, removal of bone and removal of the tooth.
- d. Impaction (complete bony impaction, upper or lower) that requires incision of overlying soft tissue, elevation of a flap, removal of bone and section of the tooth for removal.
- e. Root recovery (surgical removal of residual root).
- f. Oral antral fistula closure (or antral root recovery).
- g. Surgical exposure of impacted or unerupted tooth for orthodontic reasons, including ligation when indicated.
- h. Surgical exposure of impacted or unerupted tooth to aid eruption.
- i. General anesthesia, intravenous sedation, and non-intravenous conscious sedation are payable services when the extensiveness of the procedure indicates it or there is a concomitant disease or impairment which warrants its use.
- j. Routine postoperative care is considered part of the fee for surgical procedures and may not be billed separately.
- k. Payment may be made for postoperative care where need is shown to be beyond normal follow-up care or for postoperative care where the original service was performed by another dentist.

**78.4(7) Prosthetic services.** Payment may be made for the following prosthetic services:

a. An immediate denture and a first-time complete denture including six months' postdelivery care. An immediate denture and a first-time complete denture are payable when the denture is provided to establish masticatory function. An immediate denture or a first-time complete denture is payable only once following the removal of teeth it replaces. A complete denture is payable only once in a five-year period except when the denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure and is required to prevent significant dental problems. Replacement of complete dentures due to resorption in less than a five-year period is not payable.

b. A removable partial denture replacing anterior teeth, including six months' postdelivery care. A removable partial denture replacing anterior teeth is payable only once in a five-year period unless the removable partial denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure and is required to prevent significant dental problems. Replacement of a

removable partial denture replacing anterior teeth due to resorption in less than a five-year period is not payable.

*c.* A removable partial denture replacing posterior teeth including six months' postdelivery care when prior approval has been received. A removable partial denture replacing posterior teeth shall be approved when the member has fewer than eight posterior teeth in occlusion or the member has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one removable partial denture brings eight posterior teeth in occlusion, no additional removable partial denture will be approved. A removable partial denture replacing posterior teeth is payable only once in a five-year period unless the removable partial denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure and is required to prevent significant dental problems. Replacement of a removable partial denture replacing posterior teeth due to resorption in less than a five-year period is not payable. (Cross-reference 78.28(2) "c"(1))

*d.* A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth when prior approval has been received. A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth shall be approved for members whose medical condition precludes the use of a removable partial denture. High noble or noble metals shall be approved only when the member is allergic to all other restorative materials. A fixed partial denture replacing anterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.28(2) "c"(2))

*e.* A fixed partial denture (including an acid etch fixed partial denture) replacing posterior teeth when prior approval has been received. A fixed partial denture (including an acid etch fixed partial denture) replacing posterior teeth shall be approved for the member whose medical condition precludes the use of a removable partial denture and who has fewer than eight posterior teeth in occlusion or if the member has a full denture in one arch and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one fixed partial denture brings eight posterior teeth in occlusion, no additional fixed partial denture will be approved. High noble or noble metals will be approved only when the member is allergic to all other restorative materials. A fixed partial denture replacing posterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.28(2) "c"(3))

*f.* Obturator for surgically excised palatal tissue or deficient velopharyngeal function of cleft palate patients.

*g.* Chairside relines are payable only once per prosthesis every 12 months.

*h.* Laboratory processed relines are payable only once per prosthesis every 12 months.

*i.* Tissue conditioning is a payable service twice per prosthesis in a 12-month period.

*j.* Two repairs per prosthesis in a 12-month period are payable.

*k.* Adjustments to a complete or removable partial denture are payable when medically necessary after six months' postdelivery care. An adjustment consists of removal of acrylic material or adjustment of teeth to eliminate a sore area or to make the denture fit better. Warming dentures and massaging them for better fit or placing them in a sonic device does not constitute an adjustment.

*l.* Dental implants and related services when prior authorization has been received. Prior authorization shall be granted when the member is missing significant oral structures due to cancer, traumatic injuries, or developmental defects such as cleft palate and cannot use a conventional denture.

**78.4(8) Orthodontic procedures.** Payment may be made for the following orthodontic procedures:

*a.* Orthodontic services to treat handicapping malocclusions are payable with prior approval. A score of 26 or above on the index from "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968, is required for approval.

(1) A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will be approved only for the severe and the most handicapping. Assessment of the most handicapping

malocclusion is determined by the magnitude of the following variables: degree of malalignment, missing teeth, angle classification, overjet and overbite, openbite, and crossbite.

(2) A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the Iowa Medicaid enterprise.

(3) Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the Iowa Medicaid enterprise's orthodontic consultant if found to be medically necessary. (Cross-reference 78.28(2)“d”)

*b.* Space management services shall be payable when there is too little dental ridge to accommodate either the number or the size of teeth and if not corrected significant dental disease will result.

*c.* Tooth guidance for a limited number of teeth or interceptive orthodontics is a payable service when extensive treatment is not required. Pretreatment records are not required.

**78.4(9) *Treatment in a hospital.*** Payment will be approved for dental treatment rendered a hospitalized patient only when the mental, physical, or emotional condition of the patient prevents the dentist from providing necessary care in the office.

**78.4(10) *Treatment in a nursing facility.*** Payment will be approved for dental treatment provided in a nursing facility. When more than one patient is examined during the same nursing home visit, payment will be made by the Medicaid program for only one visit to the nursing home.

**78.4(11) *Office visit.*** Payment will be approved for an office visit for care of injuries or abnormal conditions of the teeth or supporting structure when treatment procedures or exams are not billed for that visit.

**78.4(12) *Office calls after hours.*** Payment will be approved for office calls after office hours in emergency situations. The office call will be paid in addition to treatment procedures.

**78.4(13) *Drugs.*** Payment will be made for drugs dispensed by a dentist only if there is no licensed retail pharmacy in the community where the dentist's office is located. If eligible to dispense drugs, the dentist should request a copy of the Prescribed Drugs Manual from the Iowa Medicaid enterprise provider services unit. Payment will not be made for writing prescriptions.

**78.4(14) *Services to members 21 years of age or older.*** Orthodontic procedures are not covered for members 21 years of age or older.

This rule is intended to implement Iowa Code section 249A.4.  
[ARC 9702B, IAB 9/7/11, effective 9/1/11]

**441—78.5(249A) Podiatrists.** Payment will be approved only for certain podiatric services.

**78.5(1)** Payment will be approved for the following orthotic appliances and treatment of nail pathologies:

- a.* Durable plantar foot orthotic.
- b.* Plaster impressions for foot orthotic.
- c.* Molded digital orthotic.
- d.* Shoe padding when appliances are not practical.
- e.* Custom molded space shoes for rheumatoid arthritis, congenital defects and deformities, neurotropic, diabetic and ischemic intractable ulcerations and deformities due to injuries.
- f.* Rams horn (hypertrophic) nails.
- g.* Onychomycosis (mycotic) nails.

**78.5(2)** Payment will be made for the same scope of podiatric services available through Part B of Title XVIII (Medicare) except as listed below:

*a.* Treatment of flatfoot. The term “flatfoot” is defined as a condition in which one or more arches have flattened out.

*b.* Treatment of subluxations of the foot are defined as partial dislocations or displacements of joint surfaces, tendons, ligaments, or muscles of the foot. Surgical or nonsurgical treatments undertaken for the sole purpose of correcting a subluxated structure in the foot as an isolated entity are not covered.

Reasonable and necessary diagnosis of symptomatic conditions that result from or are associated with partial displacement of foot structures is a covered service. Surgical correction in the subluxated foot structure that is an integral part of the treatment of a foot injury or is undertaken to improve the function of the foot or to alleviate an induced or associated symptomatic condition is a covered service.

c. Routine foot care. Routine foot care includes the cutting or removal of corns or callouses, the trimming of nails and other hygienic and preventive maintenance care in the realm of self-care such as cleaning and soaking the feet, the use of skin creams to maintain skin tone of both ambulatory and bedfast patients and any services performed in the absence of localized illness, injury, or symptoms involving the foot.

d. Orthopedic shoes. Payment will not be made for orthopedic shoes or for any device to be worn in or attached to orthopedic shoes or other types of shoes when provided by the podiatrist. Payment will be made to the podiatrist for the examination including tests to establish the need for orthopedic shoes.

**78.5(3)** Prescriptions are required for drugs and supplies as specified in paragraph 78.1(2)“c.” Payment shall be made for drugs dispensed by a podiatrist only if there is no licensed retail pharmacy in the community where the podiatrist’s office is located. If eligible to dispense drugs, the podiatrist should request a copy of the Prescribed Drugs Manual from the Iowa Medicaid enterprise provider services unit. Payment will not be made for writing prescriptions.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.6(249A) Optometrists.** Payment will be approved for medically necessary services and supplies provided by the optometrist within the scope of practice of optometry and the limitations of state law, subject to the following limitations and exclusions. Covered optometric services include a professional component and materials.

**78.6(1) Payable professional services are:**

a. Eye examinations. The coverage of eye examinations depends on the purpose of the examination. Services are covered if the examination is the result of a complaint or symptom of an eye disease or injury. Routine eye examinations are covered once in a 12-month period. These services are rendered in the optometrist’s office or clinic, the home, a nursing facility, or other appropriate setting. Payment for mileage shall be subject to the same approval and payment criteria as those in effect for Medicare Part B. The following levels of service are recognized for optometric examinations:

(1) Intermediate examination. A level of optometric or ophthalmological services pertaining to medical examination and evaluation, with initiation or continuation of a diagnostic and treatment program.

(2) Comprehensive examination. A level of optometric or ophthalmological services pertaining to medical examination and evaluation, with initiation or continuation of a diagnostic and treatment program, and a general evaluation of the complete visual system.

b. Medical services. Payment will be approved for medically necessary services and supplies within the scope of practice of the optometrist, including services rendered in the optometrist’s office or clinic, the home, a nursing facility, or other appropriate setting. Payment for mileage shall be subject to the same approval and payment criteria as those in effect for Medicare Part B.

c. Auxiliary procedures. The following auxiliary procedures and special tests are payable when performed by an optometrist. Auxiliary procedures and special tests are reimbursed as a separate procedure only when warranted by case history or diagnosis.

(1) Serial tonometry. Single tonometry is part of the intermediate and comprehensive exams and is not payable as a separate procedure as is serial tonometry.

(2) Gonioscopy.

(3) Extended ophthalmoscopy. Routine ophthalmoscopy is part of the intermediate and comprehensive examination and is not payable as a separate procedure. Generally, extended ophthalmoscopy is considered to be part of the comprehensive examination and, if performed in conjunction with that level of service, is not payable as a separate procedure.

(4) Visual fields. Gross visual field testing is part of general optometric services and is not reported separately.

- (5) External photography.
  - (6) Fundus photography.
  - (7) Retinal integrity evaluation.
  - d. Single vision and multifocal lens service, verification and subsequent service. When lenses are necessary, the following enumerated professional and technical optometric services are to be provided:
    - (1) When lenses are necessary, the following enumerated professional and technical optometric services are to be provided:
      1. Ordering of corrective lenses.
      2. Verification of lenses after fabrication.
      3. Adjustment and alignment of completed lens order.
    - (2) New lenses are subject to the following limitations:
      1. Up to three times for children up to one year of age.
      2. Up to four times per year for children one through three years of age.
      3. Once every 12 months for children four through seven years of age.
      4. Once every 24 months after eight years of age when there is a change in the prescription.
    - (3) Protective lenses are allowed for:
      1. Children through seven years of age.
      2. Members with vision in only one eye.
      3. Members with a diagnosis-related illness or disability where regular lenses would pose a safety risk.
  - e. Rescinded IAB 4/3/02, effective 6/1/02.
  - f. Frame service.
    - (1) When a new frame is necessary, the following enumerated professional and technical optometric services are to be provided:
      1. Selection and styling.
      2. Sizing and measurements.
      3. Fitting and adjustment.
      4. Readjustment and servicing.
    - (2) New frames are subject to the following limitations:
      1. One frame every six months is allowed for children through three years of age.
      2. One frame every 12 months is allowed for children four through six years of age.
      3. When there is a prescribed lens change and the new lenses cannot be accommodated by the current frame.
    - (3) Safety frames are allowed for:
      1. Children through seven years of age.
      2. Members with a diagnosis-related disability or illness where regular frames would pose a safety risk.
  - g. Rescinded IAB 4/3/02, effective 6/1/02.
  - h. Repairs or replacement of frames, lenses or component parts. Payment shall be made for service in addition to materials. The service fee shall not exceed the dispensing fee for a replacement frame. Payment shall be made for replacement of glasses when the original glasses have been lost or damaged beyond repair. Replacement of lost or damaged glasses is limited to once every 12 months for adults aged 21 and over, except for people with a mental or physical disability.
  - i. Fitting of contact lenses when required following cataract surgery, documented keratoconus, aphakia, or for treatment of acute or chronic eye disease. Up to eight pairs of contact lenses are allowed for children up to one year of age with aphakia. Up to four pairs of contact lenses per year are allowed for children one to three years of age with aphakia.
- 78.6(2) Ophthalmic materials.** Ophthalmic materials which are provided in connection with any of the foregoing professional optometric services shall provide adequate vision as determined by the optometrist and meet the following standards:
- a. Corrected curve lenses, unless clinically contraindicated, manufactured by reputable American manufacturers.

b. Standard plastic, plastic and metal combination, or metal frames manufactured by reputable American manufacturers, if available.

c. Prescription standards according to the American National Standards Institute (ANSI) standards and tolerance.

**78.6(3) Reimbursement.** The reimbursement for allowed ophthalmic material is subject to a fee schedule established by the department or to actual laboratory cost as evidenced by an attached invoice.

a. Materials payable by fee schedule are:

- (1) Lenses, single vision and multifocal.
- (2) Frames.
- (3) Case for glasses.

b. Materials payable at actual laboratory cost as evidenced by an attached invoice are:

- (1) Contact lenses.
- (2) Schroeder shield.
- (3) Ptosis crutch.
- (4) Protective lenses and safety frames.
- (5) Subnormal visual aids.

**78.6(4) Prior authorization.** Prior authorization is required for the following:

a. A second lens correction within a 24-month period for members eight years of age and older. Approval shall be given when the member's vision has at least a five-tenths diopter of change in sphere or cylinder or ten-degree change in axis in either eye.

b. Visual therapy may be authorized when warranted by case history or diagnosis for a period of time not greater than 90 days. Should continued therapy be warranted, the prior approval process shall be reaccomplished, accompanied by a report showing satisfactory progress. Approved diagnoses are convergence insufficiency and amblyopia. Visual therapy is not covered when provided by opticians.

c. Subnormal visual aids where near visual acuity is better than 20/100 at 16 inches, 2M print. Prior authorization is not required if near visual acuity as described above is less than 20/100. Subnormal visual aids include, but are not limited to, hand magnifiers, loupes, telescopic spectacles, or reverse Galilean telescope systems. Payment shall be actual laboratory cost as evidenced by an attached invoice.

(Cross-reference 78.28(3))

**78.6(5) Noncovered services.** Noncovered services include, but are not limited to, the following services:

- a. Glasses with cosmetic gradient tint lenses or other eyewear for cosmetic purposes.
- b. Glasses for protective purposes including glasses for eye safety, sunglasses, or glasses with photogray lenses. An exception to this is in 78.6(3) "b"(4).
- c. A second pair of glasses or spare glasses.
- d. Cosmetic surgery and experimental medical and surgical procedures.
- e. Contact lenses if vision is correctable with noncontact lenses except as found at paragraph 78.6(1) "i."

**78.6(6) Therapeutically certified optometrists.** Therapeutically certified optometrists may provide services and employ pharmaceutical agents in accordance with Iowa Code chapter 154 regulating the practice of optometry. A therapeutically certified optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry to employ the agents and perform the procedures provided by the Iowa Code.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 7548B, IAB 2/11/09, effective 4/1/09]

**441—78.7(249A) Opticians.** Payment will be approved only for certain services and supplies provided by opticians when prescribed by a physician (MD or DO) or an optometrist. Payment and procedure for obtaining services and supplies shall be the same as described in rule 441—78.6(249A). (Cross-reference 78.28(3))

**78.7(1) to 78.7(3) Rescinded** IAB 4/3/02, effective 6/1/02.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.8(249A) Chiropractors.** Payment will be made for the same chiropractic procedures payable under Title XVIII of the Social Security Act (Medicare).

**78.8(1) Covered services.** Chiropractic manipulative therapy (CMT) eligible for reimbursement is specifically limited by Medicaid to the manual manipulation (i.e., by use of the hands) of the spine for the purpose of correcting a subluxation demonstrated by X-ray. Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae.

**78.8(2) Indications and limitations of coverage.**

a. The subluxation must have resulted in a neuromusculoskeletal condition set forth in the table below for which CMT is appropriate treatment. The symptoms must be directly related to the subluxation that has been diagnosed. The mere statement or diagnosis of “pain” is not sufficient to support the medical necessity of CMT. CMT must have a direct therapeutic relationship to the patient’s condition. No other diagnostic or therapeutic service furnished by a chiropractor is covered under the Medicaid program.

| ICD-9  | CATEGORY I                                 | ICD-9  | CATEGORY II  | ICD-9  | CATEGORY III  |
|--------|--|--------|--|--------|---|
| 307.81 | Tension headache                           | 353.0  | Brachial plexus lesions  | 721.7  | Traumatic spondylopathy   |
| 721.0  | Cervical spondylosis without myelopathy    | 353.1  | Lumbosacral plexus lesions   | 722.0  | Displacement of cervical intervertebral disc without myelopathy |
| 721.2  | Thoracic spondylosis without myelopathy    | 353.2  | Cervical root lesions, NEC   | 722.10 | Displacement of lumbar intervertebral disc without myelopathy   |
| 721.3  | Lumbosacral spondylosis without myelopathy | 353.3  | Thoracic root lesions, NEC   | 722.11 | Displacement of thoracic intervertebral disc without myelopathy |
| 723.1  | Cervicalgia                                | 353.4  | Lumbosacral root lesions, NEC                                      | 722.4  | Degeneration of cervical intervertebral disc                    |
| 724.1  | Pain in thoracic spine                     | 353.8  | Other nerve root and plexus disorders                              | 722.51 | Degeneration of thoracic or thoracolumbar intervertebral disc   |
| 724.2  | Lumbago                                    | 719.48 | Pain in joint (other specified sites, must specify site)           | 722.52 | Degeneration of lumbar or lumbosacral intervertebral disc       |
| 724.5  | Backache, unspecified                      | 720.1  | Spinal enthesopathy  | 722.81 | Post laminectomy syndrome, cervical region                      |
| 784.0  | Headache                                   | 722.91 | Calcification of intervertebral cartilage or disc, cervical region | 722.82 | Post laminectomy syndrome, thoracic region                      |
|        |  | 722.92 | Calcification of intervertebral cartilage or disc, thoracic region | 722.83 | Post laminectomy syndrome, lumbar region                        |
|        |  | 722.93 | Calcification of intervertebral cartilage or disc, lumbar region   | 724.3  | Sciatica  |
|        |  | 723.0  | Spinal stenosis in cervical region                                 |        |   |
|        |  | 723.2  | Cervicocranial syndrome  |        |   |
|        |  | 723.3  | Cervicobrachial syndrome   |        |   |
|        |  | 723.4  | Brachial neuritis or radiculitis, NOC                              |        |   |
|        |  | 723.5  | Torticollis, unspecified   |        |   |
|        |  | 724.01 | Spinal stenosis, thoracic region                                   |        |   |
|        |  | 724.02 | Spinal stenosis, lumbar region                                     |        |   |
|        |  | 724.4  | Thoracic or lumbosacral neuritis or radiculitis                    |        |   |

| ICD-9 CATEGORY I | ICD-9 CATEGORY II  | ICD-9 CATEGORY III |
|------------------|--|--------------------|
|                  | 724.6 Disorders of sacrum, ankylosis   |                    |
|                  | 724.79 Disorders of coccyx, coccygodynia   |                    |
|                  | 724.8 Other symptoms referable to back, facet syndrome                                     |                    |
|                  | 729.1 Myalgia and myositis, unspecified  |                    |
|                  | 729.4 Fascitis, unspecified  |                    |
|                  | 738.40 Acquired spondylolisthesis  |                    |
|                  | 756.12 Spondylolisthesis   |                    |
|                  | 846.0 Sprains and strains of sacroiliac region, lumbosacral (joint; ligament)              |                    |
|                  | 846.1 Sprains and strains of sacroiliac region, sacroiliac ligament                        |                    |
|                  | 846.2 Sprains and strains of sacroiliac region, sacrospinatus (ligament)                   |                    |
|                  | 846.3 Sprains and strains of sacroiliac region, sacrotuberous (ligament)                   |                    |
|                  | 846.8 Sprains and strains of sacroiliac region, other specified sites of sacroiliac region |                    |
|                  | 847.0 Sprains and strains, neck  |                    |
|                  | 847.1 Sprains and strains, thoracic  |                    |
|                  | 847.2 Sprains and strains, lumbar  |                    |
|                  | 847.3 Sprains and strains, sacrum  |                    |
|                  | 847.4 Sprains and strains, coccyx  |                    |

b. The neuromusculoskeletal conditions listed in the table in paragraph “a” generally require short-, moderate-, or long-term CMT. A diagnosis or combination of diagnoses within Category I generally requires short-term CMT of 12 per 12-month period. A diagnosis or combination of diagnoses within Category II generally requires moderate-term CMT of 18 per 12-month period. A diagnosis or combination of diagnoses within Category III generally requires long-term CMT of 24 per 12-month period. For diagnostic combinations between categories, 28 CMTs are generally required per 12-month period. If the CMT utilization guidelines are exceeded, documentation supporting the medical necessity of additional CMT must be submitted with the Medicaid claim form or the claim will be denied for failure to provide information.

c. CMT is not a covered benefit when:

- (1) The maximum therapeutic benefit has been achieved for a given condition.
- (2) There is not a reasonable expectation that the continuation of CMT would result in improvement of the patient’s condition.
- (3) The CMT seeks to prevent disease, promote health and prolong and enhance the quality of life.

**78.8(3) Documenting X-ray.** An X-ray must document the primary regions of subluxation being treated by CMT.

a. The documenting X-ray must be taken at a time reasonably proximate to the initiation of CMT. An X-ray is considered to be reasonably proximate if it was taken no more than 12 months prior to or

3 months following the initiation of CMT. X-rays need not be repeated unless there is a new condition and no payment shall be made for subsequent X-rays, absent a new condition, consistent with paragraph “c” of this subrule. No X-ray is required for pregnant women and for children aged 18 and under.

b. The X-ray films shall be labeled with the patient’s name and date the X-rays were taken and shall be marked right or left. The X-ray shall be made available to the department or its duly authorized representative when requested. A written and dated X-ray report, including interpretation and diagnosis, shall be present in the patient’s clinical record.

c. Chiropractors shall be reimbursed for documenting X-rays at the physician fee schedule rate. Payable X-rays shall be limited to those Current Procedural Terminology (CPT) procedure codes that are appropriate to determine the presence of a subluxation of the spine. Criteria used to determine payable X-ray CPT codes may include, but are not limited to, the X-ray CPT codes for which major commercial payors reimburse chiropractors. The Iowa Medicaid enterprise shall publish in the Chiropractic Services Provider Manual the current list of payable X-ray CPT codes. Consistent with CPT, chiropractors may bill the professional, technical, or professional and technical components for X-rays, as appropriate. Payment for documenting X-rays shall be further limited to one per condition, consistent with the provisions of paragraph “a” of this subrule. A claim for a documenting X-ray related to the onset of a new condition is only payable if the X-ray is reasonably proximate to the initiation of CMT for the new condition, as defined in paragraph “a” of this subrule. A chiropractor is also authorized to order a documenting X-ray whether or not the chiropractor owns or possesses X-ray equipment in the chiropractor’s office. Any X-rays so ordered shall be payable to the X-ray provider, consistent with the provisions in this paragraph.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.9(249A) Home health agencies.** Payment shall be approved for medically necessary home health agency services prescribed by a physician in a plan of home health care provided by a Medicare-certified home health agency.

The number of hours of home health agency services shall be reasonable and appropriate to meet an established medical need of the member that cannot be met by a family member, significant other, friend, or neighbor. Services must be medically necessary in the individual case and be related to a diagnosed medical impairment or disability.

The member need not be homebound to be eligible for home health agency services; however, the services provided by a home health agency shall only be covered when provided in the member’s residence with the following exception. Private duty nursing and personal care services for persons aged 20 and under as described at 78.9(10) “a” may be provided in settings other than the member’s residence when medically necessary.

Medicaid members of home health agency services need not first require skilled nursing care to be entitled to home health aide services.

Further limitations related to specific components of home health agency services are noted in subrules 78.9(3) to 78.9(10).

Payment shall be made on an encounter basis. An encounter is defined as separately identifiable hours in which home health agency staff provide continuous service to a member.

Payment for supplies shall be approved when the supplies are incidental to the patient’s care, e.g., syringes for injections, and do not exceed \$15 per month. Dressings, durable medical equipment, and other supplies shall be obtained from a durable medical equipment dealer or pharmacy. Payment of supplies may be made to home health agencies when a durable medical equipment dealer or pharmacy is not available in the member’s community.

Payment may be made for restorative and maintenance home health agency services.

Payment may be made for teaching, training, and counseling in the provision of health care services.

Treatment plans for these services shall additionally reflect: to whom the services are to be provided (patient, family member, etc.); prior teaching training, or counseling provided; medical necessity for the rendered service; identification of specific services and goals; date of onset of the teaching, training, or

counseling; frequency of services; progress of member in response to treatment; and estimated length of time these services will be needed.

The following are not covered: services provided in the home health agency office, homemaker services, well child care and supervision, and medical equipment rental or purchase.

Services shall be authorized by a physician, evidenced by the physician's signature and date on a plan of treatment.

**78.9(1) Treatment plan.** A plan of treatment shall be completed prior to the start of care and at a minimum reviewed every 62 days thereafter. The plan of care shall support the medical necessity and intensity of services to be provided by reflecting the following information:

- a. Place of service.
- b. Type of service to be rendered and the treatment modalities being used.
- c. Frequency of the services.
- d. Assistance devices to be used.
- e. Date home health services were initiated.
- f. Progress of member in response to treatment.
- g. Medical supplies to be furnished.
- h. Member's medical condition as reflected by the following information, if applicable:
  - (1) Dates of prior hospitalization.
  - (2) Dates of prior surgery.
  - (3) Date last seen by a physician.
  - (4) Diagnoses and dates of onset of diagnoses for which treatment is being rendered.
  - (5) Prognosis.
  - (6) Functional limitations.
  - (7) Vital signs reading.
  - (8) Date of last episode of instability.
  - (9) Date of last episode of acute recurrence of illness or symptoms.
  - (10) Medications.
- i. Discipline of the person providing the service.
- j. Certification period (no more than 62 days).
- k. Estimated date of discharge from the hospital or home health agency services, if applicable.
- l. Physician's signature and date. The plan of care must be signed and dated by the physician

before the claim for service is submitted for reimbursement.

**78.9(2) Supervisory visits.** Payment shall be made for supervisory visits two times a month when a registered nurse acting in a supervisory capacity provides supervisory visits of services provided by a home health aide under a home health agency plan of treatment or when services are provided by an in-home health care provider under the department's in-home health-related care program as set forth in 441—Chapter 177.

**78.9(3) Skilled nursing services.** Skilled nursing services are services that when performed by a home health agency require a licensed registered nurse or licensed practical nurse to perform. Situations when a service can be safely performed by the member or other nonskilled person who has received the proper training or instruction or when there is no one else to perform the service are not considered a "skilled nursing service." Skilled nursing services shall be available only on an intermittent basis. Intermittent services for skilled nursing services shall be defined as a medically predictable recurring need requiring a skilled nursing service at least once every 60 days, not to exceed five days per week (except as provided below), with an attempt to have a predictable end. Daily visits (six or seven days per week) that are reasonable and necessary and show an attempt to have a predictable end shall be covered for up to three weeks. Coverage of additional daily visits beyond the initial anticipated time frame may be appropriate for a short period of time, based on the medical necessity of service. Medical documentation shall be submitted justifying the need for continued visits, including the physician's estimate of the length of time that additional visits will be necessary. Daily skilled nursing visits or multiple daily visits for wound care or insulin injections shall be covered when ordered by a physician and included in the plan of

care. Other daily skilled nursing visits which are ordered for an indefinite period of time and designated as daily skilled nursing care do not meet the intermittent definition and shall be denied.

Skilled nursing services shall be evaluated based on the complexity of the service and the condition of the patient.

Private duty nursing for persons aged 21 and over is not a covered service. See subrule 78.9(10) for guidelines for private duty nursing for persons aged 20 or under.

**78.9(4) *Physical therapy services.*** Payment shall be made for physical therapy services when the services relate directly to an active written treatment plan, follow a treatment plan established by the physician after any needed consultation with the qualified physical therapist, are reasonable and necessary to the treatment of the patient's illness or injury, and meet the guidelines defined for restorative, maintenance, or trial therapy as set forth in subrule 78.19(1), paragraphs "a" and "b."

For physical therapy services, the treatment plan shall additionally reflect goals, modalities of treatment, date of onset of conditions being treated, restorative potential, and progress notes.

**78.9(5) *Occupational therapy services.*** Payment shall be made for occupational therapy services when the services relate directly to an active written treatment plan, follow a treatment plan established by the physician, are reasonable and necessary to the treatment of the patient's illness or injury, and meet the guidelines defined for restorative, maintenance, or trial therapy as set forth in subrule 78.19(1), paragraphs "a" and "c."

For occupational therapy services, the treatment plan shall additionally reflect goals, modalities of treatment, date of onset of conditions being treated, restorative potential, and progress notes.

**78.9(6) *Speech therapy services.*** Payment shall be made for speech therapy services when the services relate directly to an active written treatment plan, follow a treatment plan established by the physician, are reasonable and necessary to the treatment of the patient's illness or injury, and meet the guidelines defined for restorative, maintenance, or trial therapy as set forth in subrule 78.19(1), paragraphs "a" and "d."

For speech therapy services, the treatment plan shall additionally reflect goals, modalities of treatment, date of onset of conditions being treated, restorative potential, and progress notes.

**78.9(7) *Home health aide services.*** Payment shall be made for unskilled services provided by a home health aide if the following conditions are met:

*a.* The service as well as the frequency and duration are stated in a written plan of treatment established by a physician. The home health agency is encouraged to collaborate with the member, or in the case of a child with the child's caregiver, in the development and implementation of the plan of treatment.

*b.* The member requires personal care services as determined by a registered nurse or other appropriate therapist. The services shall be given under the supervision of a registered nurse, physical, speech, or occupational therapist and the registered nurse or therapist shall assign the aide who will provide the care.

*c.* Services shall be provided on an intermittent basis. "Intermittent basis" for home health agency services is defined as services that are usually two to three times a week for two to three hours at a time. Services provided for four to seven days per week, not to exceed 28 hours per week, when ordered by a physician and included in a plan of care shall be allowed as intermittent services. Increased services provided when medically necessary due to unusual circumstances on a short-term basis of two to three weeks may also be allowed as intermittent services when the home health agency documents the need for the excessive time required for home health aide services.

Home health aide daily care may be provided for persons employed or attending school whose disabling conditions require the persons to be assisted with morning and evening activities of daily living in order to support their independent living.

Personal care services include the activities of daily living, e.g., helping the member to bathe, get in and out of bed, care for hair and teeth, exercise, and take medications specifically ordered by the physician, but ordinarily self-administered, and retraining the member in necessary self-help skills.

Certain household services may be performed by the aide in order to prevent or postpone the member's institutionalization when the primary need of the member for home health aide services

furnished is for personal care. If household services are incidental and do not substantially increase the time spent by the aide in the home, the entire visit is considered a covered service. Domestic or housekeeping services which are not related to patient care are not a covered service if personal care is not rendered during the visit.

For home health aide services, the treatment plan shall additionally reflect the number of hours per visit and the living arrangement of the member, e.g., lives alone or with family.

**78.9(8) Medical social services.**

a. Payment shall be made for medical social work services when all of the following conditions are met and the problems are not responding to medical treatment and there does not appear to be a medical reason for the lack of response. The services:

- (1) Are reasonable and necessary to the treatment of a member's illness or injury.
- (2) Contribute meaningfully to the treatment of the member's condition.
- (3) Are under the direction of a physician.
- (4) Are provided by or under the supervision of a qualified medical or psychiatric social worker.
- (5) Address social problems that are impeding the member's recovery.

b. Medical social services directed toward minimizing the problems an illness may create for the member and family, e.g., encouraging them to air their concerns and providing them with reassurance, are not considered reasonable and necessary to the treatment of the patient's illness or injury.

**78.9(9) Home health agency care for maternity patients and children.** The intent of home health agency services for maternity patients and children shall be to provide services when the members are unable to receive the care outside of their home and require home health care due to a high-risk factor. Routine prenatal, postpartum, or child health care is a covered service in a physician's office or clinic and, therefore, is not covered by Medicaid when provided by a home health agency.

a. Treatment plans for maternity patients and children shall identify:

- (1) The potential risk factors,
- (2) The medical factor or symptom which verifies the child is at risk,
- (3) The reason the member is unable to obtain care outside of the home,
- (4) The medically related task of the home health agency,
- (5) The member's diagnosis,
- (6) Specific services and goals, and
- (7) The medical necessity for the services to be rendered. A single high-risk factor does not provide sufficient documentation of the need for services.

b. The following list of potential high-risk factors may indicate a need for home health services to prenatal maternity patients:

- (1) Aged 16 or under.
- (2) First pregnancy for a woman aged 35 or over.
- (3) Previous history of prenatal complications such as fetal death, eclampsia, C-section delivery, psychosis, or diabetes.
- (4) Current prenatal problems such as hypertensive disorders of pregnancy, diabetes, cardiac disease, sickle cell anemia, low hemoglobin, mental illness, or drug or alcohol abuse.
- (5) Sociocultural or ethnic problems such as language barriers, lack of family support, insufficient dietary practices, history of child abuse or neglect, or single mother.
- (6) Preexisting disabilities such as sensory deficits, or mental or physical disabilities.
- (7) Second pregnancy in 12 months.
- (8) Death of a close family member or significant other within the previous year.

c. The following list of potential high-risk factors may indicate a need for home health services to postpartum maternity patients:

- (1) Aged 16 or under.
- (2) First pregnancy for a woman aged 35 or over.
- (3) Major postpartum complications such as severe hemorrhage, eclampsia, or C-section delivery.

(4) Preexisting mental or physical disabilities such as deaf, blind, hemaplegic, activity-limiting disease, sickle cell anemia, uncontrolled hypertension, uncontrolled diabetes, mental illness, or mental retardation.

(5) Drug or alcohol abuse.

(6) Symptoms of postpartum psychosis.

(7) Special sociocultural or ethnic problems such as lack of job, family problems, single mother, lack of support system, or history of child abuse or neglect.

(8) Demonstrated disturbance in maternal and infant bonding.

(9) Discharge or release from hospital against medical advice before 36 hours postpartum.

(10) Insufficient antepartum care by history.

(11) Multiple births.

(12) Nonhospital delivery.

d. The following list of potential high-risk factors may indicate a need for home health services to infants:

(1) Birth weight of five pounds or under or over ten pounds.

(2) History of severe respiratory distress.

(3) Major congenital anomalies such as neonatal complications which necessitate planning for long-term follow-up such as postsurgical care, poor prognosis, home stimulation activities, or periodic development evaluation.

(4) Disabling birth injuries.

(5) Extended hospitalization and separation from other family members.

(6) Genetic disorders, such as Down's syndrome, and phenylketonuria or other metabolic conditions that may lead to mental retardation.

(7) Noted parental rejection or indifference toward baby such as never visiting or calling the hospital about the baby's condition during the infant's extended stay.

(8) Family sociocultural or ethnic problems such as low education level or lack of knowledge of child care.

(9) Discharge or release against medical advice before 36 hours of age.

(10) Nutrition or feeding problems.

e. The following list of potential high-risk factors may indicate a need for home health services to preschool or school-age children:

(1) Child or sibling victim of child abuse or neglect.

(2) Mental retardation or other physical disabilities necessitating long-term follow-up or major readjustments in family lifestyle.

(3) Failure to complete the basic series of immunizations by 18 months, or boosters by 6 years.

(4) Chronic illness such as asthma, cardiac, respiratory or renal disease, diabetes, cystic fibrosis, or muscular dystrophy.

(5) Malignancies such as leukemia or carcinoma.

(6) Severe injuries necessitating treatment or rehabilitation.

(7) Disruption in family or peer relationships.

(8) Suspected developmental delay.

(9) Nutritional deficiencies.

**78.9(10) Private duty nursing or personal care services for persons aged 20 and under.** Payment for private duty nursing or personal care services for persons aged 20 and under shall be approved if determined to be medically necessary. Payment shall be made on an hourly unit of service.

a. Definitions.

(1) Private duty nursing services are those services which are provided by a registered nurse or a licensed practical nurse under the direction of the member's physician to a member in the member's place of residence or outside the member's residence, when normal life activities take the member outside the place of residence. Place of residence does not include nursing facilities, intermediate care facilities for the mentally retarded, or hospitals.

Services shall be provided according to a written plan of care authorized by a licensed physician. The home health agency is encouraged to collaborate with the member, or in the case of a child with the child's caregiver, in the development and implementation of the plan of treatment. These services shall exceed intermittent guidelines as defined in subrule 78.9(3). Private duty nursing and personal care services shall be inclusive of all home health agency services personally provided to the member. Enhanced payment under the interim fee schedule shall be made available for services to children who are technology dependent, i.e., ventilator dependent or whose medical condition is so unstable as to otherwise require intensive care in a hospital.

Private duty nursing or personal care services do not include:

1. Respite care, which is a temporary intermission or period of rest for the caregiver.
2. Nurse supervision services including chart review, case discussion or scheduling by a registered nurse.
3. Services provided to other persons in the member's household.
4. Services requiring prior authorization that are provided without regard to the prior authorization process.
5. Transportation services.
6. Homework assistance.

(2) Personal care services are those services provided by a home health aide or certified nurse's aide and which are delegated and supervised by a registered nurse under the direction of the member's physician to a member in the member's place of residence or outside the member's residence, when normal life activities take the member outside the place of residence. Place of residence does not include nursing facilities, intermediate care facilities for the mentally retarded, or hospitals. Payment for personal care services for persons aged 20 and under that exceed intermittent guidelines may be approved if determined to be medically necessary as defined in subrule 78.9(7). These services shall be in accordance with the member's plan of care and authorized by a physician. The home health agency is encouraged to collaborate with the member, or in the case of a child with the child's caregiver, in the development and implementation of the plan of treatment.

Medical necessity means the service is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life, cause pain, result in illness or infirmity, threaten to cause or aggravate a disability or chronic illness, and no other equally effective course of treatment is available or suitable for the member requesting a service.

*b.* Requirements.

(1) Private duty nursing or personal care services shall be ordered in writing by a physician as evidenced by the physician's signature on the plan of care.

(2) Private duty nursing or personal care services shall be authorized by the department or the department's designated review agent prior to payment.

(3) Prior authorization shall be requested at the time of initial submission of the plan of care or at any time the plan of care is substantially amended and shall be renewed with the department or the department's designated review agent. Initial request for and request for renewal of prior authorization shall be submitted to the department's designated review agent. The provider of the service is responsible for requesting prior authorization and for obtaining renewal of prior authorization.

The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation. The request for prior authorization shall include all items previously identified as required treatment plan information and shall further include: any planned surgical interventions and projected time frame; information regarding caregiver's desire to become involved in the member's care, to adhere to program objectives, to work toward treatment plan goals, and to work toward maximum independence; and identify the types and service delivery levels of all other services to the member whether or not the services are reimbursable by Medicaid. Providers shall indicate the expected number of private duty nursing RN hours, private duty nursing LPN hours, or home health aide hours per day, the number of days per week, and the number of weeks or months of service per discipline. If the member is currently hospitalized, the projected date of discharge shall be included.

Prior authorization approvals shall not be granted for treatment plans that exceed 16 hours of home health agency services per day. (Cross-reference 78.28(9))

**78.9(11) Vaccines.** Home health agencies which wish to administer vaccines which are available through the Vaccines for Children program to Medicaid members shall enroll in the Vaccines for Children program. In lieu of payment, vaccines available through the Vaccines for Children program shall be accessed from the department of public health for Medicaid members. Home health agencies may provide Vaccines for Children clinics and be reimbursed for vaccine administration to provide Vaccines for Children program vaccines to Medicaid children in other than the home setting.

This rule is intended to implement Iowa Code section 249A.4.  
[ARC 7548B, IAB 2/11/09, effective 4/1/09; ARC 9315B, IAB 12/29/10, effective 2/2/11]

**441—78.10(249A) Durable medical equipment (DME), prosthetic devices and medical supplies.**

**78.10(1) General payment requirements.** Payment will be made for items of DME, prosthetic devices and medical supplies, subject to the following general requirements and the requirements of subrule 78.10(2), 78.10(3), or 78.10(4), as applicable:

*a.* DME, prosthetic devices, and medical supplies must be required by the member because of the member's medical condition.

*b.* The item shall be necessary and reasonable either for the treatment of an illness or injury, or to improve the functioning of a malformed body part. Determination will be made by the Iowa Medicaid enterprise medical services unit.

(1) An item is necessary when it can be expected to make a meaningful contribution to the treatment of a specific illness or injury or to the improvement in function of a malformed body part.

(2) Although an item may be necessary, it must also be a reasonable expenditure for the Medicaid program. The following considerations enter into the determination of reasonableness: Whether the expense of the item to the program would be clearly disproportionate to the therapeutic benefits which could ordinarily be derived from use of the item; whether the item would be substantially more costly than a medically appropriate and realistically feasible alternative pattern of care; and whether the item serves essentially the same purpose as an item already available to the beneficiary.

*c.* A physician's (doctor of medicine, osteopathy, or podiatry), physician assistant's, or advanced registered nurse practitioner's prescription is required to establish medical necessity. The prescription shall state the diagnosis, prognosis, and length of time the item is to be required.

For items requiring prior approval, a request shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription and sufficient medical documentation to permit an independent conclusion that the requirements for the equipment or device are met and the item is medically necessary and reasonable. A request for prior approval is made on Form 470-0829, Request for Prior Authorization. See rule 441—78.28(249A) for prior approval requirements.

*d.* Nonmedical items will not be covered. These include but are not limited to:

- (1) Physical fitness equipment, e.g., an exercycle, weights.
- (2) First-aid or precautionary-type equipment, e.g., preset portable oxygen units.
- (3) Self-help devices, e.g., safety grab bars, raised toilet seats.
- (4) Training equipment, e.g., speech teaching machines, braille training texts.
- (5) Equipment used for environmental control or to enhance the environmental setting, e.g., room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners.
- (6) Equipment which basically serves comfort or convenience functions, or is primarily for the convenience of a person caring for the patient, e.g., elevators, stairway elevators and posture chairs.

*e.* The amount payable is based on the least expensive item which meets the patient's medical needs. Payment will not be approved for duplicate items.

*f.* Consideration will be given to rental or purchase based on the price of the item and the length of time it would be required. The decision on rental or purchase shall be made by the Iowa Medicaid enterprise, and be based on the most reasonable method to provide the equipment.

(1) The provider shall monitor rental payments up to 100 percent of the purchase price. At the point that total rent paid equals 100 percent of the purchase allowance, the member will be considered to own the item and no further rental payments will be made to the provider.

(2) Payment may be made for the purchase of an item even though rental payments may have been made for prior months. The rental of the equipment may be necessary for a period of time to establish that it will meet the identified need before the purchase of the equipment. When a decision is made to purchase after renting an item, all of the rental payments will be applied to the purchase allowance.

(3) EXCEPTION: Ventilators will be maintained on a rental basis for the duration of use.

g. Payment may be made for necessary repair, maintenance, and supplies for member-owned equipment. No payment may be made for repairs, maintenance, or supplies when the member is renting the item.

h. Replacement of member-owned equipment is covered in cases of loss or irreparable damage or when required because of a change in the member's condition.

i. No allowance will be made for delivery, freight, postage, or other provider operating expenses for DME, prosthetic devices or medical supplies.

**78.10(2) Durable medical equipment.** DME is equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

a. Durable medical equipment will not be provided in a hospital, nursing facility, or intermediate care facility for persons with mental retardation. EXCEPTION: Medicaid will provide payment to medical equipment and supply dealers to provide oxygen services in a nursing facility or an intermediate care facility for persons with mental retardation when all of the following requirements and conditions have been met:

(1) A physician's, physician assistant's, or advanced registered nurse practitioner's prescription documents that the member has significant hypoxemia as defined by Medicare and evidenced by supporting medical documentation and the member requires oxygen for 12 hours or more per day for at least 30 days. Oxygen prescribed "PRN" or "as necessary" is not allowed. The documentation maintained in the provider record must contain the following:

1. The number of hours oxygen is required per day;
2. The diagnosis of the disease requiring continuous oxygen, prognosis, and length of time the oxygen will be needed;
3. The oxygen flow rate and concentration; the type of system ordered, i.e., cylinder gas, liquid gas, or concentrator;
4. A specific estimate of the frequency and duration of use; and
5. The initial reading on the time meter clock on each concentrator, where applicable.

(2) The maximum Medicaid payment shall be based on the least costly method of oxygen delivery.

(3) Medicaid payment shall be made for the rental of equipment only. All accessories and disposable supplies related to the oxygen delivery system, servicing and repairing of equipment are included in the Medicaid payment.

(4) Oxygen logs must be maintained by the provider. When random postpayment review of these logs indicates less than an average of 12 hours per day of oxygen was provided over a 30-day period, recoupment of the overpayment may occur.

(5) Payment will be made for only one mode of oxygen even if the physician's, physician assistant's, or advanced registered nurse practitioner's prescription allows for multiple modes of delivery.

(6) Payment will not be made for oxygen that is not documented according to department of inspections and appeals 481—subrule 58.21(8).

b. Only the following types of durable medical equipment can be covered through the Medicaid program:

Alternating pressure pump.

Automated medication dispenser. See 78.10(2) "d" for prior authorization requirements.

Bedpan.

Blood glucose monitors, subject to the limitation in 78.10(2)“e.”  
 Blood pressure cuffs.  
 Cane.  
 Cardiorespiratory monitor (rental and supplies).  
 Commode.  
 Commode pail.  
 Crutches.  
 Decubitus equipment.  
 Dialysis equipment.  
 Diaphragm (contraceptive device).  
 Enclosed bed. See 78.10(2)“d” for prior authorization requirements.  
 Enuresis alarm system (bed-wetting alarm device) for members five years of age or older.  
 Hospital bed.  
 Hospital bed accessories.  
 Inhalation equipment.  
 Insulin infusion pump. See 78.10(2)“d” for prior authorization requirements.  
 Lymphedema pump.  
 Neuromuscular stimulator.  
 Oximeter.  
 Oxygen, subject to the limitations in 78.10(2)“a” and 78.10(2)“c.”  
 Patient lift (Hoyer).  
 Phototherapy bilirubin light.  
 Pressure unit.  
 Protective helmet.  
 Respirator.  
 Resuscitator bags and pressure gauge.  
 Seat lift chair.  
 Suction machine.  
 Traction equipment.  
 Urinal (portable).  
 Vaporizer.  
 Ventilator.  
 Vest airway clearance system. See 78.10(2)“d” for prior authorization requirements.  
 Walker.  
 Wheelchair—standard and adaptive.  
 Whirlpool bath.

*c.* Coverage of home oxygen equipment and oxygen will be considered reasonable and necessary only for members with significant hypoxemia as defined by Medicare and shown by supporting medical documentation. The physician’s, physician assistant’s, or advanced registered nurse practitioner’s prescription shall document that other forms of treatment are contraindicated or have been tried and have not been successful and that oxygen therapy is required. EXCEPTION: Home oxygen equipment and oxygen are covered for children through three years of age when prescribed by a physician, physician assistant or advanced registered nurse practitioner. A pulse oximeter reading must be obtained at one year of age and at two years of age and documented in the provider record.

(1) To identify the medical necessity for oxygen therapy, the supplier and a physician, physician assistant, or advanced registered nurse practitioner shall jointly submit Medicare Form B-7401, Physician’s Certification for Durable Medical Equipment, or a reasonable facsimile. The following information is required:

1. A diagnosis of the disease requiring home use of oxygen;
2. The oxygen flow rate and concentration;
3. The type of system ordered, i.e., cylinder gas, liquid gas, or concentrator;
4. A specific estimate of the frequency and duration of use; and

5. The initial reading on the time meter clock on each concentrator, where applicable. Oxygen prescribed “PRN” or “as necessary” is not allowed.
  - (2) If the patient’s condition or need for oxygen services changes, the attending physician, physician assistant, or advanced registered nurse practitioner must adjust the documentation accordingly.
  - (3) A second oxygen system is not covered by Medicaid when used as a backup for oxygen concentrators or as a standby in case of emergency. Members may be provided with a portable oxygen system to complement a stationary oxygen system, or to be used by itself, with documentation from the physician (doctor of medicine or osteopathy), physician assistant, or advanced registered nurse practitioner of the medical necessity for portable oxygen for specific activities.
  - (4) Payment for concentrators shall be made only on a rental basis.
  - (5) All accessories, disposable supplies, servicing, and repairing of concentrators are included in the monthly Medicaid payment for concentrators.
- d. Prior authorization is required for the following medical equipment and supplies (Cross-reference 78.28(1)):
  - (1) Enclosed beds. Payment for an enclosed bed will be approved when prescribed for a patient who meets all of the following conditions:
    1. The patient has a diagnosis-related cognitive or communication impairment that results in risk to safety.
    2. The patient’s mobility puts the patient at risk for injury.
    3. The patient has suffered injuries when getting out of bed.
  - (2) External insulin infusion pumps. Payment will be approved according to Medicare coverage criteria.
  - (3) Vest airway clearance systems. Payment will be approved for a vest airway clearance system when prescribed by a pulmonologist for a patient with a diagnosis of a lung disorder if all of the following conditions are met:
    1. Pulmonary function tests for the 12 months before the initiation of the vest demonstrate an overall significant decrease of lung function.
    2. The patient resides in an independent living situation or has a medical condition that precludes the caregiver from administering traditional chest physiotherapy.
    3. Treatment by flutter device failed or is contraindicated.
    4. Treatment by intrapulmonary percussive ventilation failed or is contraindicated.
    5. All other less costly alternatives have been tried.
  - (4) Automated medication dispenser. Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:
    1. The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member’s ability to remember to take medications.
    2. The member is on two or more medications prescribed to be administered more than one time a day.
    3. The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.
    4. Less costly alternatives, such as medisets or telephone reminders, have failed.
  - (5) Blood glucose monitors and diabetic test strips produced by a manufacturer that does not have a current agreement to provide a rebate to the department for monitors or test strips provided through the Medicaid program. Prior approval shall be granted when the member’s medical condition necessitates use of a blood glucose monitor or diabetic test strips produced by a manufacturer that does not have a current rebate agreement with the department.
- e. Blood glucose monitors are covered through the Medicaid program only if:
  - (1) The monitor is produced by a manufacturer that has a current agreement to provide a rebate to the department for monitors provided through the Medicaid program; or
  - (2) Prior authorization based on medical necessity is received pursuant to rule 441—79.8(249A) for a monitor produced by a manufacturer that does not have a current rebate agreement with the department.

**78.10(3) *Prosthetic devices.*** Prosthetic devices mean replacement, corrective, or supportive devices prescribed by a physician (doctor of medicine, osteopathy or podiatry), physician assistant, or advanced registered nurse practitioner within the scope of practice as defined by state law to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body. This does not require a determination that there is no possibility that the patient's condition may improve sometime in the future.

*a.* Prosthetic devices are not covered when dispensed to a patient prior to the time the patient undergoes a procedure which will make necessary the use of the device.

*b.* Only the following types of prosthetic devices shall be covered through the Medicaid program:

(1) Artificial eyes.

(2) Artificial limbs.

(3) Augmentative communications systems provided for members unable to communicate their basic needs through oral speech or manual sign language. Payment will be made for the most cost-effective item that meets basic communication needs commensurate with the member's cognitive and language abilities. See 78.10(3) "c" for prior approval requirements.

(4) Enteral delivery supplies and products. See 78.10(3) "c" for prior approval requirements.

(5) Hearing aids. See rule 441—78.14(249A).

(6) Oral nutritional products. See 78.10(3) "c" for prior approval requirements. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded.

(7) Orthotic devices. See 78.10(3) "d" for limitations on coverage of cranial orthotic devices.

(8) Ostomy appliances.

(9) Parenteral delivery supplies and products. Daily parenteral nutrition therapy is considered necessary and reasonable for a member with severe pathology of the alimentary tract that does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the member's general condition.

(10) Prosthetic shoes. See rule 441—78.15(249A).

(11) Tracheotomy tubes.

(12) Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross-reference 78.28(4))

*c.* Prior approval is required for the following prosthetic devices:

(1) Augmentative communication systems. Form 470-2145, Augmentative Communication System Selection, completed by a speech pathologist and a physician's, physician assistant's, or advanced registered nurse practitioner's prescription for a particular device shall be submitted to the Iowa Medicaid enterprise medical services unit to request prior approval. Information requested on the prior approval form includes a medical history, diagnosis, and prognosis completed by a physician, physician assistant, or advanced registered nurse practitioner. In addition, a speech or language pathologist needs to describe current functional abilities in the following areas: communication skills, motor status, sensory status, cognitive status, social and emotional status, and language status. Also needed from the speech or language pathologist is information on educational ability and needs, vocational potential, anticipated duration of need, prognosis regarding oral communication skills, prognosis with a particular device, and recommendations. The department's consultants with expertise in speech pathology will evaluate the prior approval requests and make recommendations to the department. (Cross-reference 78.28(1) "c")

(2) Enteral products and enteral delivery pumps and supplies. Daily enteral nutrition therapy shall be approved as medically necessary only for a member who either has a metabolic or digestive disorder that prevents the member from obtaining the necessary nutritional value from usual foods in any form and cannot be managed by avoidance of certain food products or has a severe pathology of the body that does not allow ingestion or absorption of sufficient nutrients from regular food to maintain weight and strength commensurate with the member's general condition.

A request for prior approval shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription and documentation to establish the medical necessity

for enteral products and enteral delivery pumps and supplies pursuant to the above standards. The documentation shall include:

1. A statement of the member's total medical condition that includes a description of the member's metabolic or digestive disorder or pathology.
2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the member's nutritional status and indicate that the member's nutritional needs were not or could not be met by regular food in pureed form.
3. Documentation of the medical necessity for an enteral pump, if the request includes an enteral pump. The information submitted must identify the medical reasons for not using a gravity feeding set.

Examples of conditions that will not justify approval of enteral nutrition therapy are: weight-loss diets, wired-shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children's program is not available), and the use of enteral products for convenience reasons when regular food in pureed form would meet the medical need of the member.

Basis of payment for nutritional therapy supplies shall be the least expensive method of delivery that is reasonable and medically necessary based on the documentation submitted.

(3) Oral nutritional products. Payment for oral nutritional products shall be approved as medically necessary only when the member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded. A request for prior approval shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription and documentation to establish the medical necessity for oral supplementation pursuant to these standards. The documentation shall include:

1. A statement of the member's total medical condition that includes a description of the member's metabolic, digestive, or psychological disorder or pathology.
2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the member's nutritional status and indicate that the member's nutritional needs were not or could not be met by regular food in pureed form.
3. Documentation to support the fact that regular foods will not provide sufficient nutritional value to the member. Examples of conditions that will not justify approval of oral supplementation are: weight-loss diets, wired-shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children's program is not available), supplementation to boost calorie or protein intake by less than 51 percent of the daily intake, and the absence of severe pathology of the body or psychological pathology or disorder.

*d.* Cranial orthotic device. Payment shall be approved for cranial orthotic devices when the device is medically necessary for the postsurgical treatment of synostotic plagiocephaly. Payment shall also be approved when there is photographic evidence supporting moderate to severe nonsynostotic positional plagiocephaly and either:

- (1) The member is between 3 and 5 months of age and has failed to respond to a two-month trial of repositioning therapy; or
- (2) The member is between 6 and 18 months of age and there is documentation of either of the following conditions:

1. Cephalic index at least two standard deviations above the mean for the member's gender and age; or
2. Asymmetry of 12 millimeters or more in the cranial vault, skull base, or orbitotragial depth.

**78.10(4) Medical supplies.** Medical supplies are nondurable items consumed in the process of giving medical care, for example, nebulizers, gauze, bandages, sterile pads, adhesive tape, and sterile absorbent cotton. Medical supplies are payable for a specific medicinal purpose. This does not include food or drugs. However, active pharmaceutical ingredients and excipients that are identified as preferred on the

preferred drug list published by the department pursuant to Iowa Code section 249A.20A are covered. Medical supplies shall not be dispensed at any one time in quantities exceeding a 31-day supply for active pharmaceutical ingredients and excipients or a three-month supply for all other items. After the initial dispensing of medical supplies, the provider must document a refill request from the Medicaid member or the member's caregiver for each refill.

*a.* Only the following types of medical supplies and supplies necessary for the effective use of a payable item can be purchased through the medical assistance program:

Active pharmaceutical ingredients and excipients identified as preferred on the preferred drug list published pursuant to Iowa Code section 249A.20A.

Catheter (indwelling Foley).

Colostomy and ileostomy appliances.

Colostomy and ileostomy care dressings, liquid adhesive, and adhesive tape.

Diabetic blood glucose test strips, subject to the limitation in 78.10(4) "c."

Diabetic supplies, other than blood glucose test strips (needles, syringes, and diabetic urine test supplies).

Dialysis supplies.

Diapers (for members aged four and above).

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type).

Disposable underpads.

Dressings.

Elastic antiembolism support stocking.

Enema.

Hearing aid batteries.

Respirator supplies.

Surgical supplies.

Urinary collection supplies.

*b.* Only the following types of medical supplies will be approved for payment for members receiving care in a nursing facility or an intermediate care facility for the mentally retarded when prescribed by the physician, physician assistant, or advanced registered nurse practitioner:

Catheter (indwelling Foley).

Colostomy and ileostomy appliances.

Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.

Diabetic supplies (needles and syringes, blood glucose test strips and diabetic urine test supplies).

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type).

*c.* Diabetic blood glucose test strips are covered through the Medicaid program only if:

(1) The strips are produced by a manufacturer that has a current agreement to provide a rebate to the department for test strips provided through the Medicaid program, or

(2) Prior authorization is received pursuant to rule 441—79.8(249A) for test strips produced by a manufacturer that does not have a current rebate agreement with the department, based on medical necessity.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.12.

[ARC 7548B, IAB 2/11/09, effective 4/1/09; ARC 8344B, IAB 12/2/09, effective 12/1/09; ARC 8643B, IAB 4/7/10, effective 3/11/10; ARC 8714B, IAB 5/5/10, effective 5/1/10; ARC 8993B, IAB 8/11/10, effective 10/1/10; ARC 9256B, IAB 12/1/10, effective 1/1/11]

**441—78.11(249A) Ambulance service.** Payment will be approved for ambulance service if it is required by the recipient's condition and the recipient is transported to the nearest hospital with appropriate facilities or to one in the same locality, from one hospital to another, to the patient's home or to a nursing facility. Payment for ambulance service to the nearest hospital for outpatient service will be approved

only for emergency treatment. Ambulance service must be medically necessary and not merely for the convenience of the patient.

**78.11(1)** Partial payment may be made when an individual is transported beyond the destinations specified, and is limited to the amount that would have been paid had the individual been transported to the nearest institution with appropriate facilities. When transportation is to the patient's home, partial payment is limited to the amount that would have been paid from the nearest institution with appropriate facilities. When a recipient who is a resident of a nursing care facility is hospitalized and later discharged from the hospital, payment will be made for the trip to the nursing care facility where the recipient resides even though it may not in fact be the nearest nursing care facility.

**78.11(2)** The Iowa Medicaid enterprise medical services unit shall determine that the ambulance transportation was medically necessary and that the condition of the patient precluded any other method of transportation. Payment can be made without the physician's confirmation when:

- a. The individual is admitted as a hospital inpatient or in an emergency situation.
- b. Previous information on file relating to the patient's condition clearly indicates ambulance service was necessary.

**78.11(3)** When a patient is transferred from one nursing home to another because of the closing of a facility or from a nursing home to a custodial home because the recipient no longer requires nursing care, the conditions of medical necessity and the distance requirements shall not be applicable. Approval for transfer shall be made by the local office of the department of human services prior to the transfer. When such a transfer is made, the following rate schedule shall apply:

- One patient - normal allowance
- Two patients - 3/4 normal allowance per patient
- Three patients - 2/3 normal allowance per patient
- Four patients - 5/8 normal allowance per patient

**78.11(4)** Transportation of hospital inpatients. When an ambulance service provides transport of a hospital inpatient to a provider and returns the recipient to the same hospital (the recipient continuing to be an inpatient of the hospital), the ambulance service shall bill the hospital for reimbursement as the hospital's DRG reimbursement system includes all costs associated with providing inpatient services as stated in 441—paragraph 79.1(5)“j.”

**78.11(5)** In the event that more than one ambulance service is called to provide ground ambulance transport, payment shall be made only to one ambulance company. When a paramedic from one ambulance service joins a ground ambulance company already in transport, coverage is not available for the services and supplies provided by the paramedic.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.12(249A) Behavioral health intervention.** Payment will be made for behavioral health intervention services not otherwise covered under this chapter that are designed to minimize or, if possible, eliminate the symptoms or causes of an Axis I psychological disorder, subject to the limitations in this rule.

**78.12(1) Definitions.**

“*Axis I disorder*” means a diagnosed mental disorder, except for personality disorders and mental retardation, as set forth in the “Diagnostic and Statistical Manual IV-TR,” Fourth Edition.

“*Behavioral health intervention*” means skill-building services that focus on:

1. Addressing the mental and functional disabilities that negatively affect a member's integration and stability in the community and quality of life;
2. Improving a member's health and well-being related to the member's Axis I disorder by reducing or managing the symptoms or behaviors that prevent the member from functioning at the member's best possible functional level; and
3. Promoting a member's mental health recovery and resilience through increasing the member's ability to manage symptoms.

“*Licensed practitioner of the healing arts*” or “*LPHA*,” as used in this rule, means a practitioner such as a physician (M.D. or D.O.), an advanced registered nurse practitioner (ARNP), a psychologist,

a social worker (LMSW or LISW), a marital and family therapist (LMFT), or a mental health counselor (LMHC) who:

1. Is licensed by the applicable state authority for that profession;
2. Is enrolled in the Iowa Plan for Behavioral Health (Iowa Plan) pursuant to 441—Chapter 88, Division IV; and
3. Is qualified to provide clinical assessment services (Current Procedural Terminology code 90801) under the Iowa Plan pursuant to 441—Chapter 88, Division IV.

**78.12(2) Covered services.**

*a. Service setting.*

(1) Community-based behavioral health intervention is available to a member living in a community-based environment. Services have a primary goal of assisting the member and the member's family to learn age-appropriate skills to manage behavior and regain or retain self-control. Depending on the member's age and diagnosis, specific services offered may include:

1. Behavior intervention,
2. Crisis intervention,
3. Skill training and development, and
4. Family training.

(2) Residential behavioral health intervention is available to members eligible for foster group care payment pursuant to 441—subrule 156.20(1). Services have the primary goal of assisting the member to prepare to transition to the community through learning age-appropriate skills to manage behavior and regain or retain self-control. Specific services offered include:

1. Behavior intervention,
2. Crisis intervention, and
3. Family training.

(3) Behavioral health intervention is not covered for members who are in an acute care or psychiatric hospital, a long-term care facility, or a psychiatric medical institution for children.

*b. Crisis intervention.* Crisis intervention services shall provide a focused intervention and rapid stabilization of acute symptoms of mental illness or emotional distress. The intervention shall be designed to de-escalate situations in which a risk to self, others, or property exists.

(1) Services shall assist a member to regain self-control and reestablish effective management of behavioral symptoms associated with a psychological disorder in an age-appropriate manner.

(2) Crisis intervention is covered only for Medicaid members who are aged 20 or under and shall be provided as outlined in a written treatment plan.

(3) Crisis intervention services do not include control room or other restraint activities.

*c. Behavior intervention.* Behavior intervention includes services designed to modify the psychological, behavioral, emotional, cognitive, and social factors affecting a member's functioning.

(1) Interventions may address the following skills for effective functioning with family, peers, and community in an age-appropriate manner:

1. Cognitive flexibility skills,
2. Communication skills,
3. Conflict resolution skills,
4. Emotional regulation skills,
5. Executive skills,
6. Interpersonal relationship skills,
7. Problem-solving skills, and
8. Social skills.

(2) Behavior intervention shall be provided in a location appropriate for skill identification, teaching and development. Intervention may be provided in an individual, family, or group format as appropriate to meet the member's needs.

(3) Behavior intervention is covered only for Medicaid members aged 20 or under.

(4) Covered services include only direct teaching or development of skills and not general recreation, non-skill-based activities, mentoring, or interruption of school.

*d. Family training.* Family training is covered only for Medicaid members aged 20 or under.

(1) Family training services shall:

1. Enhance the family's ability to effectively interact with the child and support the child's functioning in the home and community, and
2. Teach parents to identify and implement strategies to reduce target behaviors and reinforce the appropriate skills.

(2) Training provided must:

1. Be for the direct benefit of the member, and
2. Be based on a curriculum with a training manual.

*e. Skill training and development.* Skill training and development services are covered for Medicaid members aged 18 or over.

(1) Skill training and development shall consist of interventions to:

1. Enhance a member's independent living, social, and communication skills;
2. Minimize or eliminate psychological barriers to a member's ability to effectively manage symptoms associated with a psychological disorder; and
3. Maximize a member's ability to live and participate in the community.

(2) Interventions may include training in the following skills for effective functioning with family, peers, and community:

1. Communication skills,
2. Conflict resolution skills,
3. Daily living skills,
4. Employment-related skills,
5. Interpersonal relationship skills,
6. Problem-solving skills, and
7. Social skills.

**78.12(3) Excluded services.**

*a.* Services that are habilitative in nature are not covered under behavioral health intervention. For purposes of this subrule, "habilitative services" means services that are designed to assist individuals in acquiring skills that they never had, as well as associated training to acquire self-help, socialization, and adaptive skills necessary to reside successfully in a home or community setting.

*b.* Respite, day care, education, and recreation services are not covered under behavioral health intervention.

**78.12(4) Coverage requirements.** Medicaid covers behavioral health intervention only when the following conditions are met:

*a.* A licensed practitioner of the healing arts acting within the practitioner's scope of practice under state law has diagnosed the member with a psychological disorder.

*b.* The licensed practitioner of the healing arts has recommended the behavioral health intervention as part of a plan of treatment designed to treat the member's psychological disorder. The plan of treatment shall be comprehensive in nature and shall detail all behavioral health services that the member may require, not only services included under behavioral health intervention.

(1) The member's need for services must meet specific individual goals that are focused to address:

1. Risk of harm to self or others,
2. Behavioral support in the community,
3. Specific skills impaired due to the member's mental illness, and
4. Needs of children at risk of out-of-home placement due to mental health needs or the transition back to the community or home following an out-of-home placement.

(2) Diagnosis and treatment plan development provided in connection with this rule for members enrolled in the Iowa Plan are covered services under the Iowa Plan pursuant to 441—Chapter 88, Division IV.

*c.* For a member under the age of 21, the licensed practitioner of the healing arts:

(1) Has, in cooperation with the managed care contractor, selected a standardized assessment instrument appropriate for baseline measurement of the member's current skill level in managing mental health needs;

(2) Has completed an initial formal assessment of the member using the instrument selected; and

(3) Completes a formal assessment every six months thereafter if continued services are ordered.

*d.* The behavioral health intervention provider has prepared a written services implementation plan that meets the requirements of subrule 78.12(5).

**78.12(5) Approval of plan.** The behavioral health intervention provider shall contact the Iowa Plan provider for authorization of the services.

*a. Initial plan.* The initial services implementation plan must meet all of the following criteria:

(1) The plan conforms to the medical necessity requirements in subrule 78.12(6);

(2) The plan is consistent with the written diagnosis and treatment recommendations made by the licensed practitioner of the healing arts;

(3) The plan is sufficient in amount, duration, and scope to reasonably achieve its purpose;

(4) The provider meets the requirements of rule 441—77.12(249A); and

(5) The plan does not exceed six months' duration.

*b. Subsequent plans.* The Iowa Plan contractor may approve a subsequent services implementation plan according to the conditions in paragraph 78.12(5)“a” if the services are recommended by a licensed practitioner of the healing arts who has:

(1) Reexamined the member;

(2) Reviewed the original diagnosis and treatment plan; and

(3) Evaluated the member's progress, including a formal assessment as required by 78.12(4)“c”(3).

**78.12(6) Medical necessity.** Nothing in this rule shall be deemed to exempt coverage of behavioral health intervention from the requirement that services be medically necessary. For purposes of behavioral health intervention, “medically necessary” means that the service is:

*a.* Consistent with the diagnosis and treatment of the member's condition and specific to a daily impairment caused by an Axis I disorder;

*b.* Required to meet the medical needs of the member and is needed for reasons other than the convenience of the member or the member's caregiver;

*c.* The least costly type of service that can reasonably meet the medical needs of the member; and

*d.* In accordance with the standards of evidence-based medical practice. The standards of practice for each field of medical and remedial care covered by the Iowa Medicaid program are those standards of practice identified by:

(1) Knowledgeable Iowa clinicians practicing or teaching in the field; and

(2) The professional literature regarding evidence-based practices in the field.

This rule is intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, chapter 1192, section 31.

[ARC 8504B, IAB 2/10/10, effective 3/22/10; ARC 9487B, IAB 5/4/11, effective 7/1/11]

**441—78.13(249A) Nonemergency medical transportation.** Nonemergency transportation to receive medical care, including any reimbursement of transportation expenses incurred by a Medicaid member, shall be provided through the broker designated by the department pursuant to a contract between the department and the broker, as specified in this rule.

**78.13(1) Member request.** When a member needs nonemergency transportation, one way or round trip, to receive medical care provided by the Medicaid program, including any reimbursement of transportation expenses incurred by the member, the member must contact the broker in advance. The broker shall establish and publicize the procedures for members to request transportation services. The broker is required to provide transportation within 72 hours of a request only if receipt of medical care within 72 hours is medically necessary.

**78.13(2) Necessary services.** Transportation shall be provided only when the member needs transportation to receive necessary services covered by the Iowa Medicaid program from an enrolled provider, including transportation needed to obtain prescribed drugs.

**78.13(3) Access to free transportation.** Transportation shall be provided only if the member does not have access to transportation that is available at no cost to the member, such as transportation provided by volunteers, relatives, friends, social service agencies, nursing facilities, residential care centers, or any other source. EXCEPTION: If a prescribed drug is needed immediately, transportation will be provided to obtain the drug even if free delivery is available.

**78.13(4) Closest medical provider.** Transportation beyond 20 miles (one way) shall be provided only to the closest qualified provider unless:

a. The difference between the closest qualified provider and the provider requested by the member is less than 10 miles (one way); or

b. The additional cost of transportation to the provider requested by the member is medically justified based on:

- (1) A previous relationship between the member and the requested provider,
- (2) Prior experience of the member with closer providers, or
- (3) Special expertise or experience of the requested provider.

**78.13(5) Coverage.** Based on the information provided by the member and the provisions of this rule, the broker shall arrange and reimburse for the most economical form of transportation appropriate to the needs of the member.

a. The broker may require that public transportation be used when reasonably available and the member's condition does not preclude its use.

b. The broker may arrange and reimburse for transportation by arranging to reimburse the member for transportation expenses. In that case, the member shall submit transportation expenses to the broker on Form 470-0386, Medical Transportation Claim, or an equivalent electronic form.

c. When a member is unable to travel alone due to age or due to physical or mental incapacity, the broker shall provide for the expenses of an attendant.

d. The broker shall provide for meals, lodging, and other incidental transportation expenses required for the member and for any attendant required due to the age or incapacity of the member in connection with transportation provided under this rule.

**78.13(6) Exceptions for nursing facility residents.**

a. Nonemergency medical transportation for residents of nursing facilities within 30 miles of the nursing facility (one way) shall not be provided through the broker but shall be the responsibility of the nursing facility.

b. Nonemergency medical transportation for residents of nursing facilities beyond 30 miles from the nursing facility (one way) shall be provided through the broker, but the nursing facility shall contact the broker on behalf of the resident.

**78.13(7) Grievances.** Pursuant to its contract with the department, the broker shall establish an internal grievance procedure for members and transportation providers. Members who have exhausted the grievance process may appeal to the department pursuant to 441—Chapter 7 as an “aggrieved person.” For transportation providers, the grievance process shall end with binding arbitration, with a designee of the Iowa Medicaid enterprise as arbitrator.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 8344B, IAB 12/2/09, effective 12/1/09; ARC 8643B, IAB 4/7/10, effective 3/11/10; ARC 8994B, IAB 8/11/10, effective 10/1/10]

**441—78.14(249A) Hearing aids.** Payment shall be approved for a hearing aid and examinations subject to the following conditions:

**78.14(1) Physician examination.** The member shall have an examination by a physician to determine that the member has no condition which would contraindicate the use of a hearing aid. This report shall be documented in the patient record. The requirement for a physician evaluation shall be waived for members 18 years of age or older when the member has signed an informed consent statement acknowledging that the member:

a. Has been advised that it may be in the member's best health interest to receive a medical evaluation from a licensed physician before purchase of a hearing aid.

b. Does not wish to receive a medical evaluation prior to purchase of a hearing aid.

**78.14(2) *Audiological testings.*** A physician or an audiologist shall perform audiological testing as a part of making a determination that a member could benefit from the use of a hearing aid. The department shall cover vestibular testing performed by an audiologist only when prescribed by a physician.

**78.14(3) *Hearing aid evaluation.*** A physician or an audiologist shall perform a hearing aid evaluation to establish if a member could benefit from a hearing aid. When a hearing aid is recommended for a member, the physician or audiologist recommending the hearing aid shall see the member at least one time within 30 days after purchase of the hearing aid to determine that the aid is adequate.

**78.14(4) *Hearing aid selection.*** A physician or audiologist may recommend a specific brand or model appropriate to the member's condition. When a physician or an audiologist makes a general hearing aid recommendation, a hearing aid dispenser may perform the tests to determine the specific brand or model appropriate to the member's condition.

**78.14(5) *Travel.*** When a member is unable to travel to the physician or audiologist because of health reasons, the department shall make payment for travel to the member's place of residence or other suitable location. The department shall make payment to physicians as specified in 78.1(8) and payment to audiologists at the same rate it reimburses state employees for travel.

**78.14(6) *Purchase of hearing aid.*** The department shall pay for the type of hearing aid recommended when purchased from an eligible licensed hearing aid dispenser pursuant to rule 441—77.13(249A). The department shall pay for binaural amplification when:

- a. A child needs the aid for speech development,
- b. The aid is needed for educational or vocational purposes,
- c. The aid is for a blind member,
- d. The member's hearing loss has caused marked restriction of daily activities and constriction of interests resulting in seriously impaired ability to relate to other people, or
- e. Lack of binaural amplification poses a hazard to a member's safety.

**78.14(7) *Payment for hearing aids.***

a. Payment for hearing aids shall be acquisition cost plus a dispensing fee covering the fitting and service for six months. The department shall make payment for routine service after the first six months. Dispensing fees and payment for routine service shall not exceed the fee schedule appropriate to the place of service. Shipping and handling charges are not allowed.

b. Payment for ear mold and batteries shall be at the current audiologist's fee schedule.

c. Payment for repairs shall be made to the dealer for repairs made by the dealer. Payment for in-house repairs shall be made at the current fee schedule. Payment shall also be made to the dealer for repairs when the hearing aid is repaired by the manufacturer or manufacturer's depot. Payment for out-of-house repairs shall be at the amount shown on the manufacturer's invoice. Payment shall be allowed for a service or handling charge when it is necessary for repairs to be performed by the manufacturer or manufacturer's depot and this charge is made to the general public.

d. Prior approval. When prior approval is required, Form 470-4767, Examiner Report of Need for a Hearing Aid, shall be submitted along with the forms required by 441—paragraph 79.8(1) "a."

(1) Payment for the replacement of a hearing aid less than four years old shall require prior approval except when the member is under 21 years of age. The department shall approve payment when the original hearing aid is lost or broken beyond repair or there is a significant change in the member's hearing that would require a different hearing aid. (Cross-reference 78.28(4) "a")

(2) Payment for a hearing aid costing more than \$650 shall require prior approval. The department shall approve payment for either of the following purposes (Cross-reference 78.28(4) "b"):

1. Educational purposes when the member is participating in primary or secondary education or in a postsecondary academic program leading to a degree and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

2. Vocational purposes when documentation submitted indicates the necessity, such as varying amounts of background noise in the work environment and a need to converse in order to do the job, and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output

shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

This rule is intended to implement Iowa Code section 249A.4.  
[ARC 8008B, IAB 7/29/09, effective 8/1/09]

**441—78.15(249A) Orthopedic shoes.** Payment shall be approved only for depth or custom-molded orthopedic shoes, inserts, and modifications, subject to the following definitions and conditions.

**78.15(1) Definitions.**

“*Custom-molded shoe*” means a shoe that:

1. Has been constructed over a cast or model of the recipient’s foot;
2. Is made of leather or another suitable material of equal quality;
3. Has inserts that can be removed, altered, or replaced according to the recipient’s conditions and needs; and
4. Has some form of closure.

“*Depth shoe*” means a shoe that:

1. Has a full length, heel-to-toe filler that when removed provides a minimum of 3/16 inch of additional depth used to accommodate custom-molded or customized inserts;
2. Is made from leather or another suitable material of equal quality;
3. Has some form of closure; and
4. Is available in full and half sizes with a minimum of three widths, so that the sole is graded to the size and width of the upper portions of the shoe according to the American Standard last sizing schedule or its equivalent.

“*Insert*” means a foot mold or orthosis constructed of more than one layer of a material that:

1. Is soft enough and firm enough to take and hold an impression during use, and
2. Is molded to the recipient’s foot or is made over a model of the foot.

**78.15(2) Prescription.** The recipient shall present to the provider a written prescription by a physician, a podiatrist, a physician assistant, or an advanced registered nurse practitioner that includes all of the following:

1. The date.
2. The patient’s diagnosis.
3. The reason orthopedic shoes are needed.
4. The probable duration of need.
5. A specific description of any required modification of the shoes.

**78.15(3) Diagnosis.** The recipient shall have a diagnosis of an orthopedic, neuromuscular, vascular, or insensate foot condition, supported by applicable codes from the current version of the International Classification of Diseases (ICD). A diagnosis of flat feet is not covered.

*a.* A recipient with diabetes must meet the Medicare criteria for therapeutic depth and custom-molded shoes.

*b.* Custom-molded shoes are covered only when the recipient has a foot deformity and the provider has documentation of all of the following:

- (1) The reasons the recipient cannot be fitted with a depth shoe.
- (2) Pain.
- (3) Tissue breakdown or a high probability of tissue breakdown.
- (4) Any limitation on walking.

**78.15(4) Frequency.** Only two pairs of orthopedic shoes are allowed per recipient in a 12-month period unless documentation of change in size or evidence of excessive wear is submitted. EXCEPTION: School-aged children under the age of 21 may obtain athletic shoes in addition to the two pairs of shoes in a 12-month period.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.16(249A) Community mental health centers.** Payment will be approved for all reasonable and necessary services provided by a psychiatrist on the staff of a community mental health center. Payment will be approved for services provided by a clinical psychologist, social worker or psychiatric nurse on the staff of the center, subject to the following conditions:

**78.16(1)** Payment to a community mental health center will be approved for reasonable and necessary services provided to members by a psychiatrist, psychologist, social worker or psychiatric nurse on the staff of the center under the following conditions:

*a.* Services must be rendered under the supervision of a board-eligible or board-certified psychiatrist. All services must be performed under the supervision of a board-eligible or board-certified psychiatrist subject to the conditions set forth in 78.16(1) “*b*” with the following exceptions:

- (1) Services by staff psychiatrists, or
- (2) Services rendered by psychologists meeting the requirements of the National Register of Health Service Providers in Psychology, or
- (3) Services provided by a staff member listed in this subrule performing the preliminary diagnostic evaluation of a member for voluntary admission to one of the state mental health institutes.

*b.* Supervisory process.

(1) Each patient shall have an initial evaluation completed which shall include at least one personal evaluation interview with a mental health professional, as defined under Iowa Code section 228.1. If the evaluation interview results indicate a need for an interview with a board-eligible or board-certified psychiatrist, then such referral shall be made. This must be accomplished before submission of the first claim for services rendered to that patient.

(2) Ongoing review and assessment of patients’ treatment needs, treatment plans, and the appropriateness of services rendered shall be assured through the peer review process in effect for community mental health centers, as directed by 2002 Iowa Acts, chapter 1120, section 13.

(3) and (4) Rescinded IAB 2/5/03, effective 2/1/03.

**78.16(2)** The treatment plans for and services rendered to patients of the center shall be evaluated and revised as necessary and appropriate, consistent with the standards of the peer review process described in subparagraph 78.16(1) “*b*”(1).

**78.16(3)** The peer review process and related activities, as described under subparagraph 78.16(1) “*b*”(1), are not payable as separate services under the Medicaid program. The center shall maintain the results of and information related to the peer review process, and these records shall be subject to audit by the department of human services or department designees, as necessary and appropriate.

**78.16(4)** Clinical records of medical assistance patients shall be available to the carrier on request. All these records shall be held confidential.

**78.16(5)** At the time of application for participation in the program the center will be provided with a form on which to list its professional staff. The center shall report acquisitions or losses of professional staff to the carrier within ten days.

**78.16(6)** Payment to a community mental health center will be approved for day treatment services for persons aged 21 or over if the center is certified by the department for day treatment services, the services are provided on the premises of the community mental health center or satellite office of the community mental health center, and the services meet the standards outlined herein.

*a.* Community mental health centers providing day treatment services for persons aged 21 or over shall have available a written narrative providing the following day treatment information:

- (1) Documented need for day treatment services for persons aged 21 and over in the area served by the program, including studies, needs assessments, and consultations with other health care professionals.
- (2) Goals and objectives of the day treatment program for persons aged 21 and over that meet the day treatment program guidelines noted in 78.16(6) “*b*.”
- (3) Organization and staffing including how the day treatment program for persons aged 21 and over fits with the rest of the community mental health center, the number of staff, staff credentials, and the staff’s relationship to the program, e.g., employee, contractual, or consultant.

(4) Policies and procedures for the program including admission criteria, patient assessment, treatment plan, discharge plan, postdischarge services, and the scope of services provided.

(5) Any accreditations or other types of approvals from national or state organizations.

(6) The physical facility and any equipment to be utilized.

*b.* Day treatment services for persons aged 21 and over shall be structured, long-term services designed to assist in restoring, maintaining or increasing levels of functioning, minimizing regression, and preventing hospitalization.

(1) Service components include training in independent functioning skills necessary for self-care, emotional stability and psychosocial interactions and training in medication management.

(2) Services are structured with an emphasis on program variation according to individual need.

(3) Services are provided for a period of three to five hours per day, three or four times per week.

*c.* Payment will be approved for day treatment services provided by or under the general supervision of a mental health professional as defined in rule 441—33.1(225C,230A). When services are provided by an employee or consultant of the community mental health center who is not a mental health professional, the employee or consultant shall be supervised by a mental health professional who gives professional direction and active guidance to the employee or consultant and who retains responsibility for consumer care. The supervision shall be timely, regular, and documented. The employee or consultant shall meet the following minimum requirements:

(1) Have a bachelor's degree in a human services related field from an accredited college or university; or

(2) Have an Iowa license to practice as a registered nurse with two years of experience in the delivery of nursing or human services.

*d.* Persons aged 18 through 20 with chronic mental illness as defined by rule 441—24.1(225C) can receive day treatment services under this subrule or subrule 78.16(7).

**78.16(7)** Payment to a community mental health center will be approved for day treatment services for persons aged 20 or under if the center is certified by the department for day treatment services and the services are provided on the premises of the community mental health center or satellite office of the community mental health center. Exception: Field trips away from the premises are a covered service when the trip is therapeutic and integrated into the day treatment program's description and milieu plan.

Day treatment coverage will be limited to a maximum of 15 hours per week. Day treatment services for persons aged 20 or under shall be outpatient services provided to persons who are not inpatients in a medical institution or residents of a group care facility licensed under 441—Chapter 114.

*a. Program documentation.* Community mental health centers providing day treatment services for persons aged 20 or under shall have available a written narrative which provides the following day treatment program information:

(1) Documented need for day treatment services for persons aged 20 or under in the area served by the program, including studies, needs assessments, and consultations with other health care professionals.

(2) Goals and objectives of the day treatment program for persons aged 20 or under that meet the guidelines noted in paragraphs "c" to "h" below.

(3) Organization and staffing including how the day treatment program for persons aged 20 or under fits with the rest of the community mental health center, the number of staff, staff credentials, and the staff's relationship to the program, e.g., employee, contractual, or consultant.

(4) Policies and procedures for the program including admission criteria, patient assessment, treatment plan, discharge plan, postdischarge services, and the scope of services provided.

(5) Any accreditations or other types of approvals from national or state organizations.

(6) The physical facility and any equipment to be utilized.

*b. Program standards.* Medicaid day treatment program services for persons aged 20 and under shall meet the following standards:

(1) Staffing shall:

1. Be sufficient to deliver program services and provide stable, consistent, and cohesive milieu with a staff-to-patient ratio of no less than one staff for each eight participants. Clinical, professional, and paraprofessional staff may be counted in determining the staff-to-patient ratio.

Professional or clinical staff are those staff who are either mental health professionals as defined in rule 441—33.1(225C,230A) or persons employed for the purpose of providing offered services under the supervision of a mental health professional. All other staff (administrative, adjunctive, support, nonclinical, clerical, and consulting staff or professional clinical staff) when engaged in administrative or clerical activities shall not be counted in determining the staff-to-patient ratio or in defining program staffing patterns. Educational staff may be counted in the staff-to-patient ratio.

2. Reflect how program continuity will be provided.
3. Reflect an interdisciplinary team of professionals and paraprofessionals.
4. Include a designated director who is a mental health professional as defined in rule 441—33.1(225C,230A). The director shall be responsible for direct supervision of the individual treatment plans for participants and the ongoing assessment of program effectiveness.

5. Be provided by or under the general supervision of a mental health professional as defined in rule 441—33.1(225C,230A). When services are provided by an employee or consultant of the community mental health center who is not a mental health professional, the employee or consultant shall be supervised by a mental health professional who gives direct professional direction and active guidance to the employee or consultant and who retains responsibility for consumer care. The supervision shall be timely, regular and documented. The employee or consultant shall have a bachelor's degree in a human services related field from an accredited college or university or have an Iowa license to practice as a registered nurse with two years of experience in the delivery of nursing or human services. Exception: Other certified or licensed staff, such as certified addiction counselors or certified occupational and recreational therapy assistants, are eligible to provide direct services under the general supervision of a mental health professional, but they shall not be included in the staff-to-patient ratio.

- (2) There shall be written policies and procedures addressing the following: admission criteria; patient assessment; patient evaluation; treatment plan; discharge plan; community linkage with other psychiatric, mental health, and human service providers; a process to review the quality of care being provided with a quarterly review of the effectiveness of the clinical program; postdischarge services; and the scope of services provided.

- (3) The program shall have hours of operation available for a minimum of three consecutive hours per day, three days or evenings per week.

- (4) The length of stay in a day treatment program for persons aged 20 or under shall not exceed 180 treatment days per episode of care, unless the rationale for a longer stay is documented in the patient's case record and treatment plan every 30 calendar days after the first 180 treatment days.

- (5) Programming shall meet the individual needs of the patient. A description of services provided for patients shall be documented along with a schedule of when service activities are available including the days and hours of program availability.

- (6) There shall be a written plan for accessing emergency services 24 hours a day, seven days a week.

- (7) The program shall maintain a community liaison with other psychiatric, mental health, and human service providers. Formal relationships shall exist with hospitals providing inpatient programs to facilitate referral, communication, and discharge planning. Relationships shall also exist with appropriate school districts and educational cooperatives. Relationships with other entities such as physicians, hospitals, private practitioners, halfway houses, the department, juvenile justice system, community support groups, and child advocacy groups are encouraged. The provider's program description will describe how community links will be established and maintained.

- (8) Psychotherapeutic treatment services and psychosocial rehabilitation services shall be available. A description of the services shall accompany the application for certification.

- (9) The program shall maintain a distinct clinical record for each patient admitted. Documentation, at a minimum, shall include: the specific services rendered, the date and actual time services were rendered, who rendered the services, the setting in which the services were rendered, the amount of time it took to deliver the services, the relationship of the services to the treatment regimen described in the plan of care, and updates describing the patient's progress.

*c. Program services.* Day treatment services for persons aged 20 or under shall be a time-limited, goal-oriented active treatment program that offers therapeutically intensive, coordinated, structured clinical services within a stable therapeutic milieu. Time-limited means that the patient is not expected to need services indefinitely or lifelong, and that the primary goal of the program is to improve the behavioral functioning or emotional adjustment of the patient in order that the service is no longer necessary. Day treatment services shall be provided within the least restrictive therapeutically appropriate context and shall be community-based and family focused. The overall expected outcome is clinically adaptive behavior on the part of the patient and the family.

At a minimum, day treatment services will be expected to improve the patient's condition, restore the condition to the level of functioning prior to onset of illness, control symptoms, or establish and maintain a functional level to avoid further deterioration or hospitalization. Services are expected to be age-appropriate forms of psychosocial rehabilitation activities, psychotherapeutic services, social skills training, or training in basic care activities to establish, retain or encourage age-appropriate or developmentally appropriate psychosocial, educational, and emotional adjustment.

Day treatment programs shall use an integrated, comprehensive and complementary schedule of therapeutic activities and shall have the capacity to treat a wide array of clinical conditions.

The following services shall be available as components of the day treatment program. These services are not separately billable to Medicaid, as day treatment reimbursement includes reimbursement for all day treatment components.

(1) Psychotherapeutic treatment services (examples would include individual, group, and family therapy).

(2) Psychosocial rehabilitation services. Active treatment examples include, but are not limited to, individual and group therapy, medication evaluation and management, expressive therapies, and theme groups such as communication skills, assertiveness training, other forms of community skills training, stress management, chemical dependency counseling, education, and prevention, symptom recognition and reduction, problem solving, relaxation techniques, and victimization (sexual, emotional, or physical abuse issues).

Other program components may be provided, such as personal hygiene, recreation, community awareness, arts and crafts, and social activities designed to improve interpersonal skills and family mental health. Although these other services may be provided, they are not the primary focus of treatment.

(3) Evaluation services to determine need for day treatment prior to program admission. For persons for whom clarification is needed to determine whether day treatment is an appropriate therapy approach, or for persons who do not clearly meet admission criteria, an evaluation service may be performed. Evaluation services shall be individual and family evaluation activities made available to courts, schools, other agencies, and individuals upon request, who assess, plan, and link individuals with appropriate services. This service must be completed by a mental health professional. An evaluation from another source performed within the previous 12 months or sooner if there has not been a change may be substituted. Medicaid will not make separate payment for these services under the day treatment program.

(4) Assessment services. All day treatment patients will receive a formal, comprehensive biopsychosocial assessment of day treatment needs including, if applicable, a diagnostic impression based on the current Diagnostic and Statistical Manual of Mental Disorders. An assessment from another source performed within the previous 12 months may be used if the symptomatology is the same as 12 months ago. If not, parts of the assessment which reflect current functioning may be used as an update. Using the assessment, a comprehensive summation will be produced, including the findings of all assessments performed. The summary will be used in forming a treatment plan including treatment goals. Indicators for discharge planning, including recommended follow-up goals and provision for future services, should also be considered, and consistently monitored.

(5) The day treatment program may include an educational component as an additional service. The patient's educational needs shall be served without conflict from the day treatment program. Hours

in which the patient is involved in the educational component of the day treatment program are not included in the day treatment hours billable to Medicaid.

*d. Admission criteria.* Admission criteria for day treatment services for persons aged 20 or under shall reflect the following clinical indicators:

- (1) The patient is at risk for exclusion from normative community activities or residence.
- (2) The patient exhibits psychiatric symptoms, disturbances of conduct, decompensating conditions affecting mental health, severe developmental delays, psychological symptoms, or chemical dependency issues sufficiently severe to bring about significant or profound impairment in day-to-day educational, social, vocational, or interpersonal functioning.
- (3) Documentation is provided that the traditional outpatient setting has been considered and has been determined not to be appropriate.
- (4) The patient's principal caretaker (family, guardian, foster family or custodian) must be able and willing to provide the support and monitoring of the patient, to enable adequate control of the patient's behavior, and must be involved in the patient's treatment. Persons aged 20 or under who have reached the age of majority, either by age or emancipation, are exempt from family therapy involvement.
- (5) The patient has the capacity to benefit from the interventions provided.

*e. Individual treatment plan.* Each patient receiving day treatment services shall have a treatment plan prepared. A preliminary treatment plan should be formulated within 3 days of participation after admission, and replaced within 30 calendar days by a comprehensive, formalized plan utilizing the comprehensive assessment. This individual treatment plan should reflect the patient's strengths and weaknesses and identify areas of therapeutic focus. The treatment goals which are general statements of consumer outcomes shall be related to identified strengths, weaknesses, and clinical needs with time-limited, measurable objectives. Objectives shall be related to the goal and have specific anticipated outcomes. Methods that will be used to pursue the objectives shall be stated. The plan should be reviewed and revised as needed, but shall be reviewed at least every 30 calendar days. The treatment plan shall be developed or approved by a board-eligible or board-certified psychiatrist, a staff psychiatrist, physician, or a psychologist registered either on the "National Register of Health Service Providers in Psychology" or the "Iowa Register of Health Service Providers for Psychology." Approval will be evidenced by a signature of the physician or health service provider.

*f. Discharge criteria.* Discharge criteria for the day treatment program for persons aged 20 or under shall incorporate at least the following indicators:

- (1) In the case of patient improvement:
  1. The patient's clinical condition has improved as shown by symptom relief, behavioral control, or indication of mastery of skills at the patient's developmental level. Reduced interference with and increased responsibility with social, vocational, interpersonal, or educational goals occurs sufficient to warrant a treatment program of less supervision, support, and therapeutic intervention.
  2. Treatment goals in the individualized treatment plan have been achieved.
  3. An aftercare plan has been developed that is appropriate to the patient's needs and agreed to by the patient and family, custodian, or guardian.
- (2) If the patient does not improve:
  1. The patient's clinical condition has deteriorated to the extent that the safety and security of inpatient or residential care is necessary.
  2. Patient, family, or custodian noncompliance with treatment or with program rules exists.

*g. Coordination of services.* Programming services shall be provided in accordance with the individual treatment plan developed by appropriate day treatment staff, in collaboration with the patient and appropriate caretaker figure (parent, guardian, or principal caretaker), and under the supervision of the program director, coordinator, or supervisor.

The program for each patient will be coordinated by primary care staff of the community mental health center. A coordinated, consistent array of scheduled therapeutic services and activities shall comprise the day treatment program. These may include counseling or psychotherapy, theme groups, social skills development, behavior management, and other adjunctive therapies. At least 50 percent of scheduled therapeutic program hours exclusive of educational hours for each patient shall consist

of active treatment that specifically addresses the targeted problems of the population served. Active treatment shall be defined as treatment in which the program staff assume significant responsibility and often intervene.

Family, guardian, or principal caretaker shall be involved with the program through family therapy sessions or scheduled family components of the program. They will be encouraged to adopt an active role in treatment. Medicaid will not make separate payment for family therapy services. Persons aged 20 or under who have reached the age of majority, either by age or emancipation, are exempt from family therapy involvement.

Therapeutic activities will be scheduled according to the needs of the patients, both individually and as a group.

Scheduled therapeutic activities, which may include other program components as described above, shall be provided at least 3 hours per week up to a maximum of 15 hours per week.

*h. Stable milieu.* The program shall formally seek to provide a stable, consistent, and cohesive therapeutic milieu. In part this will be encouraged by scheduling attendance such that a stable core of patients exists as much as possible. The milieu will consider the developmental and social stage of the participants such that no patient will be significantly involved with other patients who are likely to contribute to retardation or deterioration of the patient's social and emotional functioning. To help establish a sense of program identity, the array of therapeutic interventions shall be specifically identified as the day treatment program. Program planning meetings shall be held at least quarterly to evaluate the effectiveness of the clinical program. In the program description, the provider shall state how milieu stability will be provided.

*i. Chronic mental illness.* Persons aged 18 through 20 with chronic mental illness as defined by rule 441—24.1(225C) can receive day treatment services under this subrule or subrule 78.16(6).

This rule is intended to implement Iowa Code section 249A.4.

**441—78.17(249A) Physical therapists.** Payment will be approved for the same services payable under Title XVIII of the Social Security Act (Medicare).

This rule is intended to implement Iowa Code section 249A.4.

**441—78.18(249A) Screening centers.** Payment will be approved for health screening as defined in 441—subrule 84.1(1) for Medicaid members under 21 years of age.

**78.18(1)** Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as screening center services. Screening centers that wish to administer those vaccines to Medicaid members shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. Screening centers shall receive reimbursement for the administration of vaccines to Medicaid members.

**78.18(2)** Payment will be approved for necessary laboratory service related to an element of screening when performed by the screening center and billed as a separate item.

**78.18(3)** Periodicity schedules for health, hearing, vision, and dental screenings.

*a.* Payment will be approved for health, vision, and hearing screenings as follows:

- (1) Six screenings in the first year of life.
- (2) Four screenings between the ages of 1 and 2.
- (3) One screening a year at ages 3, 4, 5, and 6.
- (4) One screening a year at ages 8, 10, 12, 14, 16, 18, and 20.

*b.* Payment for dental screenings will be approved in conjunction with the health screenings up to age 12 months. Screenings will be approved at ages 12 months and 24 months and thereafter at six-month intervals up to age 21.

*c.* Interperiodic screenings will be approved as medically necessary.

**78.18(4)** When it is established by the periodicity schedule in 78.18(3) that an individual is in need of screening the individual will receive a notice that screening is due.

**78.18(5)** When an individual is screened, a member of the screening center shall complete a medical history. The medical history shall become part of the individual's medical record.

**78.18(6)** Rescinded IAB 12/3/08, effective 2/1/09.

**78.18(7)** Payment will be made for persons aged 20 and under for nutritional counseling provided by a licensed dietitian employed by or under contract with a screening center for a nutritional problem or condition of a degree of severity that nutritional counseling beyond that normally expected as part of the standard medical management is warranted. For persons eligible for the WIC program, a WIC referral is required. Medical necessity for nutritional counseling services exceeding those available through WIC shall be documented.

**78.18(8)** Payment shall be made for dental services provided by a dental hygienist employed by or under contract with a screening center.

This rule is intended to implement Iowa Code section 249A.4.

#### **441—78.19(249A) Rehabilitation agencies.**

**78.19(1)** *Coverage of services.*

*a. General provisions regarding coverage of services.*

(1) Services are provided in the recipient's home or in a care facility (other than a hospital) by a speech therapist, physical therapist, or occupational therapist employed by or contracted by the agency. Services provided a recipient residing in a nursing facility or residential care facility are payable when a statement is submitted signed by the facility that the facility does not have these services available. The statement need only be submitted at the start of care unless the situation changes. Payment will not be made to a rehabilitation agency for therapy provided to a recipient residing in an intermediate care facility for the mentally retarded since these facilities are responsible for providing or paying for services required by recipients.

(2) All services must be determined to be medically necessary, reasonable, and meet a significant need of the recipient that cannot be met by a family member, friend, medical staff personnel, or other caregiver; must meet accepted standards of medical practice; and must be a specific and effective treatment for a patient's medical or disabling condition.

(3) In order for a service to be payable, a licensed therapist must complete a plan of treatment every 30 days and indicate the type of service required. The plan of treatment must contain the information noted in subrule 78.19(2).

(4) There is no specific limitation on the number of visits for which payment through the program will be made so long as that amount of service is medically necessary in the individual case, is related to a diagnosed medical impairment or disabling condition, and meets the current standards of practice in each related field. Documentation must be submitted with each claim to support the need for the number of services being provided.

(5) Payments will be made both for restorative service and also for maintenance types of service. Essentially, maintenance services means services to a patient whose condition is stabilized and who requires observation by a therapist of conditions defined by the physician as indicating a possible deterioration of health status. This would include persons with long-term illnesses or a disabling condition whose status is stable rather than posthospital. Refer to 78.19(1) "b" (7) and (8) for guidelines under restorative and maintenance therapy.

(6) Restorative or maintenance therapy sessions must meet the following criteria:

1. There must be face-to-face patient contact interaction.
2. Services must be provided primarily on an individual basis. Group therapy is covered, but total units of service in a month shall not exceed total units of individual therapy. Family members receiving therapy may be included as part of a group.

3. Treatment sessions may be no less than 15 minutes of service and no more than 60 minutes of service per date unless more than 60 minutes of service is required for a treatment session due to the patient's specific condition. If more than 60 minutes of service is required for a treatment session, additional documentation of the specific condition and the need for the longer treatment session shall be submitted with the claim. A unit of treatment shall be considered to be 15 minutes in length.

4. Progress must be documented in measurable statistics in the progress notes in order for services to be reimbursed. Refer to 78.19(1)“b”(7) and (8) for guidelines under restorative and maintenance therapy.

(7) Payment will be made for an appropriate period of diagnostic therapy or trial therapy (up to two months) to determine a patient’s rehabilitation potential and establish appropriate short-term and long-term goals. Documentation must be submitted with each plan to support the need for diagnostic or trial therapy. Refer to 78.19(1)“b”(16) for guidelines under diagnostic or trial therapy.

*b. Physical therapy services.*

(1) To be covered under rehabilitation agency services, physical therapy services must relate directly and specifically to an active written treatment plan, follow a treatment plan established by the licensed therapist after consultation with the physician, be reasonable and necessary to the treatment of the person’s illness, injury, or disabling condition, be specific and effective treatment for the patient’s medical or disabling condition, and be of such a level of complexity and sophistication, or the condition of the patient must be such that the services required can be safely and effectively performed only by a qualified physical therapist or under the supervision of the therapist.

(2) A qualified physical therapist assistant may provide any restorative services performed by a licensed physical therapist under supervision of the therapist as set forth in the department of public health, professional licensure division, 645—subrule 200.20(7).

(3) The initial physical therapy evaluation must be provided by a licensed physical therapist.

(4) There must be an expectation that there will be a significant, practical improvement in the patient’s condition in a reasonable amount of time based on the patient’s restorative potential assessed by the physician.

(5) It must be demonstrated there is a need to establish a safe and effective maintenance program related to a specific disease state, illness, injury, or disabling condition.

(6) The amount, frequency, and duration of the services must be reasonable.

(7) Restorative therapy must be reasonable and necessary to the treatment of the patient’s injury or disabling condition. The expected restorative potential must be practical and in relation to the extent and duration of the treatment. There must be an expectation that the patient’s medical or disabling condition will show functional improvement in a reasonable period of time. Functional improvement means that demonstrable measurable increases have occurred in the patient’s level of independence outside the therapeutic environment.

(8) Generally, maintenance therapy means services to a patient whose condition is stabilized and who requires observation by a therapist of conditions defined by the physician as indicating a possible deterioration of health status. This includes persons with long-term illnesses or disabling conditions whose status is stable rather than posthospital. Maintenance therapy is also appropriate for individuals whose condition is such that a professionally established program of activities, exercises, or stimulation is medically necessary to prevent deterioration or maintain present functioning levels.

Where a maintenance program is appropriate, the initial evaluation and the instruction of the patient, family members, home health aides, facility personnel, or other caregivers to carry out the program are considered a covered physical therapy service. Payment shall be made for a maximum of three visits to establish a maintenance program and instruct the caregivers. Payment for supervisory visits to monitor the program is limited to two per month for a maximum period of 12 months. The plan of treatment must specify the anticipated monitoring activity of the supervisor.

Beyond evaluation, instruction, and monitoring, maintenance therapy is not reimbursable.

After 12 months of maintenance therapy, a reevaluation is a covered service, if medically necessary. A reevaluation will be considered medically necessary only if there is a significant change in residential or employment situation or the patient exhibits an increase or decrease in functional ability or motivation, clearing of confusion, or the remission of some other medical condition which previously contraindicated restorative therapy. A statement by the interdisciplinary team of a person with developmental disabilities recommending a reevaluation and stating the basis for medical necessity will be considered as supporting the necessity of a reevaluation and may expedite approval.

(Restorative and maintenance therapy definitions also apply to speech and occupational therapy.)

When a patient is under a restorative physical therapy program, the patient's condition is regularly reevaluated and the program adjusted by the physical therapist. It is expected that prior to discharge, a maintenance program has been designed by the physical therapist. Consequently, where a maintenance program is not established until after the restorative program has been completed, it would not be considered reasonable and necessary to the treatment of the patient's condition and would be excluded from coverage.

(9) Hot packs, hydrocollator, infrared treatments, paraffin baths, and whirlpool baths do not ordinarily require the skills of a qualified physical therapist. These are covered when the patient's condition is complicated by other conditions such as a circulatory deficiency or open wounds or if the service is an integral part of a skilled physical therapy procedure.

(10) Gait training and gait evaluation and training constitute a covered service if the patient's ability to walk has been impaired by a neurological, muscular or skeletal condition or illness. The gait training must be expected to significantly improve the patient's ability to walk or level of independence.

Repetitious exercise to increase endurance of weak or unstable patients can be safely provided by supportive personnel, e.g., aides, nursing personnel. Therefore, it is not a covered physical therapy service.

(11) Ultrasound, shortwave, and microwave diathermy treatments are considered covered services.

(12) Range of motion tests must be performed by a qualified physical therapist. Range of motion exercises require the skills of a qualified physical therapist only when they are part of the active treatment of a specific disease or disabling condition which has resulted in a loss or restriction of mobility.

Documentation must reflect the degree of motion lost, the normal range of motion, and the degree to be restored.

Range of motion to unaffected joints only does not constitute a covered physical therapy service.

(13) Reconditioning programs after surgery or prolonged hospitalization are not covered as physical therapy.

(14) Therapeutic exercises would constitute a physical therapy service due either to the type of exercise employed or to the condition of the patient.

(15) Use of isokinetic or isotonic type equipment in physical therapy is covered when normal range of motion of a joint is affected due to bone, joint, ligament or tendon injury or postsurgical trauma. Billing can only be made for the time actually spent by the therapist in instructing the patient and assessing the patient's progress.

(16) When recipients do not meet restorative or maintenance therapy criteria, diagnostic or trial therapy may be utilized. When the initial evaluation is not sufficient to determine whether there are rehabilitative goals that should be addressed, diagnostic or trial therapy to establish goals shall be considered appropriate. Diagnostic or trial therapy may be appropriate for recipients who need evaluation in multiple environments in order to adequately determine their rehabilitative potential. Diagnostic or trial therapy consideration may be appropriate when there is a need to assess the patient's response to treatment in the recipient's environment.

When during diagnostic or trial therapy a recipient has been sufficiently evaluated to determine potential for restorative or maintenance therapy, or lack of therapy potential, diagnostic or trial therapy ends. When as a result of diagnostic or trial therapy, restorative or maintenance therapy is found appropriate, claims shall be submitted noting restorative or maintenance therapy (instead of diagnostic or trial therapy).

At the end of diagnostic or trial therapy, the rehabilitation provider shall recommend continuance of services under restorative therapy, recommend continuance of services under maintenance therapy, or recommend discontinuance of services. Continuance of services under restorative or maintenance therapy will be reviewed based on the criteria in place for restorative or maintenance therapy.

Trial therapy shall not be granted more often than once per year for the same issue. If the recipient has a previous history of rehabilitative services, trial therapy for the same type of services generally would be payable only when a significant change has occurred since the last therapy. Requests for subsequent diagnostic or trial therapy for the same issue would require documentation reflecting a significant change. See number 4 below for guidelines under a significant change. Further diagnostic or trial therapy for the

same issue would not be considered appropriate when progress was not achieved, unless the reasons which blocked change previously are listed and the reasons the new diagnostic or trial therapy would not have these blocks are provided.

The number of diagnostic or trial therapy hours authorized in the initial treatment period shall not exceed 12 hours per month. Documentation of the medical necessity and the plan for services under diagnostic trial therapy are required as they will be reviewed in the determination of the medical necessity of the number of hours of service provided.

Diagnostic or trial therapy standards also apply to speech and occupational therapy.

The following criteria additionally must be met:

1. There must be face-to-face interaction with a licensed therapist. (An aide's services will not be payable.)

2. Services must be provided on an individual basis. (Group diagnostic or trial therapy will not be payable.)

3. Documentation of the diagnostic therapy or trial therapy must reflect the provider's plan for therapy and the recipient's response.

4. If the recipient has a previous history of rehabilitative services, trial therapy for the same type of services generally would be payable only when a significant change has occurred since the last therapy. A significant change would be considered as having occurred when any of the following exist: new onset, new problem, new need, new growth issue, a change in vocational or residential setting that requires a reevaluation of potential, or surgical intervention that may have caused new rehabilitative potentials.

5. For persons who received previous rehabilitative treatment, consideration of trial therapy generally should occur only if the person has incorporated any regimen recommended during prior treatment into the person's daily life to the extent of the person's abilities.

6. Documentation should include any previous attempts to resolve problems using nontherapy personnel (i.e., residential group home staff, family members, etc.) and whether follow-up programs from previous therapy have been carried out.

7. Referrals from residential, vocational or other rehabilitation personnel that do not meet present evaluation, restorative or maintenance criteria shall be considered for trial therapy. Documentation of the proposed service, the medical necessity and the current medical or disabling condition, including any secondary rehabilitative diagnosis, will need to be submitted with the claim.

8. Claims for diagnostic or trial therapy shall reflect the progress being made toward the initial diagnostic or trial therapy plan.

*c. Occupational therapy services.*

(1) To be covered under rehabilitation agency services, occupational therapy services must be included in a plan of treatment, improve or restore practical functions which have been impaired by illness, injury, or disabling condition, or enhance the person's ability to perform those tasks required for independent functioning, be prescribed by a physician under a plan of treatment, be performed by a qualified licensed occupational therapist or a qualified licensed occupational therapist assistant under the general supervision of a qualified licensed occupational therapist as set forth in the department of public health, professional licensure division, rule 645—201.9(148B), and be reasonable and necessary for the treatment of the person's illness, injury, or disabling condition.

(2) Restorative therapy is covered when an expectation exists that the therapy will result in a significant practical improvement in the person's condition.

However, in these cases where there is a valid expectation of improvement met at the time the occupational therapy program is instituted, but the expectation goal is not realized, services would only be covered up to the time one would reasonably conclude the patient would not improve.

The guidelines under restorative therapy, maintenance therapy, and diagnostic or trial therapy for physical therapy in 78.19(1) "b" (7), (8), and (16) apply to occupational therapy.

(3) Maintenance therapy, or any activity or exercise program required to maintain a function at the restored level, is not a covered service. However, designing a maintenance program in accordance with the requirements of 78.19(1) "b" (8) and monitoring the progress would be covered.

(4) The selection and teaching of tasks designed to restore physical function are covered.

(5) Planning and implementing therapeutic tasks, such as activities to restore sensory-integrative functions are covered. Other examples include providing motor and tactile activities to increase input and improve responses for a stroke patient.

(6) The teaching of activities of daily living and energy conservation to improve the level of independence of a patient which require the skill of a licensed therapist and meet the definition of restorative therapy is covered.

(7) The designing, fabricating, and fitting of orthotic and self-help devices are considered covered services if they relate to the patient's condition and require occupational therapy. A maximum of 13 visits is reimbursable.

(8) Vocational and prevocational assessment and training are not payable by Medicaid. These include services which are related solely to specific employment opportunities, work skills, or work settings.

*d. Speech therapy services.*

(1) To be covered by Medicaid as rehabilitation agency services, speech therapy services must be included in a plan of treatment established by the licensed, skilled therapist after consultation with the physician, relate to a specific medical diagnosis which will significantly improve a patient's practical, functional level in a reasonable and predictable time period, and require the skilled services of a speech therapist. Services provided by a speech aide are not reimbursable.

(2) Speech therapy activities which are considered covered services include: restorative therapy services to restore functions affected by illness, injury, or disabling condition resulting in a communication impairment or to develop functions where deficiencies currently exist. Communication impairments fall into the general categories of disorders of voice, fluency, articulation, language, and swallowing disorders resulting from any condition other than mental impairment. Treatment of these conditions is payable if restorative criteria are met.

(3) Aural rehabilitation, the instruction given by a qualified speech pathologist in speech reading or lip reading to patients who have suffered a hearing loss (input impairment), constitutes a covered service if reasonable and necessary to the patient's illness or injury. Group treatment is not covered. Audiological services related to the use of a hearing aid are not reimbursable.

(4) Teaching a patient to use sign language and to use an augmentative communication device is reimbursable. The patient must show significant progress outside the therapy sessions in order for these services to be reimbursable.

(5) Where a maintenance program is appropriate, the initial evaluation, the instruction of the patient and caregivers to carry out the program, and supervisory visits to monitor progress are covered services. Beyond evaluation, instruction, and monitoring, maintenance therapy is not reimbursable. However, designing a maintenance program in accordance with the requirements of maintenance therapy and monitoring the progress are covered.

(6) The guidelines and limits on restorative therapy, maintenance therapy, and diagnostic or trial therapy for physical therapy in 78.19(1) "b"(7), (8), and (16) apply to speech therapy. If the only goal of prior rehabilitative speech therapy was to learn the prerequisite speech components, then number "5" under 78.19(1) "b"(16) will not apply to trial therapy.

**78.19(2) General guidelines for plans of treatment.**

*a.* The minimum information to be included on medical information forms and treatment plans includes:

(1) The patient's current medical condition and functional abilities, including any disabling condition.

(2) The physician's signature and date (within the certification period).

(3) Certification period.

(4) Patient's progress in measurable statistics. (Refer to 78.19(1) "b"(16).)

(5) The place services are rendered.

(6) Dates of prior hospitalization (if applicable or known).

(7) Dates of prior surgery (if applicable or known).

(8) The date the patient was last seen by the physician (if available).

- (9) A diagnosis relevant to the medical necessity for treatment.
- (10) Dates of onset of any diagnoses for which treatment is being rendered (if applicable).
- (11) A brief summary of the initial evaluation or baseline.
- (12) The patient's prognosis.
- (13) The services to be rendered.
- (14) The frequency of the services and discipline of the person providing the service.
- (15) The anticipated duration of the services and the estimated date of discharge (if applicable).
- (16) Assistive devices to be used.
- (17) Functional limitations.
- (18) The patient's rehabilitative potential and the extent to which the patient has been able to apply the skills learned in the rehabilitation setting to everyday living outside the therapy sessions.
- (19) The date of the last episode of instability or the date of the last episode of acute recurrence of illness or symptoms (if applicable).
- (20) Quantitative, measurable, short-term and long-term functional goals.
- (21) The period of time of a session.
- (22) Prior treatment (history related to current diagnosis) if available or known.

*b.* The information to be included when developing plans for teaching, training, and counseling include:

- (1) To whom the services were provided (patient, family member, etc.).
- (2) Prior teaching, training, or counseling provided.
- (3) The medical necessity of the rendered services.
- (4) The identification of specific services and goals.
- (5) The date of the start of the services.
- (6) The frequency of the services.
- (7) Progress in response to the services.
- (8) The estimated length of time the services are needed.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.20(249A) Independent laboratories.** Payment will be made for medically necessary laboratory services provided by laboratories that are independent of attending and consulting physicians' offices, hospitals, and critical access hospitals and that are certified to participate in the Medicare program.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.21(249A) Rural health clinics.** Payment will be made to rural health clinics for the same services payable under the Medicare program (Title XVIII of the Social Security Act). Payment will be made for sterilization in accordance with 78.1(16).

**78.21(1) Utilization review.** Utilization review shall be conducted of Medicaid members who access more than 24 outpatient visits in any 12-month period from physicians, advanced registered nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the member lock-in program.

**78.21(2) Risk assessment.** Risk assessment, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed at the initial visit during a Medicaid member's pregnancy.

*a.* If the risk assessment reflects a low-risk pregnancy, the assessment shall be completed again at approximately the twenty-eighth week of pregnancy.

*b.* If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)

**78.21(3) Vaccines.** Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as rural health center services. Rural health clinics that wish to administer those vaccines to Medicaid members shall enroll in the Vaccines for Children

program and obtain the vaccines from the department of public health. However, the administration of vaccines is a covered service.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.22(249A) Family planning clinics.** Payments will be made on a fee schedule basis for services provided by family planning clinics.

**78.22(1)** Payment will be made for sterilization in accordance with 78.1(16).

**78.22(2)** Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as family planning clinic services. Family planning clinics that wish to administer those vaccines for Medicaid members who receive services at the clinic shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. Family planning clinics shall receive reimbursement for the administration of vaccines to Medicaid members.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.23(249A) Other clinic services.** Payment will be made on a fee schedule basis to facilities not part of a hospital, funded publicly or by private contributions, which provide medically necessary treatment by or under the direct supervision of a physician or dentist to outpatients.

**78.23(1) Sterilization.** Payment will be made for sterilization in accordance with 78.1(16).

**78.23(2) Utilization review.** Utilization review shall be conducted of Medicaid members who access more than 24 outpatient visits in any 12-month period from physicians, advanced registered nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the member lock-in program.

**78.23(3) Risk assessment.** Risk assessment, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed at the initial visit during a Medicaid member's pregnancy.

*a.* If the risk assessment reflects a low-risk pregnancy, the assessment shall be completed again at approximately the twenty-eighth week of pregnancy.

*b.* If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)

**78.23(4) Vaccines.** Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as clinic services. Clinics that wish to administer those vaccines to Medicaid members shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. Clinics shall receive reimbursement for the administration of vaccines to Medicaid members.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.24(249A) Psychologists.** Payment will be approved for services authorized by state law when they are provided by the psychologist in the psychologist's office, a hospital, nursing facility, or residential care facility.

**78.24(1)** Payment for covered services provided by the psychologist shall be made on a fee for service basis.

*a.* Payment shall be made only for time spent in face-to-face consultation with the client.

*b.* Time spent with clients shall be rounded to the quarter hour.

**78.24(2)** Payment will be approved for the following psychological procedures:

*a.* Individual outpatient psychotherapy or other psychological procedures not to exceed one hour per week or 40 hours in any 12-month period, or

*b.* Couple, marital, family, or group outpatient therapy not to exceed one and one-half hours per week or 60 hours in any 12-month period, or

*c.* A combination of individual and group therapy not to exceed the cost of 40 individual therapy hours in any 12-month period.

*d.* Psychological examinations and testing for purposes of evaluation, placement, psychotherapy, or assessment of therapeutic progress, not to exceed eight hours in any 12-month period.

*e.* Mileage at the same rate as in 78.1(8) when the following conditions are met:

- (1) It is necessary for the psychologist to travel outside of the home community, and
  - (2) There is no qualified mental health professional more immediately available in the community,
- and

- (3) The member has a medical condition which prohibits travel.

*f.* Covered procedures necessary to maintain continuity of psychological treatment during periods of hospitalization or convalescence for physical illness.

*g.* Procedures provided within a licensed hospital, residential treatment facility, day hospital, or nursing home as part of an approved treatment plan and a psychologist is not employed by the facility.

**78.24(3)** Payment will not be approved for the following services:

*a.* Psychological examinations performed without relationship to evaluations or psychotherapy for a specific condition, symptom, or complaint.

*b.* Psychological examinations covered under Part B of Medicare, except for the Part B Medicare deductible and coinsurance.

*c.* Psychological examinations employing unusual or experimental instrumentation.

*d.* Individual and group psychotherapy without specification of condition, symptom, or complaint.

*e.* Sensitivity training, marriage enrichment, assertiveness training, growth groups or marathons, or psychotherapy for nonspecific conditions of distress such as job dissatisfaction or general unhappiness.

**78.24(4)** Rescinded IAB 10/12/94, effective 12/1/94.

**78.24(5)** The following services shall require review by a consultant to the department.

*a.* Protracted therapy beyond 16 visits. These cases shall be reviewed following the sixteenth therapy session and periodically thereafter.

*b.* Any service which does not appear necessary or appears to fall outside the scope of what is professionally appropriate or necessary for a particular condition.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.15.

**441—78.25(249A) Maternal health centers.** Payment will be made for prenatal and postpartum medical care, health education, and transportation to receive prenatal and postpartum services. Payment will be made for enhanced perinatal services for persons determined high risk. These services include additional health education services, nutrition counseling, social services, and one postpartum home visit. Maternal health centers shall provide trimester and postpartum reports to the referring physician. Risk assessment using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed at the initial visit during a Medicaid member's pregnancy. If the risk assessment reflects a low-risk pregnancy, the assessment shall be completed again at approximately the twenty-eighth week of pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)

Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as maternal health center services. Maternal health centers that wish to administer those vaccines to Medicaid members shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. Maternal health centers shall receive reimbursement for the administration of vaccines to Medicaid members.

**78.25(1) Provider qualifications.**

*a.* Prenatal and postpartum medical services shall be provided by a physician, a physician assistant, or a nurse practitioner employed by or on contract with the center. Medical services performed by maternal health centers shall be performed under the supervision of a physician. Nurse practitioners and physician assistants performing under the supervision of a physician must do so within the scope of practice of that profession, as defined by Iowa Code chapters 152 and 148C, respectively.

*b.* Rescinded IAB 12/3/08, effective 2/1/09.

*c.* Education services and postpartum home visits shall be provided by a registered nurse.

*d.* Nutrition services shall be provided by a licensed dietitian.

*e.* Psychosocial services shall be provided by a person with at least a bachelor's degree in social work, counseling, sociology, psychology, family and community services, health or human development, health education, or individual and family studies.

**78.25(2)** *Services covered for all pregnant women.* Services provided may include:

- a. Prenatal and postpartum medical care.
- b. Health education, which shall include:
  - (1) Importance of continued prenatal care.
  - (2) Normal changes of pregnancy including both maternal changes and fetal changes.
  - (3) Self-care during pregnancy.
  - (4) Comfort measures during pregnancy.
  - (5) Danger signs during pregnancy.
  - (6) Labor and delivery including the normal process of labor, signs of labor, coping skills, danger signs, and management of labor.
  - (7) Preparation for baby including feeding, equipment, and clothing.
  - (8) Education on the use of over-the-counter drugs.
  - (9) Education about HIV protection.
- c. Home visit.
- d. Transportation to receive prenatal and postpartum services that is not payable under rule 441—78.11(249A) or 441—78.13(249A).
- e. Dental hygiene services within the scope of practice as defined by the dental board at 650—paragraph 10.5(3) “b.”

**78.25(3)** *Enhanced services covered for women with high-risk pregnancies.* Enhanced perinatal services may be provided to a patient who has been determined to have a high-risk pregnancy as documented by Form 470-2942, Medicaid Prenatal Risk Assessment. An appropriately trained physician or advanced registered nurse practitioner must be involved in staffing the patients receiving enhanced services.

Enhanced services are as follows:

- a. Rescinded IAB 12/3/08, effective 2/1/09.
- b. Education, which shall include as appropriate education about the following:
  - (1) High-risk medical conditions.
  - (2) High-risk sexual behavior.
  - (3) Smoking cessation.
  - (4) Alcohol usage education.
  - (5) Drug usage education.
  - (6) Environmental and occupational hazards.
- c. Nutrition assessment and counseling, which shall include:
  - (1) Initial assessment of nutritional risk based on height, current and prepregnancy weight status, laboratory data, clinical data, and self-reported dietary information.
  - (2) Ongoing nutritional assessment.
  - (3) Development of an individualized nutritional care plan.
  - (4) Referral to food assistance programs if indicated.
  - (5) Nutritional intervention.
- d. Psychosocial assessment and counseling, which shall include:
  - (1) A psychosocial assessment including: needs assessment, profile of client demographic factors, mental and physical health history and concerns, adjustment to pregnancy and future parenting, and environmental needs.
  - (2) A profile of the client’s family composition, patterns of functioning and support systems.
  - (3) An assessment-based plan of care, risk tracking, counseling and anticipatory guidance as appropriate, and referral and follow-up services.
- e. A postpartum home visit within two weeks of the child’s discharge from the hospital, which shall include:
  - (1) Assessment of mother’s health status.
  - (2) Physical and emotional changes postpartum.
  - (3) Family planning.
  - (4) Parenting skills.

- (5) Assessment of infant health.
- (6) Infant care.
- (7) Grief support for unhealthy outcome.
- (8) Parenting of a preterm infant.
- (9) Identification of and referral to community resources as needed.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.26(249A) Ambulatory surgical center services.** Ambulatory surgical center services are those services furnished by an ambulatory surgical center in connection with a covered surgical procedure or a covered dental procedure. Covered procedures are listed in the fee schedule published on the department's Web site.

**78.26(1)** Covered surgical procedures shall be those medically necessary procedures that are eligible for payment as physicians' services, under the circumstances specified in rule 441—78.1(249A) and performed on a Medicaid member, that can safely be performed in an outpatient setting as determined by the department upon advice from the Iowa Medicaid enterprise medical services unit.

**78.26(2)** Covered dental procedures are those medically necessary procedures that are eligible for payment as dentists' services, under the circumstances specified in rule 441—78.4(249A) and performed on a Medicaid member, that can safely be performed in an outpatient setting for Medicaid members whose mental, physical, or emotional condition necessitates deep sedation or general anesthesia.

**78.26(3)** The covered services provided by the ambulatory surgical center in connection with a Medicaid-covered surgical or dental procedure shall be those nonsurgical and nondental services that:

- a. Are medically necessary in connection with a Medicaid-covered surgical or dental procedure;
- b. Are eligible for payment as physicians' services under the circumstances specified in rule 441—78.1(249A) or as dentists' services under the circumstances specified in rule 441—78.4(249A); and
- c. Can safely and economically be performed in an outpatient setting, as determined by the department upon advice from the Iowa Medicaid enterprise medical services unit.

**78.26(4)** Limits on covered services.

- a. Abortion procedures are covered only when criteria in subrule 78.1(17) are met.
- b. Sterilization procedures are covered only when criteria in subrule 78.1(16) are met.
- c. Preprocedure review by the Iowa Foundation for Medical Care (IFMC) is required if ambulatory surgical centers are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from IFMC, 1776 West Lakes Parkway, West Des Moines, Iowa 50266-8239, or in local hospital utilization review offices. (Cross-reference 78.28(6))

This rule is intended to implement Iowa Code section 249A.4.

[ARC 8205B, IAB 10/7/09, effective 11/11/09]

**441—78.27(249A) Home- and community-based habilitation services.**

**78.27(1) Definitions.**

*"Adult"* means a person who is 18 years of age or older.

*"Assessment"* means the review of the current functioning of the member using the service in regard to the member's situation, needs, strengths, abilities, desires, and goals.

*"Case management"* means case management services accredited under 441—Chapter 24 and provided according to 441—Chapter 90.

*"Comprehensive service plan"* means an individualized, goal-oriented plan of services written in language understandable by the member using the service and developed collaboratively by the member and the case manager.

*"Department"* means the Iowa department of human services.

*"Emergency"* means a situation for which no approved individual program plan exists that, if not addressed, may result in injury or harm to the member or to other persons or in significant amounts of property damage.

*"HCBS"* means home- and community-based services.

“*Interdisciplinary team*” means a group of persons with varied professional backgrounds who meet with the member to develop a comprehensive service plan to address the member’s need for services.

“*ISIS*” means the department’s individualized services information system.

“*Member*” means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

“*Program*” means a set of related resources and services directed to the accomplishment of a fixed set of goals for qualifying members.

**78.27(2) Member eligibility.** To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

*a. Risk factors.* The member has at least one of the following risk factors:

(1) The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in the member’s life; or

(2) The member has a history of psychiatric illness resulting in at least one episode of continuous, professional supportive care other than hospitalization.

*b. Need for assistance.* The member has a need for assistance demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least two years:

(1) The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history.

(2) The member requires financial assistance for out-of-hospital maintenance and is unable to procure this assistance without help.

(3) The member shows severe inability to establish or maintain a personal social support system.

(4) The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management.

(5) The member exhibits inappropriate social behavior that results in a demand for intervention.

*c. Income.* The countable income used in determining the member’s Medicaid eligibility does not exceed 150 percent of the federal poverty level.

*d. Needs assessment.* The member’s case manager has completed an assessment of the member’s need for service, and, based on that assessment, the Iowa Medicaid enterprise medical services unit has determined that the member is in need of home- and community-based habilitation services. A member who is not eligible for Medicaid case management services under 441—Chapter 90 shall receive case management as a home- and community-based habilitation service. The designated case manager shall:

(1) Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule 90.5(1) before services begin and annually thereafter.

(2) Use the evaluation results to develop a comprehensive service plan as specified in subrule 78.27(4).

*e. Plan for service.* The department has approved the member’s plan for home- and community-based habilitation services. A service plan that has been validated through ISIS shall be considered approved by the department. Home- and community-based habilitation services provided before department approval of a member’s eligibility for the program cannot be reimbursed.

(1) The member’s comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4). A service plan may change at any time due to a significant change in the member’s needs.

(2) The member’s habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

(3) The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

**78.27(3) Application for services.** The case manager shall apply for services on behalf of a member by entering a program request for habilitation services in ISIS. The department shall issue a notice of decision to the applicant when financial eligibility, determination of needs-based eligibility, and approval of the service plan have been completed.

**78.27(4) Comprehensive service plan.** Individualized, planned, and appropriate services shall be guided by a member-specific comprehensive service plan developed with the member in collaboration with an interdisciplinary team, as appropriate. Medically necessary services shall be planned for and provided at the locations where the member lives, learns, works, and socializes.

*a. Development.* A comprehensive service plan shall be developed for each member receiving home- and community-based habilitation services based on the member's current assessment and shall be reviewed on an annual basis.

(1) The case manager shall establish an interdisciplinary team for the member. The team shall include the case manager and the member and, if applicable, the member's legal representative, the member's family, the member's service providers, and others directly involved.

(2) With the interdisciplinary team, the case manager shall identify the member's services based on the member's needs, the availability of services, and the member's choice of services and providers.

(3) The comprehensive service plan development shall be completed at the member's home or at another location chosen by the member.

(4) The interdisciplinary team meeting shall be conducted before the current comprehensive service plan expires.

(5) The comprehensive service plan shall reflect desired individual outcomes.

(6) Services defined in the comprehensive service plan shall be appropriate to the severity of the member's problems and to the member's specific needs or disabilities.

(7) Activities identified in the comprehensive service plan shall encourage the ability and right of the member to make choices, to experience a sense of achievement, and to modify or continue participation in the treatment process.

(8) For members receiving home-based habilitation in a licensed residential care facility of 16 or fewer beds, the service plan shall address the member's opportunities for independence and community integration.

(9) The initial service plan and annual updates to the service plan must be approved by the Iowa Medicaid enterprise in the individualized services information system before services are implemented. Services provided before the approval date are not payable. The written case plan must be completed, signed and dated by the case manager or service worker within 30 calendar days after plan approval.

(10) Any changes to the service plan must be approved by the Iowa Medicaid enterprise in the individualized services information system before the implementation of services. Services provided before the approval date are not payable.

*b. Service goals and activities.* The comprehensive service plan shall:

(1) Identify observable or measurable individual goals.

(2) Identify interventions and supports needed to meet those goals with incremental action steps, as appropriate.

(3) Identify the staff persons, businesses, or organizations responsible for carrying out the interventions or supports.

(4) List all Medicaid and non-Medicaid services received by the member and identify:

1. The name of the provider responsible for delivering the service;

2. The funding source for the service; and

3. The number of units of service to be received by the member.

(5) Identify for a member receiving home-based habilitation:

1. The member's living environment at the time of enrollment;

2. The number of hours per day of on-site staff supervision needed by the member; and

3. The number of other members who will live with the member in the living unit.

(6) Include a separate, individualized, anticipated discharge plan that is specific to each service the member receives.

*c. Rights restrictions.* Any rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The comprehensive service plan shall include documentation of:

(1) Any restrictions on the member's rights, including maintenance of personal funds and self-administration of medications;

- (2) The need for the restriction; and
- (3) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.

*d. Emergency plan.* The comprehensive service plan shall include a plan for emergencies and identification of the supports available to the member in an emergency. Emergency plans shall be developed as follows:

- (1) The member's interdisciplinary team shall identify in the comprehensive service plan any health and safety issues applicable to the individual member based on information gathered before the team meeting, including a risk assessment.

- (2) The interdisciplinary team shall identify an emergency backup support and crisis response system to address problems or issues arising when support services are interrupted or delayed or the member's needs change.

- (3) Providers of applicable services shall provide for emergency backup staff.

*e. Plan approval.* Services shall be entered into ISIS based on the comprehensive service plan. A service plan that has been validated and authorized through ISIS shall be considered approved by the department. Services must be authorized in ISIS as specified in paragraph 78.27(2) "e."

**78.27(5) Requirements for services.** Home- and community-based habilitation services shall be provided in accordance with the following requirements:

- a.* The services shall be based on the member's needs as identified in the member's comprehensive service plan.

- b.* The services shall be delivered in the least restrictive environment appropriate to the needs of the member.

- c.* The services shall include the applicable and necessary instruction, supervision, assistance, and support required by the member to achieve the member's life goals.

- d.* Service components that are the same or similar shall not be provided simultaneously.

- e.* Service costs are not reimbursable while the member is in a medical institution, including but not limited to a hospital or nursing facility.

- f.* Reimbursement is not available for room and board.

- g.* Services shall be billed in whole units.

- h.* Services shall be documented. Each unit billed must have corresponding financial and medical records as set forth in rule 441—79.3(249A).

**78.27(6) Case management.** Case management assists members in gaining access to needed medical, social, educational, housing, transportation, vocational, and other appropriate services in order to ensure the health, safety, and welfare of the member.

- a. Scope.* Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).

- b. Exclusion.* Payment shall not be made for case management provided to a member who is eligible for case management services under 441—Chapter 90.

**78.27(7) Home-based habilitation.** "Home-based habilitation" means individually tailored supports that assist with the acquisition, retention, or improvement of skills related to living in the community.

- a. Scope.* Home-based habilitation services are individualized supportive services provided in the member's home and community that assist the member to reside in the most integrated setting appropriate to the member's needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member's comprehensive service plan. Covered supports include:

- (1) Adaptive skill development;
- (2) Assistance with activities of daily living;
- (3) Community inclusion;
- (4) Transportation;
- (5) Adult educational supports;
- (6) Social and leisure skill development;

- (7) Personal care; and
- (8) Protective oversight and supervision.

*b. Exclusions.* Home-based habilitation payment shall not be made for the following:

- (1) Room and board and maintenance costs, including the cost of rent or mortgage, utilities, telephone, food, household supplies, and building maintenance, upkeep, or improvement.
- (2) Service activities associated with vocational services, day care, medical services, or case management.
- (3) Transportation to and from a day program.
- (4) Services provided to a member who lives in a licensed residential care facility of more than 16 persons.
- (5) Services provided to a member who lives in a facility that provides the same service as part of an inclusive or “bundled” service rate, such as a nursing facility or an intermediate care facility for persons with mental retardation.

(6) Personal care and protective oversight and supervision may be a component part of home-based habilitation services but may not comprise the entirety of the service.

**78.27(8) Day habilitation.** “Day habilitation” means assistance with acquisition, retention, or improvement of self-help, socialization, and adaptive skills.

*a. Scope.* Day habilitation activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice. Services focus on enabling the member to attain or maintain the member’s maximum functional level and shall be coordinated with any physical, occupational, or speech therapies in the comprehensive service plan. Services may serve to reinforce skills or lessons taught in other settings. Services must enhance or support the member’s:

- (1) Intellectual functioning;
- (2) Physical and emotional health and development;
- (3) Language and communication development;
- (4) Cognitive functioning;
- (5) Socialization and community integration;
- (6) Functional skill development;
- (7) Behavior management;
- (8) Responsibility and self-direction;
- (9) Daily living activities;
- (10) Self-advocacy skills; or
- (11) Mobility.

*b. Setting.* Day habilitation shall take place in a nonresidential setting separate from the member’s residence. Services shall not be provided in the member’s home. When the member lives in a residential care facility of more than 16 beds, day habilitation services provided in the facility are not considered to be provided in the member’s home if the services are provided in an area apart from the member’s sleeping accommodations.

*c. Duration.* Day habilitation services shall be furnished for four or more hours per day on a regularly scheduled basis for one or more days per week or as specified in the member’s comprehensive service plan. Meals provided as part of day habilitation shall not constitute a full nutritional regimen (three meals per day).

*d. Exclusions.* Day habilitation payment shall not be made for the following:

- (1) Vocational or prevocational services.
- (2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.
- (3) Compensation to members for participating in day habilitation services.

**78.27(9) Prevocational habilitation.** “Prevocational habilitation” means services that prepare a member for paid or unpaid employment.

*a. Scope.* Prevocational habilitation services include teaching concepts such as compliance, attendance, task completion, problem solving, and safety. Services are not oriented to a specific job task, but instead are aimed at a generalized result. Services shall be reflected in the member’s

comprehensive service plan and shall be directed to rehabilitative objectives rather than to explicit employment objectives.

*b. Setting.* Prevocational habilitation services may be provided in a variety of community-based settings based on the individual need of the member. Meals provided as part of these services shall not constitute a full nutritional regimen (three meals per day).

*c. Exclusions.* Prevocational habilitation payment shall not be made for the following:

(1) Services that are available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available for the service under these programs shall be maintained in the file of each member receiving prevocational habilitation services.

(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(3) Compensation to members for participating in prevocational services.

**78.27(10) Supported employment habilitation.** “Supported employment habilitation” means services associated with maintaining competitive paid employment.

*a. Scope.* Supported employment habilitation services are intensive, ongoing supports that enable members to perform in a regular work setting. Services are provided to members who need support because of their disabilities and who are unlikely to obtain competitive employment at or above the minimum wage absent the provision of supports. Covered services include:

(1) Activities to obtain a job. Covered services directed to obtaining a job must be provided to or on behalf of a member for whom competitive employment is reasonably expected within less than one year. Services must be focused on job placement, not on teaching generalized employment skills or rehabilitative goals. Three conditions must be met before services are provided. First, the member and the interdisciplinary team described in subrule 78.27(4) must complete the form that Iowa vocational rehabilitation services uses to identify the supported employment services appropriate to meet a person’s employment needs. Second, the member’s interdisciplinary team must determine that the identified services are necessary. Third, the Iowa Medicaid enterprise medical services unit must approve the services. Available components of activities to obtain a job are as follows:

1. Job development services. Job development services are directed toward obtaining competitive employment. A unit of service is a job placement that the member holds for 30 consecutive calendar days or more. Payment is available once the service is authorized in the member’s service plan. A member may receive two units of job development services during a 12-month period. The activities provided to the member may include job procurement training, including grooming and hygiene, application, résumé development, interviewing skills, follow-up letters, and job search activities; job retention training, including promptness, coworker relations, transportation skills, disability-related supports, job benefits, and an understanding of employee rights and self-advocacy; and customized job development services specific to the member.

2. Employer development services. The focus of employer development services is to support employers in hiring and retaining members in their workforce and to communicate expectations of the employers to the interdisciplinary team described in subrule 78.27(4). Employer development services may be provided only to members who are reasonably expected to work for no more than 10 hours per week. A unit of service is one job placement that the member holds for 30 consecutive calendar days or more. Payment for this service may be made only after the member holds the job for 30 days. A member may receive two units of employer development services during a 12-month period if the member is competitively employed for 30 or more consecutive calendar days and the other conditions for service approval are met. The services provided may include: developing relationships with employers and providing leads for individual members when appropriate; job analysis for a specific job; development of a customized training plan identifying job-specific skill requirements, employer expectations, teaching strategies, time frames, and responsibilities; identifying and arranging reasonable accommodations with the employer; providing disability awareness and training to the employer when it is deemed necessary; and providing technical assistance to the employer regarding the training progress as identified on the member’s customized training plan.

3. Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided to the member for a minimum of 30 days or with assisting the member in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the member's employment goals. A unit of service is an hour. A maximum of 26 units may be provided in a 12-month period. The services provided may include: job opening identification with the member; assistance with applying for a job, including completion of applications or interviews; and work site assessment and job accommodation evaluation.

(2) Supports to maintain employment, including the following services provided to or on behalf of the member:

1. Individual work-related behavioral management.
2. Job coaching.
3. On-the-job or work-related crisis intervention.
4. Assistance in the use of skills related to sustaining competitive paid employment, including assistance with communication skills, problem solving, and safety.

5. Assistance with time management.

6. Assistance with appropriate grooming.

7. Employment-related supportive contacts.

8. On-site vocational assessment after employment.

9. Employer consultation.

*b. Setting.* Supported employment may be conducted in a variety of settings, particularly work sites where persons without disabilities are employed.

(1) The majority of coworkers at any employment site with more than two employees where members seek, obtain, or maintain employment must be persons without disabilities.

(2) In the performance of job duties at any site where members seek, obtain, or maintain employment, the member must have daily contact with other employees or members of the general public who do not have disabilities, unless the absence of daily contact with other employees or the general public is typical for the job as performed by persons without disabilities.

(3) When services for maintaining employment are provided to members in a teamwork or "enclave" setting, the team shall include no more than eight people with disabilities.

*c. Service requirements.* The following requirements shall apply to all supported employment services:

(1) All supported employment services shall provide individualized and ongoing support contacts at intervals necessary to promote successful job retention.

(2) The provider shall provide employment-related adaptations required to assist the member in the performance of the member's job functions as part of the service.

(3) Community transportation options (such as carpools, coworkers, self or public transportation, families, volunteers) shall be attempted before the service provider provides transportation. When no other resources are available, employment-related transportation between work and home and to or from activities related to employment may be provided as part of the service.

(4) Members may access both services to maintain employment and services to obtain a job for the purpose of job advancement or job change. A member may receive a maximum of three job placements in a 12-month period and a maximum of 40 units per week of services to maintain employment.

*d. Exclusions.* Supported employment habilitation payment shall not be made for the following:

(1) Services that are available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available under these programs shall be maintained in the file of each member receiving supported employment services.

(2) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program.

(3) Subsidies or payments that are passed through to users of supported employment programs.

- (4) Training that is not directly related to a member's supported employment program.
- (5) Services involved in placing or maintaining members in day activity programs, work activity programs, or sheltered workshop programs.
- (6) Supports for volunteer work or unpaid internships.
- (7) Tuition for education or vocational training.
- (8) Individual advocacy that is not member-specific.

**78.27(11) Adverse service actions.**

*a. Denial.* Services shall be denied when the department determines that:

- (1) Rescinded IAB 12/29/10, effective 1/1/11.
- (2) The member is not eligible for or in need of home- and community-based habilitation services.
- (3) The service is not identified in the member's comprehensive service plan.
- (4) Needed services are not available or received from qualifying providers, or no qualifying providers are available.
- (5) The member's service needs exceed the unit or reimbursement maximums for a service as set forth in 441—subrule 79.1(2).
- (6) Completion or receipt of required documents for the program has not occurred.

*b. Reduction.* A particular home- and community-based habilitation service may be reduced when the department determines that continued provision of service at its current level is not necessary.

*c. Termination.* A particular home- and community-based habilitation service may be terminated when the department determines that:

- (1) The member's income exceeds the allowable limit, or the member no longer meets other eligibility criteria for the program established by the department.
- (2) The service is not identified in the member's comprehensive service plan.
- (3) Needed services are not available or received from qualifying providers, or no qualifying providers are available.
- (4) The member's service needs are not being met by the services provided.
- (5) The member has received care in a medical institution for 30 consecutive days in any one stay.

When a member has been an inpatient in a medical institution for 30 consecutive days, the department will issue a notice of decision to inform the member of the service termination. If the member returns home before the effective date of the notice of decision and the member's condition has not substantially changed, the decision shall be rescinded, and eligibility for home- and community-based habilitation services shall continue.

(6) The member's service needs exceed the unit or reimbursement maximums for a service as established by the department.

(7) Duplication of services provided during the same period has occurred.

(8) The member or the member's legal representative, through the interdisciplinary process, requests termination of the service.

(9) Completion or receipt of required documents for the program has not occurred, or the member refuses to allow documentation of eligibility as to need and income.

*d. Appeal rights.* The department shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7. The member is entitled to have a review of the determination of needs-based eligibility by the Iowa Medicaid enterprise medical services unit by sending a letter requesting a review to the medical services unit. If dissatisfied with that decision, the member may file an appeal with the department.

**78.27(12) County reimbursement.** The county board of supervisors of the member's county of legal settlement shall reimburse the department for all of the nonfederal share of the cost of home- and community-based habilitation services provided to an adult member with a chronic mental illness as defined in 441—Chapter 90. The department shall notify the county's central point of coordination administrator through ISIS of the approval of the member's service plan.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 7957B, IAB 7/15/09, effective 7/1/09 (See Delay note at end of chapter); ARC 9311B, IAB 12/29/10, effective 1/1/11; ARC 9403B, IAB 3/9/11, effective 5/1/11]

**441—78.28(249A) List of medical services and equipment requiring prior approval, preprocedure review or preadmission review.**

**78.28(1)** Services, procedures, and medications prescribed by a physician (M.D. or D.O.) which are subject to prior approval or preprocedure review are as follows or as specified in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A:

*a.* Drugs require prior authorization as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A. For drugs requiring prior authorization, reimbursement will be made for a 72-hour supply dispensed in an emergency when a prior authorization request cannot be submitted.

*b.* Automated medication dispenser. (Cross-reference 78.10(2)“b”) Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:

(1) The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member’s ability to remember to take medications.

(2) The member is on two or more medications prescribed to be administered more than one time a day.

(3) The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.

(4) Less costly alternatives, such as medisets or telephone reminders, have failed.

*c.* Enteral products and enteral delivery pumps and supplies require prior approval. Daily enteral nutrition therapy shall be approved as medically necessary only for a member who either has a metabolic or digestive disorder that prevents the member from obtaining the necessary nutritional value from usual foods in any form and cannot be managed by avoidance of certain food products or has a severe pathology of the body that does not allow ingestion or absorption of sufficient nutrients from regular food to maintain weight and strength commensurate with the member’s general condition. (Cross-reference 78.10(3)“c”(2))

(1) A request for prior approval shall include a physician’s, physician assistant’s, or advanced registered nurse practitioner’s written order or prescription and documentation to establish the medical necessity for enteral products and enteral delivery pumps and supplies pursuant to the above standards. The documentation shall include:

1. A statement of the member’s total medical condition that includes a description of the member’s metabolic or digestive disorder or pathology.

2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the member’s nutritional status and indicate that the member’s nutritional needs were not or could not be met by regular food in pureed form.

3. Documentation of the medical necessity for an enteral pump, if the request includes an enteral pump. The information submitted must identify the medical reasons for not using a gravity feeding set.

(2) Examples of conditions that will not justify approval of enteral nutrition therapy are: weight-loss diets, wired-shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children’s program is not available), and the use of enteral products for convenience reasons when regular food in pureed form would meet the medical need of the member.

(3) Basis of payment for nutritional therapy supplies shall be the least expensive method of delivery that is reasonable and medically necessary based on the documentation submitted.

*d.* Rescinded IAB 5/11/05, effective 5/1/05.

*e.* Augmentative communication systems, which are provided to persons unable to communicate their basic needs through oral speech or manual sign language, require prior approval. Form 470-2145, Augmentative Communication System Selection, completed by a speech pathologist and a physician’s prescription for a particular device shall be submitted to request prior approval. (Cross-reference 78.10(3)“c”(1))

(1) Information requested on the prior authorization form includes a medical history, diagnosis, and prognosis completed by a physician. In addition, a speech or language pathologist needs to describe

current functional abilities in the following areas: communication skills, motor status, sensory status, cognitive status, social and emotional status, and language status.

(2) Also needed from the speech or language pathologist is information on educational ability and needs, vocational potential, anticipated duration of need, prognosis regarding oral communication skills, prognosis with a particular device, and recommendations.

(3) The department's consultants with an expertise in speech pathology will evaluate the prior approval requests and make recommendations to the department.

*f.* Preprocedure review by the Iowa Foundation for Medical Care (IFMC) will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preprocedure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and on the published criteria established by the department and the IFMC. If not so approved by the IFMC, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. (Cross-reference 78.1(19))

*g.* Prior authorization is required for enclosed beds. (Cross-reference 78.10(2)"c") The department shall approve payment for an enclosed bed when prescribed for a patient who meets all of the following conditions:

(1) The patient has a diagnosis-related cognitive or communication impairment that results in risk to safety.

(2) The patient's mobility puts the patient at risk for injury.

(3) The patient has suffered injuries when getting out of bed.

*h.* Prior authorization is required for external insulin infusion pumps and is granted according to Medicare coverage criteria. (Cross-reference 78.10(2)"c")

*i.* Prior authorization is required for oral nutritional products. (Cross-reference 78.10(2)"c") The department shall approve payment for oral nutritional products when the member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition.

(1) A request for prior approval shall include a written order or prescription from a physician, physician assistant, or advanced registered nurse practitioner and documentation to establish the medical necessity for oral nutritional products pursuant to these standards. The documentation shall include:

1. A statement of the member's total medical condition that includes a description of the member's metabolic, digestive, or psychological disorder or pathology.

2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the member's nutritional status and indicate that the member's nutritional needs were not or could not be met by regular food in pureed form.

3. Documentation to support the fact that regular foods will not provide sufficient nutritional value to the member, if the request includes oral supplementation of a regular diet.

(2) Examples of conditions that will not justify approval of oral nutritional products are: weight-loss diets, wired-shut jaws, diabetic diets, and milk or food allergies (unless the member is under five years of age and coverage through the Special Supplemental Nutrition Program for Women, Infants, and Children is not available).

*j.* Prior authorization is required for vest airway clearance systems. (Cross-reference 78.10(2)"c") The department shall approve payment for a vest airway clearance system when prescribed by a pulmonologist for a patient with a medical diagnosis related to a lung disorder if all of the following conditions are met:

(1) Pulmonary function tests for the 12 months before initiation of the vest demonstrate an overall significant decrease of lung function.

(2) The patient resides in an independent living situation or has a medical condition that precludes the caregiver from administering traditional chest physiotherapy.

(3) Treatment by flutter device failed or is contraindicated.

(4) Treatment by intrapulmonary percussive ventilation failed or is contraindicated.

(5) All other less costly alternatives have been tried.

*k.* Prior authorization is required for blood glucose monitors and diabetic test strips produced by a manufacturer that does not have a current agreement to provide a rebate to the department for monitors or test strips provided through the Medicaid program. The department shall approve payment when a blood glucose monitor or diabetic test strips produced by a manufacturer that does not have a current rebate agreement with the department are medically necessary.

**78.28(2)** Dental services. Dental services which require prior approval are as follows:

*a.* The following periodontal services:

(1) Payment for periodontal scaling and root planing will be approved when interproximal and subgingival calculus is evident in X-rays or when justified and documented that curettage, scaling or root planing is required in addition to routine prophylaxis. (Cross-reference 78.4(4)“*b*”)

(2) Payment for pedicle soft tissue graft and free soft tissue graft will be approved when the written narrative describes medical necessity. Payment for other periodontal surgical procedures will be approved after periodontal scaling and root planing has been provided, a reevaluation examination has been completed, and the patient has demonstrated reasonable oral hygiene, unless the patient is unable to demonstrate reasonable oral hygiene because of physical or mental disability or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.4(4)“*c*”)

(3) Payment for pedicle soft tissue graft and free soft tissue graft will be approved when the written narrative describes medical necessity. (Cross-reference 78.4(4)“*d*”)

(4) Payment for periodontal maintenance therapy may be approved after periodontal scaling and root planing or periodontal surgical procedures have been provided. Periodontal maintenance therapy may be approved once per three-month interval for moderate to advanced cases if the condition would deteriorate without treatment. (Cross-reference 78.4(4)“*e*”)

*b.* Surgical endodontic treatment which includes an apicoectomy, performed as a separate surgical procedure; an apicoectomy, performed in conjunction with endodontic procedure; an apical curettage; a root resection; or excision of hyperplastic tissue will be approved when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. Surgical endodontic procedures may be indicated when:

(1) Conventional root canal treatment cannot be successfully completed because canals cannot be negotiated, debrided or obturated due to calcifications, blockages, broken instruments, severe curvatures, and dilacerated roots.

(2) Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross-reference 78.4(5)“*c*”)

*c.* The following prosthetic services:

(1) A removable partial denture replacing posterior teeth will be approved when the member has fewer than eight posterior teeth in occlusion or the member has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one removable partial denture brings eight posterior teeth in occlusion, no additional removable partial denture will be approved. A removable partial denture replacing posterior teeth is payable only once in a five-year period unless the removable partial denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure, and is required to prevent significant dental problems. Replacement of a removable partial denture replacing posterior teeth due to resorption in less than a five-year period is not payable. (Cross-reference 78.4(7)“*c*”)

(2) A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth will be approved for members whose medical condition precludes the use of a removable partial denture. High noble or noble metals will be approved only when the member is allergic to all other restorative

materials. A fixed partial denture replacing anterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.4(7)“d”)

(3) A fixed partial denture (including an acid etch fixed partial denture) replacing posterior teeth will be approved for members whose medical condition precludes the use of a removable partial denture and who have fewer than eight posterior teeth in occlusion or if the member has a full denture in one arch and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one fixed partial denture brings eight posterior teeth in occlusion, no additional fixed partial denture will be approved. High noble or noble metals will be approved only when the member is allergic to all other restorative materials. A fixed partial denture replacing posterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.4(7)“e”)

(4) Dental implants and related services will be authorized when the member is missing significant oral structures due to cancer, traumatic injuries, or developmental defects such as cleft palate and cannot use a conventional denture.

*d.* Orthodontic services to treat a handicapping malocclusion are payable with prior approval. A score of 26 or above on the index from “Handicapping Malocclusion Assessment to Establish Treatment Priority,” by J. A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968, is required for approval.

(1) A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will be approved only for the severe and the most handicapping. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables:

1. Degree of malalignment;
2. Missing teeth;
3. Angle classification;
4. Overjet and overbite;
5. Openbite; and
6. Crossbite.

(2) A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the Iowa Medicaid enterprise medical services unit.

(3) Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the department’s orthodontic consultant if the additional units are found to be medically necessary. (Cross-reference 78.4(8)“a”)

*e.* More than two laboratory-fabricated crowns will be approved in a 12-month period for anterior teeth that cannot be restored with a composite or amalgam restoration and for posterior teeth that cannot be restored with a composite or amalgam restoration or stainless steel crown. (Cross-reference 78.4(3)“d”)

*f.* Endodontic retreatment of a tooth will be authorized when the conventional treatment has been completed, a reasonable time has elapsed, and failure has been demonstrated with a radiograph and narrative history.

**78.28(3)** Optometric services and ophthalmic materials which must be submitted for prior approval are as follows:

*a.* A second lens correction within a 24-month period for members eight years of age and older. Payment shall be made when the member’s vision has at least a five-tenths diopter of change in sphere or cylinder or ten-degree change in axis in either eye.

*b.* Visual therapy may be authorized when warranted by case history or diagnosis for a period of time not greater than 90 days. Should continued therapy be warranted, the prior approval process should be reaccomplished, accompanied by a report showing satisfactory progress. Approved diagnoses are convergence insufficiency and amblyopia. Visual therapy is not covered when provided by opticians.

c. Subnormal visual aids where near visual acuity is better than 20/100 at 16 inches, 2M print. Prior authorization is not required if near visual acuity as described above is less than 20/100. Subnormal aids include, but are not limited to, hand magnifiers, loupes, telescopic spectacles or reverse Galilean telescope systems.

For all of the above, the optometrist shall furnish sufficient information to clearly establish that these procedures are necessary in terms of the visual condition of the patient. (Cross-references 78.6(4), 441—78.7(249A), and 78.1(18))

**78.28(4)** Hearing aids that must be submitted for prior approval are:

a. Replacement of a hearing aid less than four years old (except when the member is under 21 years of age). The department shall approve payment when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing that would require a different hearing aid. (Cross-reference 78.14(7) "d"(1))

b. A hearing aid costing more than \$650. The department shall approve payment for either of the following purposes (Cross-reference 78.14(7) "d"(2)):

(1) Educational purposes when the member is participating in primary or secondary education or in a postsecondary academic program leading to a degree and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

(2) Vocational purposes when documentation submitted indicates the necessity, such as varying amounts of background noise in the work environment and a need to converse in order to do the job and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

**78.28(5)** Hospital services which must be subject to prior approval, preprocedure review or preadmission review are:

a. Any medical or surgical procedure requiring prior approval as set forth in Chapter 78 is subject to the conditions for payment set forth although a request form does not need to be submitted by the hospital as long as the approval is obtained by the physician. (Cross-reference 441—78.1(249A))

b. All inpatient hospital admissions are subject to preadmission review. Payment for inpatient hospital admissions is approved when it meets the criteria for inpatient hospital care as determined by the IFMC or its delegated hospitals. Criteria are available from IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices. (Cross-reference 441—78.3(249A))

c. Preprocedure review by the IFMC is required if hospitals are to be reimbursed for the inpatient and outpatient surgical procedures set forth in subrule 78.1(19). Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and the criteria established by the department and IFMC. The criteria are available from IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices.

**78.28(6)** Ambulatory surgical centers are subject to prior approval and preprocedure review as follows:

a. Any medical or surgical procedure requiring prior approval as set forth in Chapter 78 is subject to the conditions for payment set forth although a request form does not need to be submitted by the ambulatory surgical center as long as the prior approval is obtained by the physician.

b. Preprocedure review by the IFMC is required if ambulatory surgical centers are to be reimbursed for surgical procedures as set forth in subrule 78.1(19). Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and criteria established by the IFMC and the department. The criteria are available from IFMC, 6000 Westown Parkway, Suite 350E, West Des Moines, Iowa 50265-7771, or in local hospital utilization review offices.

**78.28(7)** All assertive community treatment (ACT) services require prior approval. EXCEPTION: If ACT services are initiated before Medicaid eligibility is established, prior approval is required for ACT services beginning with the second month following notice of Medicaid eligibility.

*a.* Approval shall be granted if ACT services are determined to be medically necessary. Approval shall be limited to no more than 180 days.

*b.* A new prior approval must be obtained to continue ACT services after the expiration of a previous approval.

**78.28(8)** Rescinded IAB 1/3/96, effective 3/1/96.

**78.28(9)** Private duty nursing or personal care services provided by a home health agency provider for persons aged 20 or under require prior approval and shall be approved if determined to be medically necessary. Payment shall be made on an hourly unit of service.

*a.* Definitions.

(1) Private duty nursing services are those services which are provided by a registered nurse or a licensed practical nurse under the direction of the member's physician to a member in the member's place of residence or outside the member's residence, when normal life activities take the member outside the place of residence. Place of residence does not include nursing facilities, intermediate care facilities for the mentally retarded, or hospitals.

Services shall be provided according to a written plan of care authorized by a licensed physician. The home health agency is encouraged to collaborate with the member, or in the case of a child with the child's caregiver, in the development and implementation of the plan of treatment. These services shall exceed intermittent guidelines as defined in subrule 78.9(3). Private duty nursing and personal care services shall be inclusive of all home health agency services personally provided to the member.

Private duty nursing services do not include:

1. Respite care, which is a temporary intermission or period of rest for the caregiver.
2. Nurse supervision services including chart review, case discussion or scheduling by a registered nurse.
3. Services provided to other persons in the member's household.
4. Services requiring prior authorization that are provided without regard to the prior authorization process.

(2) Personal care services are those services provided by a home health aide or certified nurse's aide and which are delegated and supervised by a registered nurse under the direction of the member's physician to a member in the member's place of residence or outside the member's residence, when normal life activities take the member outside the place of residence. Place of residence does not include nursing facilities, intermediate care facilities for the mentally retarded, or hospitals. Payment for personal care services for persons aged 20 and under that exceed intermittent guidelines may be approved if determined to be medically necessary as defined in subrule 78.9(7). These services shall be in accordance with the member's plan of care and authorized by a physician. The home health agency is encouraged to collaborate with the member, or in the case of a child with the child's caregiver, in the development and implementation of the plan of treatment.

Medical necessity means the service is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life, cause pain, result in illness or infirmity, threaten to cause or aggravate a disability or chronic illness, and no other equally effective course of treatment is available or suitable for the member requesting a service.

*b.* Requirements.

(1) Private duty nursing or personal care services shall be ordered in writing by a physician as evidenced by the physician's signature on the plan of care.

(2) Private duty nursing or personal care services shall be authorized by the department or the department's designated review agent prior to payment.

(3) Prior authorization shall be requested at the time of initial submission of the plan of care or at any time the plan of care is substantially amended and shall be renewed with the department or the department's designated review agent. Initial request for and request for renewal of prior authorization

shall be submitted to the department's designated review agent. The provider of the service is responsible for requesting prior authorization and for obtaining renewal of prior authorization.

The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation. The request for prior authorization shall include all items previously identified as required treatment plan information and shall further include: any planned surgical interventions and projected time frame; information regarding caregiver's desire to become involved in the member's care, to adhere to program objectives, to work toward treatment plan goals, and to work toward maximum independence; and identify the types and service delivery levels of all other services to the member whether or not the services are reimbursable by Medicaid. Providers shall indicate the expected number of private duty nursing RN hours, private duty nursing LPN hours, or home health aide hours per day, the number of days per week, and the number of weeks or months of service per discipline. If the member is currently hospitalized, the projected date of discharge shall be included.

Prior authorization approvals shall not be granted for treatment plans that exceed 16 hours of home health agency services per day. (Cross-reference 78.9(10))

**78.28(10)** Replacement of vibrotactile aids less than four years old shall be approved when the original aid is broken beyond repair or lost. (Cross-reference 78.10(3) "b")

This rule is intended to implement Iowa Code section 249A.4.

[ARC 7548B, IAB 2/11/09, effective 4/1/09; ARC 8714B, IAB 5/5/10, effective 5/1/10; ARC 9440B, IAB 4/6/11, effective 4/1/11; ARC 9702B, IAB 9/7/11, effective 9/1/11]

**441—78.29(249A) Behavioral health services.** Payment shall be made for medically necessary behavioral health services provided by a participating marital and family therapist, independent social worker, master social worker, mental health counselor, or certified alcohol and drug counselor within the practitioner's scope of practice pursuant to state law and subject to the limitations and exclusions set forth in this rule.

**78.29(1) Limitations.**

- a. An assessment and a treatment plan are required.
- b. Services provided by a licensed master social worker must be provided under the supervision of an independent social worker qualified to participate in the Medicaid program.

**78.29(2) Exclusions.** Payment will not be approved for the following services:

- a. Services provided in a medical institution.
- b. Services performed without relationship to a specific condition, risk factor, symptom, or complaint.
- c. Services provided for nonspecific conditions of distress such as job dissatisfaction or general unhappiness.
- d. Sensitivity training, marriage enrichment, assertiveness training, and growth groups or marathons.

**78.29(3) Payment.**

- a. Payment shall be made only for time spent in face-to-face consultation with the member.
- b. A unit of service is 15 minutes. Time spent with members shall be rounded to the quarter hour, where applicable.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 9649B, IAB 8/10/11, effective 8/1/11]

**441—78.30(249A) Birth centers.** Payment will be made for prenatal, delivery, and postnatal services.

**78.30(1) Risk assessment.** Risk assessment, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed at the initial visit during a Medicaid member's pregnancy.

a. If the risk assessment reflects a low-risk pregnancy, the assessment shall be completed again at approximately the twenty-eighth week of pregnancy.

b. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)

**78.30(2) Vaccines.** Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as birth center services. Birth centers that wish to

administer those vaccines to Medicaid members shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. Birth centers shall receive reimbursement for the administration of vaccines to Medicaid members.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.31(249A) Hospital outpatient services.**

**78.31(1) Covered hospital outpatient services.** Payment will be approved only for the following outpatient hospital services and medical services when provided on the licensed premises of the hospital or pursuant to subrule 78.31(5). Hospitals with alternate sites approved by the department of inspections and appeals are acceptable sites. All outpatient services listed in paragraphs “g” to “m” are subject to a random sample retrospective review for medical necessity by the Iowa Foundation for Medical Care. All services may also be subject to a more intensive retrospective review if abuse is suspected. Services in paragraphs “a” to “f” shall be provided in hospitals on an outpatient basis and are subject to no further limitations except medical necessity of the service.

Services listed in paragraphs “g” to “m” shall be provided by hospitals on an outpatient basis and must be certified by the department before payment may be made. Other limitations apply to these services.

- a. Emergency service.
- b. Outpatient surgery.
- c. Laboratory, X-ray and other diagnostic services.
- d. General or family medicine.
- e. Follow-up or after-care specialty clinics.
- f. Physical medicine and rehabilitation.
- g. Alcoholism and substance abuse.
- h. Eating disorders.
- i. Cardiac rehabilitation.
- j. Mental health.
- k. Pain management.
- l. Diabetic education.
- m. Pulmonary rehabilitation.
- n. Nutritional counseling for persons aged 20 and under.

**78.31(2) Requirements for all outpatient services.**

a. Need for service. It must be clearly established that the service meets a documented need in the area served by the hospital. There must be documentation of studies completed, consultations with other health care facilities and health care professionals in the area, community leaders, and organizations to determine the need for the service and to tailor the service to meet that particular need.

b. Professional direction. All outpatient services must be provided by or at the direction and under the supervision of a medical doctor or osteopathic physician except for mental health services which may be provided by or at the direction and under the supervision of a medical doctor, osteopathic physician, or certified health service provider in psychology.

c. Goals and objectives. The goals and objectives of the program must be clearly stated. Paragraphs “d” and “f” and the organization and administration of the program must clearly contribute to the fulfillment of the stated goals and objectives.

d. Treatment modalities used. The service must employ multiple treatment modalities and professional disciplines. The modalities and disciplines employed must be clearly related to the condition or disease being treated.

e. Criteria for selection and continuing treatment of patients. The condition or disease which is proposed to be treated must be clearly stated. Any indications for treatment or contraindications for treatment must be set forth together with criteria for determining the continued medical necessity of treatment.

f. Length of program. There must be established parameters that limit the program either in terms of its overall length or in terms of number of visits, etc.

*g.* Monitoring of services. The services provided by the program must be monitored and evaluated to determine the degree to which patients are receiving accurate assessments and effective treatment.

The monitoring of the services must be an ongoing plan and systematic process to identify problems in patient care or opportunities to improve patient care.

The monitoring and evaluation of the services are based on the use of clinical indicators that reflect those components of patient care important to quality.

*h.* Hospital outpatient programs that wish to administer vaccines which are available through the Vaccines for Children program to Medicaid members shall enroll in the Vaccines for Children program. In lieu of payment, vaccines available through the Vaccines for Children program shall be accessed from the department of public health for Medicaid members. Hospital outpatient programs receive payment via the APC reimbursement for the administration of vaccines to Medicaid members.

**78.31(3) Application for certification.** Hospital outpatient programs listed in subrule 78.31(1), paragraphs “g” to “m,” must submit an application to the Iowa Medicaid enterprise provider services unit for certification before payment will be made. The provider services unit will review the application against the requirements for the specific type of outpatient service and notify the provider whether certification has been approved.

Applications will consist of a narrative providing the following information:

*a.* Documented need for the program including studies, needs assessments, and consultations with other health care professionals.

*b.* Goals and objectives of the program.

*c.* Organization and staffing including how the program fits with the rest of the hospital, the number of staff, staff credentials, and the staff’s relationship to the program, e.g., hospital employee, contractual consultant.

*d.* Policies and procedures including admission criteria, patient assessment, treatment plan, discharge plan and postdischarge services, and the scope of services provided, including treatment modalities.

*e.* Any accreditations or other types of approvals from national or state organizations.

*f.* The physical facility and any equipment to be utilized, and whether the facility is part of the hospital license.

**78.31(4) Requirements for specific types of service.**

*a.* Alcoholism and substance abuse.

(1) Approval by joint commission or substance abuse commission. In addition to certification by the department, alcoholism and substance abuse programs must also be approved by either the joint commission on the accreditation of hospitals or the Iowa substance abuse commission.

(2) General characteristics. The services must be designed to identify and respond to the biological, psychological and social antecedents, influences and consequences associated with the recipient’s dependence.

These needed services must be provided either directly by the facility or through referral, consultation or contractual arrangements or agreements.

Special treatment needs of recipients by reason of age, gender, sexual orientation, or ethnic origin are evaluated and services for children and adolescents (as well as adults, if applicable) address the special needs of these age groups, including but not limited to, learning problems in education, family involvement, developmental status, nutrition, and recreational and leisure activities.

(3) Diagnostic and treatment staff. Each person who provides diagnostic or treatment services shall be determined to be competent to provide the services by reason of education, training, and experience.

Professional disciplines which must be represented on the diagnostic and treatment staff, either through employment by the facility (full-time or part-time), contract or referral, are a physician (M.D. or D.O.), a licensed psychologist and a substance abuse counselor certified by the Iowa board of substance abuse certification. Psychiatric consultation must be available and the number of staff should be appropriate to the patient load of the facility.

(4) Initial assessment. A comprehensive assessment of the biological, psychological, social, and spiritual orientation of the patient must be conducted which shall include:

A history of the use of alcohol and other drugs including age of onset, duration, patterns, and consequences of use; use of alcohol and drugs by family members and types of and responses to previous treatment.

A comprehensive medical history and physical examination including the history of physical problems associated with dependence.

Appropriate laboratory screening tests based on findings of the history and physical examination and tests for communicable diseases when indicated.

Any history of physical abuse.

A systematic mental status examination with special emphasis on immediate recall and recent and remote memory.

A determination of current and past psychiatric and psychological abnormality.

A determination of any degree of danger to self or others.

The family's history of alcoholism and other drug dependencies.

The patient's educational level, vocational status, and job performance history.

The patient's social support networks, including family and peer relationships.

The patient's perception of the patient's strengths, problem areas, and dependencies.

The patient's leisure, recreational, or vocational interests and hobbies.

The patient's ability to participate with peers and in programs and social activities.

Interview of family members and significant others as available with the patient's written or verbal permission.

Legal problems, if applicable.

(5) Admission criteria. Both of the first two criteria and one additional criterion from the following list must be present for a patient to be accepted for treatment.

Alcohol or drugs taken in greater amounts over a longer period than the person intended.

Two or more unsuccessful efforts to cut down or control use of alcohol or drugs.

Continued alcohol or drug use despite knowledge of having a persistent or recurrent family, social, occupational, psychological, or physical problem that is caused or exacerbated by the use of alcohol or drugs.

Marked tolerance: the need for markedly increased amounts of alcohol or drugs (i.e., at least a 50 percent increase) in order to achieve intoxication or desired effect or markedly diminished effect with continued use of same amount.

Characteristic withdrawal symptoms.

Alcohol or drugs taken often to relieve or avoid withdrawal symptoms.

(6) Plan of treatment. For each patient there is a written comprehensive and individualized description of treatment to be undertaken. The treatment plan is based on the problems and needs identified in the assessment and specifies the regular times at which the plan will be reassessed.

The patient's perception of needs and, when appropriate and available, the family's perception of the patient's needs shall be documented.

The patient's participation in the development of the treatment plan is sought and documented.

Each patient is reassessed to determine current clinical problems, needs, and responses to treatment. Changes in treatment are documented.

(7) Discharge plan. For each patient before discharge, a plan for discharge is designed to provide appropriate continuity of care which meets the following requirements:

The plan for continuing care must describe and facilitate the transfer of the patient and the responsibility for the patient's continuing care to another phase or modality of the program, other programs, agencies, persons or to the patient and the patient's personal support system.

The plan is in accordance with the patient's reassessed needs at the time of transfer.

The plan is developed in collaboration with the patient and, as appropriate and available, with the patient's written verbal permission with family members.

The plan is implemented in a manner acceptable to the patient and the need for confidentiality.

Implementation of the plan includes timely and direct communication with and transfer of information to the other programs, agencies, or persons who will be providing continuing care.

(8) Restrictions and limitations on payment. Medicaid will reimburse for a maximum of 28 treatment days. Payment beyond 28 days is made when documentation indicates that the patient has not reached an exit level.

If an individual has completed all or part of the basic 28-day program, a repeat of the program will be reimbursed with justification. The program will include an aftercare component meeting weekly for at least one year without charge.

*b.* Eating disorders.

(1) General characteristics. Eating disorders are characterized by gross disturbances in eating behavior. Eating disorders include anorexia nervosa, bulimia, or bulimarexia. Compulsive overeaters are not acceptable for this program.

(2) Diagnostic and treatment staff. Each person who provides diagnostic or treatment services shall be determined to be competent to provide the services by reason of education, training, and experience.

Professional disciplines which must be represented on the diagnostic and treatment staff, either through employment by a facility (full-time or part-time), contract or referral, are a physician (M.D. or D.O.), a licensed psychologist, a counselor with a master's or bachelor's degree and experience, a dietitian with a bachelor's degree and registered dietitian's certificate, and a licensed occupational therapist. The number of staff should be appropriate to the patient load of the facility.

(3) Initial assessment. A comprehensive assessment of the biological, psychological, social, and family orientation of the patient must be conducted. The assessment must include a weight history and a history of the patient's eating and dieting behavior, including binge eating, onset, patterns, and consequences. The assessment shall include the following:

A family history as well as self-assessment regarding chronic dieting, obesity, anorexia, bulimia, drug abuse, alcohol problems, depression, hospitalization for psychiatric reasons, and threatened or attempted suicide.

A history of purging behavior including frequency and history of vomiting, use of laxatives, history and frequency of use of diuretics, history and frequency of use of diet pills, ipecac, or any other weight control measures, and frequency of eating normal meals without vomiting.

A history of exercise behavior, including type, frequency, and duration.

A complete history of current alcohol and other drug use.

Any suicidal thoughts or attempts.

Sexual history, including sexual preference and activity. Sexual interest currently as compared to prior to the eating disorder is needed.

History of experiencing physical or sexual (incest or rape) abuse.

History of other counseling experiences.

Appropriate psychological assessment, including psychological orientation to the above questions.

A medical history, including a physical examination, covering the information listed in subparagraph (4) below.

Appropriate laboratory screening tests based on findings of the history and physical examination and tests for communicable diseases when indicated.

The patient's social support networks, including family and peer relationships.

The patient's educational level, vocational status, and job or school performance history, as appropriate.

The patient's leisure, recreational, or vocational interests and hobbies.

The patient's ability to participate with peers and programs and social activities.

Interview of family members and significant others as available with the patient's written or verbal permission as appropriate.

Legal problems, if applicable.

(4) Admission criteria. In order to be accepted for treatment, the patient shall meet the diagnostic criteria for anorexia nervosa or bulimia as established by the DSM III R (Diagnostic and Statistical Manual, Third Edition, Revised).

In addition to the diagnostic criteria, the need for treatment will be determined by a demonstrable loss of control of eating behaviors and the failure of the patient in recent attempts at voluntary

self-control of the problem. Demonstrable impairment, dysfunction, disruption or harm of physical health, emotional health (e.g., significant depression withdrawal, isolation, suicidal ideas), vocational or educational functioning, or interpersonal functioning (e.g., loss of relationships, legal difficulties) shall have occurred.

The need for treatment may be further substantiated by substance abuse, out-of-control spending, incidence of stealing to support habit, or compulsive gambling.

The symptoms shall have been present for at least six months and three of the following criteria must be present:

Medical criteria including endocrine and metabolic factors (e.g., amenorrhea, menstrual irregularities, decreased reflexes, cold intolerance, hypercarotenemia, parotid gland enlargement, lower respiration rate, hair loss, abnormal cholesterol or triglyceride levels).

Other cardiovascular factors including hypotension, hypertension, arrhythmia, ipecac poisoning, fainting, or bradycardia.

Renal considerations including diuretic abuse, dehydration, elevated BUN, renal calculi, edema, or hypokalemia.

Gastrointestinal factors including sore throats, mallery-weiss tears, decreased gastric emptying, constipation, abnormal liver enzymes, rectal bleeding, laxative abuse, or esophagitis.

Hematologic considerations including anemia, leukopenia, or thrombocytopenia.

Ear, nose, and throat factors including headaches or dizziness.

Skin considerations including lanugo or dry skin.

Aspiration pneumonia, a pulmonary factor.

The presence of severe symptoms and complications as evaluated and documented by the medical director may require a period of hospitalization to establish physical or emotional stability.

(5) Plan of treatment. For each patient there is a written comprehensive and individualized description of treatment to be undertaken. The treatment plan is based on problems and needs identified in the assessment and specifies the regular times at which the plan will be reassessed.

The patient's perceptions of needs and, when appropriate and available, the family's perceptions of the patient's needs shall be documented.

The patient's participation in the development of the treatment plans is sought and documented.

Each patient is reassessed to determine current clinical problems, needs, and responses to treatment. Changes in treatment are documented.

(6) Discharge plan. Plans for discharge shall meet the requirements for discharge plans for alcohol and substance abuse patients in subrule 78.31(3), paragraph "a," subparagraph (6).

(7) Restriction and limitations on payment. Medicaid will pay for a maximum of 30 days of a structured outpatient treatment program. Payment beyond 30 days is made when documentation indicates that the patient has not reached an exit level.

Eating disorder programs will include an aftercare component meeting weekly for at least one year without charge.

Family counseling groups held in conjunction with the eating disorders program will be part of the overall treatment charge.

c. Cardiac rehabilitation.

(1) General characteristics. Cardiac rehabilitation programs shall provide a supportive educational environment in which to facilitate behavior change with respect to the accepted cardiac risk factors, initiate prescribed exercise as a mode of facilitating the return of the patient to everyday activities by improving cardiovascular functional capacity and work performance, and promote a long-term commitment to lifestyle changes that could positively affect the course of the cardiovascular disease process.

(2) Treatment staff. Professional disciplines who must be represented on the treatment staff, either by employment by the facility (full-time or part-time), contract or referral, are as follows:

At least one physician responsible for responding to emergencies must be physically present in the hospital when patients are receiving cardiac rehabilitation services. The physician must be trained and certified at least to the level of basic life support.

A medical consultant shall oversee the policies and procedures of the outpatient cardiac rehabilitation area. The director shall meet with the cardiac rehabilitation staff on a regular basis to review exercise prescriptions and any concerns of the team.

A cardiac rehabilitation nurse shall carry out the exercise prescription after assessment of the patient. The nurse shall be able to interpret cardiac dysrhythmia and be able to initiate emergency action if necessary. The nurse shall assess and implement a plan of care for cardiac risk factor modification. The nurse shall have at least one year of experience in a coronary care unit.

A physical therapist shall offer expertise in unusual exercise prescriptions where a patient has an unusual exercise problem.

A dietitian shall assess the dietary needs of persons and appropriately instruct them on their prescribed diets.

A social worker shall provide counseling as appropriate and facilitate a spouse support group. A licensed occupational therapist shall be available as necessary.

(3) Admission criteria. Candidates for the program must be referred by the attending physician. The following conditions are eligible for the program:

Postmyocardial infarction (within three months postdischarge).

Postcardiac surgery (within three months postdischarge).

Poststreptokinase.

Postpercutaneous transluminal angioplasty (within three months postdischarge).

Patient with severe angina being treated medically because of client or doctor preference or inoperable cardiac disease.

(4) Physical environment and equipment. A cardiac rehabilitation unit must be an autonomous physical unit specifically equipped with the necessary telemetry monitoring equipment, exercise equipment, and appropriate equipment and supplies for cardiopulmonary resuscitation (CPR). The exercise equipment must have the capacity to measure the intensity, speed, and length of the exercises. The equipment must be periodically inspected and maintained in accordance with the hospital's preventive maintenance program.

(5) Medical records. Medical records for each cardiac rehabilitation patient shall consist of at least the following:

Referral form.

Physician's orders.

Laboratory reports.

Electrocardiogram reports.

History and physical examination.

Angiogram report, if applicable.

Operative report, if applicable.

Preadmission interview.

Exercise prescription.

Rehabilitation plan, including participant's goals.

Documentation for exercise sessions and progress notes.

Nurse's progress reports.

Discharge instructions.

(6) Discharge plan. The patient will be discharged from the program when the physician, staff, and patient agree that the work level is functional for them and little benefit could be derived from further continuation of the program, dysrhythmia disturbances are resolved, and appropriate cardiovascular response to exercise is accomplished.

(7) Monitoring of services. The program should be monitored by the hospital on a periodic basis using measuring criteria for evaluating cardiac rehabilitation services provided.

(8) Restrictions and limitations. Payment will be made for a maximum of three visits per week for a period of 12 weeks. Payment beyond 12 weeks is made when documentation indicates that the patient has not reached an exit level.

d. Mental health.

(1) General characteristics. To be covered, mental health services must be prescribed by a physician or certified health service provider in psychology, provided under an individualized treatment plan and reasonable and necessary for the diagnosis or treatment of the patient's condition. This means the services must be for the purpose of diagnostic study or the services must reasonably be expected to improve the patient's condition.

(2) Individualized treatment plan. The individualized written plan of treatment shall be established by a physician or certified health service provider in psychology after any needed consultation with appropriate staff members. The plan must state the type, amount, frequency and duration of the services to be furnished and indicate the diagnoses and anticipated goals. (A plan is not required if only a few brief services will be furnished.)

(3) Supervision and evaluation. Services must be supervised and periodically evaluated by a physician, certified health service provider in psychology, or both within the scopes of their respective practices if clinically indicated to determine the extent to which treatment goals are being realized. The evaluation must be based on periodic consultation and conference with therapists and staff. The physician or certified health service provider in psychology must also provide supervision and direction to any therapist involved in the patient's treatment and see the patient periodically to evaluate the course of treatment and to determine the extent to which treatment goals are being realized and whether changes in direction or services are required.

(4) Reasonable expectation of improvement. Services must be for the purpose of diagnostic study or reasonably be expected to improve the patient's condition. The treatment must at a minimum be designed to reduce or control the patient's psychiatric or psychological symptoms so as to prevent relapse or hospitalization and improve or maintain the patient's level of functioning.

It is not necessary that a course of therapy have as its goal restoration of the patient to the level of functioning exhibited prior to the onset of the illness although this may be appropriate for some patients. For many other patients, particularly those with long-term chronic conditions, control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization is an acceptable expectation of improvement. "Improvement" in this context is measured by comparing the effect of continuing versus discontinuing treatment. Where there is a reasonable expectation that if treatment services were withdrawn, the patient's condition would deteriorate, relapse further, or require hospitalization, this criterion would be met.

(5) Diagnostic and treatment staff. Each person who provides diagnostic or treatment services shall be determined to be competent to provide the services by reason of education, training, and experience. The number of the above staff employed by the facility must be appropriate to the facility's patient load. The staff may be employees of the hospital, on contract, or the service may be provided through referral.

The diagnostic and treatment staff shall consist of a physician, a psychologist, social workers or counselors meeting the requirements for "mental health professionals" as set forth in rule 441—33.1(225C,230A).

(6) Initial assessment. A comprehensive assessment of the biological, psychological, social, and spiritual orientation of the patient must be conducted, which shall include:

A history of the mental health problem, including age of onset, duration, patterns of symptoms, consequences of symptoms, and responses to previous treatment.

A comprehensive clinical history, including the history of physical problems associated with the mental health problem. Appropriate referral for physical examination for determination of any communicable diseases.

Any history of physical abuse.

A systematic mental health examination, with special emphasis on any change in cognitive, social or emotional functioning.

A determination of current and past psychiatric and psychological abnormality.

A determination of any degree of danger to self or others.

The family's history of mental health problems.

The patient's educational level, vocational status, and job performance history.

The patient's social support network, including family and peer relationship.

The patient's perception of the patient's strengths, problem areas, and dependencies.

The patient's leisure, recreational or vocational interests and hobbies.

The patient's ability to participate with peers in programs and social activities.

Interview of family members and significant others, as available, with the patient's written or verbal permission.

Legal problems if applicable.

(7) Covered services. Services covered for the treatment of psychiatric conditions are:

1. Individual and group therapy with physicians, psychologists, social workers, counselors, or psychiatric nurses.

2. Occupational therapy services if the services require the skills of a qualified occupational therapist and must be performed by or under the supervision of a licensed occupational therapist or by an occupational therapy assistant.

3. Drugs and biologicals furnished to outpatients for therapeutic purposes only if they are of the type which cannot be self-administered and are not "covered Part D drugs" as defined by 42 U.S.C. Section 1395w-102(e)(1)-(2) for a "Part D eligible individual" as defined in 42 U.S.C. Section 1395w-101(a)(3)(A), including an individual who is not enrolled in a Part D plan.

4. Activity therapies which are individualized and essential for the treatment of the patient's condition. The treatment plan must clearly justify the need for each particular therapy utilized and explain how it fits into the patient's treatment.

5. Family counseling services are covered only if the primary purpose of the counseling is the treatment of the patient's condition.

6. Partial hospitalization and day treatment services to reduce or control a person's psychiatric or psychological symptoms so as to prevent relapse or hospitalization, improve or maintain the person's level of functioning and minimize regression. These services include all psychiatric services needed by the patient during the day. Partial hospitalization services means an active treatment program that provides intensive and structured support that assists persons during periods of acute psychiatric or psychological distress or during transition periods, generally following acute inpatient hospitalization episodes.

Service components may include individual and group therapy, reality orientation, stress management and medication management.

Services are provided for a period for four to eight hours per day.

Day treatment services means structured, long-term services designed to assist in restoring, maintaining or increasing levels of functioning, minimizing regression and preventing hospitalization.

Service components include training in independent functioning skills necessary for self-care, emotional stability and psychosocial interactions, and training in medication management.

Services are structured with an emphasis on program variation according to individual need.

Services are provided for a period of three to five hours per day, three or four times per week.

7. Partial hospitalization and day treatment for persons aged 20 or under. Payment to a hospital will be approved for day treatment services for persons aged 20 or under if the hospital is certified by the department for hospital outpatient mental health services. All conditions for the day treatment program for persons aged 20 or under as outlined in subrule 78.16(7) for community mental health centers shall apply to hospitals. All conditions of the day treatment program for persons aged 20 or under as outlined in subrule 78.16(7) for community mental health centers shall be applicable for the partial hospitalization program for persons aged 20 or under with the exception that the maximum hours shall be 25 hours per week.

(8) Restrictions and limitations on coverage. The following are generally not covered except as indicated:

Activity therapies, group activities, or other services and programs which are primarily recreational or diversional in nature. Outpatient psychiatric day treatment programs that consist entirely of activity therapies are not covered.

Geriatric day-care programs, which provide social and recreational activities to older persons who need some supervision during the day while other family members are away from home. These programs

are not covered because they are not considered reasonable and necessary for a diagnosed psychiatric disorder.

Vocational training. While occupational therapy may include vocational and prevocational assessment of training, when the services are related solely to specific employment opportunities, work skills, or work setting, they are not covered.

(9) Frequency and duration of services. There are no specific limits on the length of time that services may be covered. There are many factors that affect the outcome of treatment. Among them are the nature of the illness, prior history, the goals of treatment, and the patient's response. As long as the evidence shows that the patient continues to show improvement in accordance with the individualized treatment plan and the frequency of services is within acceptable norms of medical practice, coverage will be continued.

(10) Documentation requirements. The provider shall develop and maintain sufficient written documentation to support each medical or remedial therapy, service, activity, or session for which billing is made. All outpatient mental health services shall include:

1. The specific services rendered.
2. The date and actual time the services were rendered.
3. Who rendered the services.
4. The setting in which the services were rendered.
5. The amount of time it took to deliver the services.
6. The relationship of the services to the treatment regimen described in the plan of care.
7. Updates describing the patient's progress.

For services that are not specifically included in the patient's treatment plan, a detailed explanation of how the services being billed relate to the treatment regimen and objectives contained in the patient's plan of care and the reason for the departure from the plan shall be given.

*e.* Pain management.

(1) Approval by commission on accreditation of rehabilitation facilities. In addition to certification by the department, pain management programs must also be approved by the commission on accreditation of rehabilitation facilities (CARF).

(2) General characteristics. A chronic pain management program shall provide coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve quality of life, and decrease dependence on the health care system for persons with pain which interferes with physical, psychosocial, and vocational functioning.

(3) Treatment staff. Each person who provides treatment services shall be determined to be competent to provide the services by reason of education, training, and experience. Professional disciplines which must be represented on the treatment staff, either through employment by the facility (full-time or part-time), contract or referral, are a physician (M.D. or D.O.), a registered nurse, a licensed physical therapist and a licensed clinical psychologist or psychiatrist. The number of staff should be appropriate to the patient load of the facility.

(4) Admission criteria. Candidates for the program shall meet the following guidelines:

The person must have had adequate medical evaluation and treatment in the months preceding admission to the program including an orthopedic or neurological consultation if the problem is back pain or a neurological evaluation if the underlying problem is headaches.

The person must be free of any underlying psychosis or severe neurosis.

The person cannot be toxic on any addictive drugs.

The person must be capable of self-care; including being able to get to meals and to perform activities of daily living.

(5) Plan of treatment. For each patient there is a written comprehensive and individualized description of treatment to be undertaken. The treatment plan is based on the problems and needs identified in the assessment and specifies the times at which the plan will be reassessed.

The patient's perception of needs and, when appropriate and available, the family's perception of the patient's needs shall be documented.

The patient's participation in the development of the treatment plan is sought and documented.

Each patient is reassessed to determine current clinical problems, needs, and responses to treatment. Changes in treatment are documented.

(6) Discharge plan. For each patient before discharge, a plan for discharge is designed to provide appropriate continuity of care which meets the following requirements:

The plan for continuing care must describe and facilitate the transfer of the patient and the responsibility for the patient's continuing care to another phase or modality of the program, other programs, agencies, persons or to the patient and the patient's personal support system.

The plan is in accordance with the patient's reassessed needs at the time of transfer.

The plan is developed in collaboration with the patient and, as appropriate and available, with the patient's written verbal permission with the family members.

The plan is implemented in a manner acceptable to the patient and the need for confidentiality.

Implementation of the plan includes timely and direct communication with and transfer of information to the other programs, agencies, or persons who will be providing continuing care.

(7) Restrictions and limitations on payment. Medicaid will pay for a maximum of three weeks of a structured outpatient treatment program. When documentation indicates that the patient has not reached an exit level, coverage may be extended an extra week.

A repeat of the entire program for any patient will be covered only if a different disease process is causing the pain or a significant change in life situation can be demonstrated.

*f.* Diabetic education.

(1) Certification by department of public health. In addition to certification by the department for Medicaid, diabetic education programs must also be certified by the department of public health. (See department of public health rules 641—Chapter 9.)

(2) General characteristics. An outpatient diabetes self-management education program shall provide instruction which will enable people with diabetes and their families to understand the diabetes disease process and the daily management of diabetes. People with diabetes must learn to balance their special diet and exercise requirements with drug therapy (insulin or oral agents). They must learn self-care techniques such as monitoring their own blood glucose. And often, they must learn to self-treat insulin reactions, protect feet that are numb and have seriously compromised circulation, and accommodate their regimen to changes in blood glucose because of stress or infections.

(3) Program staff. Each person who provides services shall be determined to be competent to provide the services by reason of education, training and experience. Professional disciplines which must be represented on the staff, either through employment by the facility (full-time or part-time), contract or referral, are a physician (M.D. or D.O.), a registered nurse, a registered dietitian and a licensed pharmacist. The number of staff should be appropriate to the patient load of the facility.

(4) Admission criteria. Candidates for the program shall meet the following guidelines:

The person must have Type I or Type II diabetes.

The person must be referred by the attending physician.

The person shall demonstrate an ability to follow through with self-management.

(5) Health assessment. An individualized and documented assessment of needs shall be developed with the patient's participation. Follow-up assessments, planning and identification of problems shall be provided.

(6) Restrictions and limitations on payment. Medicaid will pay for a diabetic self-management education program. Diabetic education programs will include follow-up assessments at 3 and 12 months without charge. A complete diabetic education program is payable once in the lifetime of a recipient.

*g.* Pulmonary rehabilitation.

(1) General characteristics. Pulmonary rehabilitation is an individually tailored, multidisciplinary program through which accurate diagnosis, therapy, emotional support, and education stabilizes or reverses both the physio- and psychopathology of pulmonary diseases and attempts to return the patient to the highest possible functional capacity allowed by the pulmonary handicap and overall life situation.

(2) Diagnostic and treatment staff. Each person who provides diagnostic or treatment services shall be determined to be competent to provide the services by reason of education, training, and experience.

Professional disciplines which must be represented by the diagnostic and treatment staff, either through employment by the facility (full-time or part-time), contract, or referral, are a physician (doctor of medicine or osteopathy), a respiratory therapist, a licensed physical therapist, and a registered nurse.

(3) Initial assessment. A comprehensive assessment must occur initially, including:

A diagnostic workup which entails proper identification of the patient's specific respiratory ailment, appropriate pulmonary function studies, a chest radiograph, an electrocardiogram and, when indicated, arterial blood gas measurements at rest and during exercise, sputum analysis and blood theophylline measurements.

Behavioral considerations include emotional screening assessments and treatment or counseling when required, estimating the patient's learning skills and adjusting the program to the patient's ability, assessing family and social support, potential employment skills, employment opportunities, and community resources.

(4) Admission criteria. Criteria include a patient's being diagnosed and symptomatic of chronic obstructive pulmonary disease (COPD), having cardiac stability, social, family, and financial resources, ability to tolerate periods of sitting time; and being a nonsmoker for six months, or if a smoker, willingness to quit and a physician's order to participate anyway.

Factors which would make a person ineligible include acute or chronic illness that may interfere with rehabilitation, any illness or disease state that affects comprehension or retention of information, a strong history of medical noncompliance, unstable cardiac or cardiovascular problems, and orthopedic difficulties that would prohibit exercise.

(5) Plan of treatment. Individualized long- and short-term goals will be developed for each patient. The treatment goals will be based on the problems and needs identified in the assessment and specify the regular times at which the plan will be reassessed.

The patients and their families need to help determine and fully understand the goals, so that they realistically approach the treatment phase.

Patients are reassessed to determine current clinical problems, needs, and responses to treatment. Changes in treatment are documented.

Components of pulmonary rehabilitation to be included are physical therapy and relaxation techniques, exercise conditioning or physical conditioning for those with exercise limitations, respiratory therapy, education, an emphasis on the importance of smoking cessation, and nutritional information.

(6) Discharge plan. Ongoing care will generally be the responsibility of the primary care physician. Periodic reassessment will be conducted to evaluate progress and allow for educational reinforcement.

(7) Restrictions and limitations on payment. Medicaid will pay for a maximum of 25 treatment days. Payment beyond 25 days is made when documentation indicates that the patient has not reached an exit level.

*h.* Nutritional counseling. Payment will be made for persons aged 20 and under for nutritional counseling provided by a licensed dietitian employed by or under contract with a hospital for a nutritional problem or condition of a degree of severity that nutritional counseling beyond that normally expected as part of the standard medical management is warranted. For persons eligible for the WIC program, a WIC referral is required. Medical necessity for nutritional counseling services exceeding those available through WIC shall be documented.

**78.31(5)** *Services rendered by advanced registered nurse practitioners certified in family, pediatric, or psychiatric mental health specialties and employed by a hospital. Rescinded IAB 10/15/03, effective 12/1/03.*

This rule is intended to implement Iowa Code section 249A.4.

**441—78.32(249A) Area education agencies.** Payment will be made for physical therapy, occupational therapy, psychological evaluations and counseling, psychotherapy, speech-language therapy, and audiological, nursing, and vision services provided by an area education agency (AEA). Services shall be provided directly by the AEA or through contractual arrangement with the AEA.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.33(249A) Case management services.** Payment will be approved for targeted case management services that are provided pursuant to 441—Chapter 90 to:

1. Members who are 18 years of age or over and have a primary diagnosis of mental retardation, developmental disabilities, or chronic mental illness as defined in rule 441—90.1(249A).
2. Members who are under 18 years of age and are receiving services under the HCBS intellectual disability waiver or children's mental health waiver.

This rule is intended to implement Iowa Code section 249A.4.  
 [ARC 9403B, IAB 3/9/11, effective 5/1/11; ARC 9588B, IAB 6/29/11, effective 9/1/11]

**441—78.34(249A) HCBS ill and handicapped waiver services.** Payment will be approved for the following services to clients eligible for HCBS ill and handicapped waiver services as established in 441—Chapter 83. Services must be billed in whole units.

**78.34(1) Homemaker services.** Homemaker services are those services provided when the client lives alone or when the person who usually performs these functions for the client needs assistance with performing the functions. A unit of service is one hour. Components of the service are directly related to the care of the client and include:

- a. Essential shopping: shopping for basic need items such as food, clothing or personal care items, or drugs.
- b. Limited housecleaning: maintenance cleaning such as vacuuming, dusting, scrubbing floors, defrosting refrigerators, cleaning stoves, cleaning medical equipment, washing and mending clothes, washing personal items used by the client, and dishes.
- c. Rescinded IAB 9/30/92, effective 12/1/92.
- d. Meal preparation planning and preparing balanced meals.

**78.34(2) Home health services.** Home health services are personal or direct care services provided to the client which are not payable under Medicaid as set forth in rule 441—78.9(249A). A unit of service is a visit.

- a. Components of the service include, but are not limited to:
  - (1) Observation and reporting of physical or emotional needs.
  - (2) Helping a client with bath, shampoo, or oral hygiene.
  - (3) Helping a client with toileting.
  - (4) Helping a client in and out of bed and with ambulation.
  - (5) Helping a client reestablish activities of daily living.
  - (6) Assisting with oral medications ordered by the physician which are ordinarily self-administered.
  - (7) Performing incidental household services which are essential to the client's health care at home and are necessary to prevent or postpone institutionalization in order to complete a full unit of service.
  - (8) Accompaniment to medical services or transport to and from school.
- b. In some cases, a nurse may provide home health services if the health of the client is such that the agency is unable to place an aide in that situation due to limitations by state law or in the event that the agency's Medicare certification requirements prohibit the aide from providing the service. It is not permitted for the convenience of the provider.
- c. Skilled nursing care is not covered.

**78.34(3) Adult day care services.** Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service include health-related care, social services, and other related support services.

**78.34(4) Nursing care services.** Nursing care services are services which are included in the plan of treatment approved by the physician and which are provided by licensed nurses to consumers in the home and community. The services shall be reasonable and necessary to the treatment of an illness or injury and include all nursing tasks recognized by the Iowa board of nursing. A unit of service is a visit.

**78.34(5) Respite care services.** Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would

provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

*a.* Services provided outside the member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

*b.* Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team.

*c.* A unit of service is one hour.

*d.* Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.

*e.* The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite, or group respite as defined in rule 441—83.1(249A).

*f.* A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

*g.* Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

**78.34(6) *Counseling services.*** Counseling services are face-to-face mental health services provided to the client and caregiver by a mental health professional as defined in rule 441—24.61(225C,230A) to facilitate home management of the client and prevent institutionalization. Counseling services are nonpsychiatric services necessary for the management of depression, assistance with the grief process, alleviation of psychosocial isolation and support in coping with a disability or illness, including terminal illness. Counseling services may be provided both for the purpose of training the client's family or other caregiver to provide care, and for the purpose of helping the client and those caring for the client to adjust to the client's disability or terminal condition. Counseling services may be provided to the client's caregiver only when included in the case plan for the client.

Payment will be made for individual and group counseling. A unit of individual counseling for the waiver client or the waiver client and the client's caregiver is 15 minutes. A unit of group counseling is one hour. Payment for group counseling is based on the group rate divided by six, or, if the number of persons who comprise the group exceeds six, the actual number of persons who comprise the group.

**78.34(7) *Consumer-directed attendant care service.*** Consumer-directed attendant care services are service activities performed by a person to help a member with self-care tasks which the member would typically do independently if the member were otherwise able.

*a.* The service activities may include helping the member with any of the following nonskilled service activities:

(1) Dressing.

(2) Bath, shampoo, hygiene, and grooming.

(3) Access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. It is recommended that the provider receive certification of training and return demonstration for transferring. Certification for this is available through the area community colleges.

(4) Toilet assistance, including bowel, bladder, and catheter assistance. It is recommended that the provider receive certification of training and return demonstration for catheter assistance. Certification for this is available through the area community colleges.

(5) Meal preparation, cooking, and assistance with eating but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the member's health care at home.

(7) Medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. It is recommended the provider successfully complete a medication aide course administered by an area community college.

(8) Wound care.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the member is on the job site. The cost of transportation for the member and assistance with

understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) Cognitive assistance with tasks such as handling money and scheduling.

(11) Fostering communication through interpreting and reading services as well as assistive devices for communication.

(12) Assisting or accompanying a member in using transportation essential to the health and welfare of the member. The cost of the transportation is not included.

*b.* The service activities may include helping the member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program.

(1) Tube feedings of members unable to eat solid foods.

(2) Intravenous therapy administered by a registered nurse.

(3) Parenteral injections required more than once a week.

(4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.

(5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.

(6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.

(7) Rehabilitation services including, but not limited to, bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.

(8) Colostomy care.

(9) Care of medical conditions out of control which includes brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nursing care.

(11) Monitoring medications requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood-altering or psychotropic drugs, or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

*c.* A unit of service is 1 hour or one 8- to 24-hour day. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

*d.* The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency that will provide the components of the attendant care services.

*e.* The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the member.

*f.* The service activities shall not include parenting or child care for or on behalf of the member or on behalf of the provider.

*g.* The member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan and kept in the member's records.

*h.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

*i.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the member, indicating that the service has been provided as presented on the claim.

*j.* The frequency or intensity of services shall be indicated in the service plan.

*k.* Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

*l.* Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

*m.* Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

**78.34(8)** *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

*a.* Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

*b.* Service requirements. Interim medical monitoring and treatment services shall:

(1) Provide experiences for each member's social, emotional, intellectual, and physical development;

(2) Include comprehensive developmental care and any special services for a member with special needs; and

(3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

*c.* Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

*d.* Limitations.

(1) A maximum of 12 one-hour units of service is available per day.

(2) Covered services do not include a complete nutritional regimen.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.

(4) Interim medical monitoring and treatment services shall be provided only in the member's home; in a registered child development home; in a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

(5) The member-to-staff ratio shall not be more than six members to one staff person.

(6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

*e.* A unit of service is one hour.

**78.34(9) Home and vehicle modification.** Covered home and vehicle modifications are physical modifications to the member's home or vehicle that directly address the member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the member and enable the member to function with greater independence in the home or vehicle.

*a.* Modifications that are necessary or desirable without regard to the member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Home and vehicle repairs are also excluded.

*b.* Only the following modifications are covered:

- (1) Kitchen counters, sink space, cabinets, special adaptations to refrigerators, stoves, and ovens.
- (2) Bathtubs and toilets to accommodate transfer, special handles and hoses for shower heads, water faucet controls, and accessible showers and sink areas.
- (3) Grab bars and handrails.
- (4) Turnaround space adaptations.
- (5) Ramps, lifts, and door, hall and window widening.
- (6) Fire safety alarm equipment specific for disability.
- (7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the member's disability.
- (8) Vehicle lifts, driver-specific adaptations, remote-start systems, including such modifications already installed in a vehicle.
- (9) Keyless entry systems.
- (10) Automatic opening device for home or vehicle door.
- (11) Special door and window locks.
- (12) Specialized doorknobs and handles.
- (13) Plexiglas replacement for glass windows.
- (14) Modification of existing stairs to widen, lower, raise or enclose open stairs.
- (15) Motion detectors.
- (16) Low-pile carpeting or slip-resistant flooring.
- (17) Telecommunications device for the deaf.
- (18) Exterior hard-surface pathways.
- (19) New door opening.
- (20) Pocket doors.
- (21) Installation or relocation of controls, outlets, switches.
- (22) Air conditioning and air filtering if medically necessary.
- (23) Heightening of existing garage door opening to accommodate modified van.
- (24) Bath chairs.

*c.* A unit of service is the completion of needed modifications or adaptations.

*d.* All modifications and adaptations shall be provided in accordance with applicable federal, state, and local building and vehicle codes.

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the provider and the member.

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications.

(1) Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service.

(2) The case manager or service worker shall encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.

h. Services shall be included in the member's service plan and shall exceed the Medicaid state plan services.

**78.34(10) *Personal emergency response or portable locator system.***

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The required components of the system are:

1. An in-home medical communications transceiver.

2. A remote, portable activator.

3. A central monitoring station with backup systems staffed by trained attendants at all times.

4. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each member.

(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

**78.34(11) *Home-delivered meals.*** Home-delivered meals are meals prepared elsewhere and delivered to a member at the member's residence.

a. Each meal shall ensure the member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement that meets the minimum one-third standard.

b. When a restaurant provides the home-delivered meal, the member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the member and what constitutes the minimum one-third daily dietary allowance.

c. A maximum of two meals is allowed per day. A unit of service is a meal.

**78.34(12) *Nutritional counseling.*** Nutritional counseling services may be provided for a nutritional problem or condition of such a degree of severity that nutritional counseling beyond that normally expected as part of the standard medical management is warranted. A unit of service is 15 minutes.

**78.34(13) *Consumer choices option.*** The consumer choices option provides a member with a flexible monthly individual budget that is based on the member's service needs. With the individual budget, the member shall have the authority to purchase goods and services to meet the member's

assessed needs and may choose to employ providers of services and supports. The services, supports, and items that are purchased with an individual budget must be directly related to a member's assessed need or goal established in the member's service plan. Components of this service are set forth below.

*a. Agreement.* As a condition of participating in the consumer choices option, a member shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the member has been informed of the responsibilities and risks of electing the consumer choices option.

*b. Individual budget amount.* A monthly individual budget amount shall be established for each member based on the assessed needs of the member and based on the services and supports authorized in the member's service plan. The member shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a member in the HCBS ill and handicapped waiver are:

1. Consumer-directed attendant care (unskilled).
2. Home and vehicle modification.
3. Home-delivered meals.
4. Homemaker service.
5. Basic individual respite care.

(2) The department shall determine an average unit cost for each service listed in subparagraph 78.34(13)“b”(1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the member's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.34(13)“b”(2). Respite services are not subject to the utilization adjustment factor in subparagraph 78.34(13)“b”(3).

(6) Anticipated costs for home and vehicle modification are not subject to the average cost in subparagraph 78.34(13)“b”(2) or the utilization adjustment factor in subparagraph 78.34(13)“b”(3). Anticipated costs for home and vehicle modification shall not include the costs of the financial management services or the independent support broker. Before becoming part of the individual budget, all home and vehicle modifications shall be identified in the member's service plan and approved by the case manager or service worker. Costs for home and vehicle modification may be paid to the financial management services provider in a one-time payment.

(7) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

*c. Required service components.* To participate in the consumer choices option, a member must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid provider. Before hiring the independent support broker, the member shall receive the results of the background check conducted pursuant to 441—Chapter 119.

*d. Optional service components.* A member who elects the consumer choices option may purchase the following goods, services and supports, which shall be provided in the member's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the member remain in the home and community. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the member in developing and maintaining independence and community integration. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address an assessed need or goal identified in the member's service plan. The item or service shall meet the following requirements:

1. Promote opportunities for community living and inclusion.
2. Increase independence or substitute for human assistance, to the extent the expenditures would otherwise be made for that human assistance.
3. Be accommodated within the member's budget without compromising the member's health and safety.
4. Be provided to the member or directed exclusively toward the benefit of the member.
5. Be the least costly to meet the member's needs.
6. Not be available through another source.

*e. Development of the individual budget.* The independent support broker shall assist the member in developing and implementing the member's individual budget. The individual budget shall include:

- (1) The costs of the financial management service.
- (2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. The independent support broker shall not be paid for more than 30 hours of service for an individual member during a 12-month period without prior approval by the department.

(3) The costs of any optional service component chosen by the member as described in paragraph 78.34(13) "d." Costs of the following items and services shall not be covered by the individual budget:

1. Child care services.
2. Clothing not related to an assessed medical need.
3. Conference, meeting or similar venue expenses other than the costs of approved services the member needs while attending the conference, meeting or similar venue.
4. Costs associated with shipping items to the member.
5. Experimental and non-FDA-approved medications, therapies, or treatments.
6. Goods or services covered by other Medicaid programs.
7. Home furnishings.
8. Home repairs or home maintenance.
9. Homeopathic treatments.
10. Insurance premiums or copayments.
11. Items purchased on installment payments.
12. Motorized vehicles.
13. Nutritional supplements.
14. Personal entertainment items.
15. Repairs and maintenance of motor vehicles.
16. Room and board, including rent or mortgage payments.
17. School tuition.
18. Service animals.
19. Services covered by third parties or services that are the responsibility of a non-Medicaid program.
20. Sheltered workshop services.
21. Social or recreational purchases not related to an assessed need or goal identified in the member's service plan.
22. Vacation expenses, other than the costs of approved services the member needs while on vacation.

(4) The costs of any approved home or vehicle modification. When authorized, the budget may include an amount allocated for a home or vehicle modification. Before becoming part of the individual budget, all home and vehicle modifications shall be identified in the member's service plan and approved by the case manager or service worker. The authorized amount shall not be used for anything other than the specific modification.

(5) Any amount set aside in a savings plan to reserve funds for the future purchase of self-directed personal care, individual-directed goods and services, or self-directed community supports and services as defined in paragraph 78.34(13)“d.” The savings plan shall meet the requirements in paragraph 78.34(13)“f.”

*f. Savings plan.* A member savings plan must be in writing and be approved by the department before the start of the savings plan. Amounts allocated to the savings plan must result from efficiencies in meeting identified needs of the member.

(1) The savings plan shall identify:

1. The specific goods, services, supports or supplies to be purchased through the savings plan.
2. The amount of the individual budget allocated each month to the savings plan.
3. The amount of the individual budget allocated each month to meet the member's identified service needs.

4. How the member's assessed needs will continue to be met through the individual budget when funds are placed in savings.

(2) With the exception of funds allocated for respite care, the savings plan shall not include funds budgeted for direct services that were not received. The budgeted amount associated with unused direct services other than respite care shall revert to the Medicaid program at the end of each month. Funds from unused respite services may be allocated to the savings plan but shall not be used for anything other than future respite care.

(3) Funds accumulated under a savings plan shall be used only to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies. The self-directed personal care, individual-directed goods and services, or self-directed community supports and services purchased with funds from a savings plan must:

1. Be used to meet a member's identified need,
2. Be medically necessary, and
3. Be approved by the member's case manager or service worker.

(4) All funds allocated to a savings plan that are not expended by December 31 of each year shall revert to the Medicaid program.

(5) The annual reassessment of a member's needs must take into account the purchases of goods and services that substitute for human assistance. Adjustments shall be made to the services used to determine the individual budget based on the reassessment.

*g. Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for optional service components identified in the individual budget.

(5) Reallocate funds among services included in the budget. Every purchase of a good or service must be identified and approved in the individual budget before the purchase is made.

*h. Delegation of budget authority.* The member may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the member.

(3) The member shall sign a consent form that designates who the member has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

*i. Employer authority.* The member shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The member may perform the following functions:

- (1) Recruit employees.
- (2) Select employees from a worker registry.
- (3) Verify employee qualifications.
- (4) Specify additional employee qualifications.
- (5) Determine employee duties.
- (6) Determine employee wages and benefits.
- (7) Schedule employees.
- (8) Train and supervise employees.

*j. Employment agreement.* Any person employed by the member to provide services under the consumer choices option shall sign an employment agreement with the member that outlines the employee's and member's responsibilities.

*k. Responsibilities of the independent support broker.* The independent support broker shall perform the following services as directed by the member or the member's representative:

(1) Assist the member with developing the member's initial and subsequent individual budgets and with making any changes to the individual budget.

(2) Have monthly contact with the member for the first four months of implementation of the initial individual budget and have quarterly contact thereafter.

(3) Complete the required employment packet with the financial management service.

(4) Assist with interviewing potential employees and entities providing services and supports if requested by the member.

(5) Assist the member with determining whether a potential employee meets the qualifications necessary to perform the job.

(6) Assist the member with obtaining a signed consent from a potential employee to conduct background checks if requested by the member.

(7) Assist the member with negotiating with entities providing services and supports if requested by the member.

(8) Assist the member with contracts and payment methods for services and supports if requested by the member.

(9) Assist the member with developing an emergency backup plan. The emergency backup plan shall address any health and safety concerns.

(10) Review expenditure reports from the financial management service to ensure that services and supports in the individual budget are being provided.

(11) Document in writing on the independent support broker timecard every contact the broker has with the member. Contact documentation shall include information on the extent to which the member's individual budget has addressed the member's needs and the satisfaction of the member.

*l. Responsibilities of the financial management service.* The financial management service shall perform all of the following services:

(1) Receive Medicaid funds in an electronic transfer.

(2) Process and pay invoices for approved goods and services included in the individual budget.

(3) Enter the individual budget into the Web-based tracking system chosen by the department and enter expenditures as they are paid.

(4) Provide real-time individual budget account balances for the member, the independent support broker, and the department, available at a minimum during normal business hours (9 a.m. to 5 p.m., Monday through Friday).

(5) Conduct criminal background checks on potential employees pursuant to 441—Chapter 119.

- (6) Verify for the member an employee's citizenship or alien status.
- (7) Assist the member with fiscal and payroll-related responsibilities including, but not limited to:
  1. Verifying that hourly wages comply with federal and state labor rules.
  2. Collecting and processing timecards.
  3. Withholding, filing, and paying federal, state and local income taxes, Medicare and Social Security (FICA) taxes, and federal (FUTA) and state (SUTA) unemployment and disability insurance taxes, as applicable.
  4. Computing and processing other withholdings, as applicable.
  5. Processing all judgments, garnishments, tax levies, or other withholding on an employee's pay as may be required by federal, state, or local laws.
  6. Preparing and issuing employee payroll checks.
  7. Preparing and disbursing IRS Forms W-2 and W-3 annually.
  8. Processing federal advance earned income tax credit for eligible employees.
  9. Refunding over-collected FICA, when appropriate.
  10. Refunding over-collected FUTA, when appropriate.
- (8) Assist the member in completing required federal, state, and local tax and insurance forms.
- (9) Establish and manage documents and files for the member and the member's employees.
- (10) Monitor timecards, receipts, and invoices to ensure that they are consistent with the individual budget. Keep records of all timecards and invoices for each member for a total of five years.
- (11) Provide to the department, the independent support broker, and the member monthly and quarterly status reports that include a summary of expenditures paid and amount of budget unused.
- (12) Establish an accessible customer service system and a method of communication for the member and the independent support broker that includes alternative communication formats.
- (13) Establish a customer services complaint reporting system.
- (14) Develop a policy and procedures manual that is current with state and federal regulations and update as necessary.
- (15) Develop a business continuity plan in the case of emergencies and natural disasters.
- (16) Provide to the department an annual independent audit of the financial management service.
- (17) Assist in implementing the state's quality management strategy related to the financial management service.

This rule is intended to implement Iowa Code section 249A.4.  
 [ARC 9045B, IAB 9/8/10, effective 11/1/10; ARC 9403B, IAB 3/9/11, effective 5/1/11 (See Delay note at end of chapter); ARC 9704B, IAB 9/7/11, effective 9/1/11]

**441—78.35(249A) Occupational therapist services.** Payment will be approved for the same services provided by an occupational therapist that are payable under Title XVIII of the Social Security Act (Medicare).

This rule is intended to implement Iowa Code section 249A.4.

**441—78.36(249A) Hospice services.**

**78.36(1) General characteristics.** A hospice is a public agency or private organization or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. A hospice provides palliative and supportive services to meet the physical, psychosocial, social and spiritual needs of a terminally ill individual and the individual's family or other persons caring for the individual regardless of where the individual resides. Hospice services are those services to control pain and provide support to individuals to continue life with as little disruption as possible.

*a.* Covered services. Covered services shall include, in accordance with Medicare guidelines, the following:

- (1) Nursing care.
- (2) Medical social services.
- (3) Physician services.

(4) Counseling services provided to the terminally ill individual and the individual's family members or other persons caring for the individual at the individual's place of residence, including bereavement, dietary, and spiritual counseling.

(5) Short-term inpatient care provided in a participating hospice inpatient unit or a participating hospital or nursing facility that additionally meets the special hospice standards regarding staffing and patient areas for pain control, symptom management and respite purposes.

(6) Medical appliances and supplies, including drugs and biologicals, as needed for the palliation and management of the individual's terminal illness and related conditions, except for "covered Part D drugs" as defined by 42 U.S.C. Section 1395w-102(e)(1)-(2) for a "Part D eligible individual" as defined in 42 U.S.C. Section 1395w-101(a)(3)(A), including an individual who is not enrolled in a Part D plan.

(7) Homemaker and home health aide services.

(8) Physical therapy, occupational therapy and speech-language pathology unless this provision has been waived under the Medicare program for a specific provider.

(9) Other items or services specified in the resident's plan that would otherwise be paid under the Medicaid program.

Nursing care, medical social services, and counseling are core hospice services and must routinely be provided directly by hospice employees. The hospice may contract with other providers to provide the remaining services. Bereavement counseling, consisting of counseling services provided after the individual's death to the individual's family or other persons caring for the individual, is a required hospice service but is not reimbursable.

*b.* Noncovered services.

(1) Covered services not related to the terminal illness. In accordance with Medicare guidelines, all medical services related to the terminal illness are the responsibility of the hospice. Services unrelated to the terminal illness are to be billed separately by the respective provider.

(2) Administrative duties performed by the medical director, any hospice-employed physician, or any consulting physician are included in the normal hospice rates. Patient care provided by the medical director, hospice-employed physician, attending physician, or consulting physician is separately reimbursable. Payment to the attending or consulting physician includes other partners in practice.

(3) Hospice care provided by a hospice other than the hospice designated by the individual unless provided under arrangements made by the designated hospice.

(4) AZT (Retrovir) and other curative antiviral drugs targeted at the human immunodeficiency virus for the treatment of AIDS.

**78.36(2) *Categories of care.*** Hospice care entails the following four categories of daily care. Guidelines for core and other services must be adhered to for all categories of care.

*a.* Routine home care is care provided in the place of residence that is not continuous.

*b.* Continuous home care is provided only during a period of crisis when an individual requires continuous care which is primarily nursing care to achieve palliation or management of acute medical symptoms. Nursing care must be provided by either a registered nurse or a licensed practical nurse and a nurse must be providing care for more than half of the period of care. A minimum of eight hours of care per day must be provided during a 24-hour day to qualify as continuous care. Homemaker and aide services may also be provided to supplement the nursing care.

*c.* Inpatient respite care is provided to the individual only when necessary to relieve the family members or other persons caring for the individual at home. Respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time. Respite care may not be provided when the individual is a resident of a nursing facility.

*d.* General inpatient care is provided in periods of acute medical crisis when the individual is hospitalized or in a participating hospice inpatient unit or nursing facility for pain control or acute or chronic symptom management.

**78.36(3) *Residence in a nursing facility.*** For purposes of the Medicaid hospice benefit, a nursing facility can be considered the residence of a beneficiary. When the person does reside in a nursing facility, the requirement that the care of a resident of a nursing facility must be provided under the immediate

direction of either the facility or the resident's personal physician does not apply if all of the following conditions are met:

- a. The resident is terminally ill.
- b. The resident has elected to receive hospice services under the Medicaid program from a Medicaid-enrolled hospice program.
- c. The nursing facility and the Medicaid-enrolled hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of the resident's hospice care and the facility agrees to provide room and board to the resident.

**78.36(4) Approval for hospice benefits.** Payment will be approved for hospice services to individuals who are certified as terminally ill, that is, the individuals have a medical prognosis that their life expectancy is six months or less if the illness runs its normal course, and who elect hospice care rather than active treatment for the illness.

a. *Physician certification process.* The hospice must obtain certification that an individual is terminally ill in accordance with the following procedures:

(1) The hospice may obtain verbal orders to initiate hospice service from the medical director of the hospice or the physician member of the hospice interdisciplinary group and by the individual's attending physician (if the individual has an attending physician). The verbal order shall be noted in the patient's record. The verbal order must be given within two days of the start of care and be followed up in writing no later than eight calendar days after hospice care is initiated. The certification must include the statement that the individual's medical prognosis is that the individual's life expectancy is six months or less if the illness runs its normal course.

(2) When verbal orders are not secured, the hospice must obtain, no later than two calendar days after hospice care is initiated, written certification signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and by the individual's attending physician (if the individual has an attending physician). The certification must include the statement that the individual's medical prognosis is that the individual's life expectancy is six months or less, if the illness runs its normal course.

(3) Hospice care benefit periods consist of up to two periods of 90 days each and an unlimited number of subsequent 60-day periods as elected by the individual. The medical director or a physician must recertify at the beginning of each benefit period that the individual is terminally ill.

b. *Election procedures.* Individuals who are dually eligible for Medicare and Medicaid must receive hospice coverage under Medicare.

(1) Election statement. An individual, or individual's representative, elects to receive the hospice benefit by filing an election statement, Form 470-2618, Election of Medicaid Hospice Benefit, with a particular hospice. The hospice may provide the individual with another election form to use provided the form includes the following information:

1. Identification of the hospice that will provide the care.
2. Acknowledgment that the recipient has been given a full understanding of hospice care.
3. Acknowledgment that the recipient waives the right to regular Medicaid benefits, except for payment to the regular physician and treatment for medical conditions unrelated to the terminal illness.
4. Acknowledgment that recipients are not responsible for copayment or other deductibles.
5. The recipient's Medicaid number.
6. The effective date of election.
7. The recipient's signature.

(2) Change of designation. An individual may change the designation of the particular hospice from which the individual elects to receive hospice care one time only.

(3) Effective date. An individual may designate an effective date for the hospice benefit that begins with the first day of the hospice care or any subsequent day of hospice care, but an individual may not designate an effective date that is earlier than the date that the election is made.

(4) Duration of election. The election to receive hospice care will be considered to continue until one of the following occurs:

1. The individual dies.

2. The individual or the individual's representative revokes the election.
3. The individual's situation changes so that the individual no longer qualifies for the hospice benefit.
4. The hospice elects to terminate the recipient's enrollment in accordance with the hospice's established discharge policy.

(5) Revocation. Form 470-2619, Revocation of Medicaid Hospice Benefit, is completed when an individual or the individual's representative revokes the hospice benefit allowed under Medicaid. When an individual revokes the election of Medicaid coverage of hospice care, the individual resumes Medicaid coverage of the benefits waived when hospice care was elected.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.37(249A) HCBS elderly waiver services.** Payment will be approved for the following services to consumers eligible for the HCBS elderly waiver services as established in 441—Chapter 83. The consumer shall have a billable waiver service each calendar quarter. Services must be billed in whole units.

**78.37(1) *Adult day care services.*** Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service include health-related care, social services, and other related support services.

**78.37(2) *Personal emergency response or portable locator system.***

*a.* A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

- (1) The necessary components of a system are:
  1. An in-home medical communications transceiver.
  2. A remote, portable activator.
  3. A central monitoring station with backup systems staffed by trained attendants at all times.
  4. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each member.

(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

*b.* A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.
2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

**78.37(3) *Home health aide services.*** Home health aide services are personal or direct care services provided to the client which are not payable under Medicaid as set forth in rule 441—78.9(249A). A unit of service is a visit. Components of the service include:

- a.* Observation and reporting of physical or emotional needs.
- b.* Helping a client with bath, shampoo, or oral hygiene.
- c.* Helping a client with toileting.

- d. Helping a client in and out of bed and with ambulation.
- e. Helping a client reestablish activities of daily living.
- f. Assisting with oral medications ordinarily self-administered and ordered by a physician.
- g. Performing incidental household services which are essential to the client's health care at home and are necessary to prevent or postpone institutionalization in order to complete a full unit of service.

**78.37(4) Homemaker services.** Homemaker services are those services provided when the client lives alone or when the person who usually performs these functions for the client is incapacitated or occupied providing direct care to the client. A unit of service is one hour. Components of the service include:

- a. Essential shopping: shopping for basic need items such as food, clothing or personal care items, or drugs.
- b. Limited housecleaning: maintenance cleaning such as vacuuming, dusting, scrubbing floors, defrosting refrigerators, cleaning stoves, and washing and mending clothes.
- c. Accompaniment to medical or psychiatric services.
- d. Meal preparation: planning and preparing balanced meals.
- e. Bathing and dressing for self-directing recipients.

**78.37(5) Nursing care services.** Nursing care services are services provided by licensed agency nurses to clients in the home which are ordered by and included in the plan of treatment established by the physician. The services are reasonable and necessary to the treatment of an illness or injury and include: observation; evaluation; teaching; training; supervision; therapeutic exercise; bowel and bladder care; administration of medications; intravenous, hypodermoclysis, and enteral feedings; skin care; preparation of clinical and progress notes; coordination of services and informing the physician and other personnel of changes in the patient's condition and needs.

A unit of service is one visit. Nursing care service can pay for a maximum of eight nursing visits per month for intermediate level of care persons. There is no limit on the maximum visits for skilled level of care persons.

**78.37(6) Respite care services.** Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

- a. Services provided outside the member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.
- b. Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team.
- c. A unit of service is one hour.
- d. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.21(249A).
- e. When respite care is provided, the provision of, or payment for, other duplicative services under the waiver is precluded.
- f. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.
- g. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

h. Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.

**78.37(7) Chore services.** Chore services include the following services: window and door maintenance, such as hanging screen windows and doors, replacing windowpanes, and washing windows; minor repairs to walls, floors, stairs, railings and handles; heavy cleaning which includes cleaning attics or basements to remove fire hazards, moving heavy furniture, extensive wall washing, floor care or painting and trash removal; and yard work such as mowing lawns, raking leaves and shoveling walks. A unit of service is one-half hour.

**78.37(8) Home-delivered meals.** Home-delivered meals are meals prepared elsewhere and delivered to a member at the member's residence.

*a.* Each meal shall ensure the member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement which meets the minimum one-third standard.

*b.* When a restaurant provides the home-delivered meal, the member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the member and what constitutes the minimum one-third daily dietary allowance.

*c.* A maximum of two meals is allowed per day. A unit of service is a meal.

**78.37(9) Home and vehicle modification.** Covered home and vehicle modifications are physical modifications to the member's home or vehicle that directly address the member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the member and enable the member to function with greater independence in the home or vehicle.

*a.* Modifications that are necessary or desirable without regard to the member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Home and vehicle repairs are also excluded.

*b.* Only the following modifications are covered:

- (1) Kitchen counters, sink space, cabinets, special adaptations to refrigerators, stoves, and ovens.
- (2) Bathtubs and toilets to accommodate transfer, special handles and hoses for shower heads, water faucet controls, and accessible showers and sink areas.
- (3) Grab bars and handrails.
- (4) Turnaround space adaptations.
- (5) Ramps, lifts, and door, hall and window widening.
- (6) Fire safety alarm equipment specific for disability.
- (7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the member's disability.
- (8) Vehicle lifts, driver-specific adaptations, remote-start systems, including such modifications already installed in a vehicle.
- (9) Keyless entry systems.
- (10) Automatic opening device for home or vehicle door.
- (11) Special door and window locks.
- (12) Specialized doorknobs and handles.
- (13) Plexiglas replacement for glass windows.
- (14) Modification of existing stairs to widen, lower, raise or enclose open stairs.
- (15) Motion detectors.
- (16) Low-pile carpeting or slip-resistant flooring.
- (17) Telecommunications device for the deaf.
- (18) Exterior hard-surface pathways.
- (19) New door opening.
- (20) Pocket doors.
- (21) Installation or relocation of controls, outlets, switches.
- (22) Air conditioning and air filtering if medically necessary.
- (23) Heightening of existing garage door opening to accommodate modified van.
- (24) Bath chairs.

*c.* A unit of service is the completion of needed modifications or adaptations.

*d.* All modifications and adaptations shall be provided in accordance with applicable federal, state, and local building and vehicle codes.

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the provider and the member.

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

*g.* Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications.

*h.* Services shall be included in the member's service plan and shall exceed the Medicaid state plan services.

**78.37(10) *Mental health outreach.*** Mental health outreach services are services provided in a recipient's home to identify, evaluate, and provide treatment and psychosocial support. The services can only be provided on the basis of a referral from the consumer's interdisciplinary team established pursuant to 441—subrule 83.22(2). A unit of service is 15 minutes.

**78.37(11) *Transportation.*** Transportation services may be provided for recipients to conduct business errands, essential shopping, to receive medical services not reimbursed through medical transportation, and to reduce social isolation. A unit of service is per mile, per trip, or rate established by area agency on aging.

**78.37(12) *Nutritional counseling.*** Nutritional counseling services may be provided for a nutritional problem or condition of such a degree of severity that nutritional counseling beyond that normally expected as part of the standard medical management is warranted. A unit of service is 15 minutes.

**78.37(13) *Assistive devices.*** Assistive devices means practical equipment products to assist persons with activities of daily living and instrumental activities of daily living to allow the person more independence. They include, but are not limited to: long-reach brush, extra long shoehorn, nonslip grippers to pick up and reach items, dressing aids, shampoo rinse tray and inflatable shampoo tray, double-handled cup and sipper lid. A unit is an item.

*a.* The service shall be included in the member's service plan and shall exceed the services available under the Medicaid state plan.

*b.* The service shall be provided following prior approval by the Iowa Medicaid enterprise.

*c.* Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

**78.37(14) *Senior companion.*** Senior companion services are nonmedical care supervision, oversight, and respite. Companions may assist with such tasks as meal preparation, laundry, shopping and light housekeeping tasks. This service cannot provide hands-on nursing or medical care. A unit of service is one hour.

**78.37(15) *Consumer-directed attendant care service.*** Consumer-directed attendant care services are service activities performed by a person to help a member with self-care tasks which the member would typically do independently if the member were otherwise able.

*a.* The service activities may include helping the member with any of the following nonskilled service activities:

(1) Dressing.

(2) Bath, shampoo, hygiene, and grooming.

(3) Access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. It is recommended that the provider receive certification of training and return demonstration for transferring. Certification for this is available through the area community colleges.

(4) Toilet assistance, including bowel, bladder, and catheter assistance. It is recommended that the provider receive certification of training and return demonstration for catheter assistance. Certification for this is available through the area community colleges.

(5) Meal preparation, cooking, and assistance with eating but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the member's health care at home.

(7) Medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. It is recommended the provider successfully complete a medication aide course administered by an area community college.

(8) Wound care.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the member is on the job site. The cost of transportation for the member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) Cognitive assistance with tasks such as handling money and scheduling.

(11) Fostering communication through interpreting and reading services as well as assistive devices for communication.

(12) Assisting or accompanying a member in using transportation essential to the health and welfare of the member. The cost of the transportation is not included.

*b.* The service activities may include helping the member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program.

(1) Tube feedings of members unable to eat solid foods.

(2) Intravenous therapy administered by a registered nurse.

(3) Parenteral injections required more than once a week.

(4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.

(5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.

(6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.

(7) Rehabilitation services including, but not limited to, bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.

(8) Colostomy care.

(9) Care of medical conditions out of control which includes brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nursing care.

(11) Monitoring medications requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood-altering or psychotropic drugs, or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

*c.* A unit of service provided by an individual or an agency, other than an assisted living program, is 1 hour or one 8- to 24-hour day. When provided by an assisted living program, a unit of service is one calendar month. If services are provided by an assisted living program for less than one full calendar month, the monthly reimbursement rate shall be prorated based on the number of days service is provided. Except for services provided by an assisted living program, each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

*d.* The member, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency that will provide the components of the attendant care services.

*e.* The member, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the member.

*f.* The service activities shall not include parenting or child care on behalf of the member or on behalf of the provider.

*g.* The member, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan and kept in the member's records.

*h.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

*i.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the member, indicating that the service has been provided as presented on the claim.

*j.* The frequency or intensity of services shall be indicated in the service plan.

*k.* Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

*l.* Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

*m.* Services may be provided in the absence of a guardian if the guardian has given advanced direction for the service provision.

**78.37(16) Consumer choices option.** The consumer choices option provides a member with a flexible monthly individual budget that is based on the member's service needs. With the individual budget, the member shall have the authority to purchase goods and services to meet the member's assessed needs and may choose to employ providers of services and supports. The services, supports, and items that are purchased with an individual budget must be directly related to a member's assessed need or goal established in the member's service plan. Components of this service are set forth below.

*a. Agreement.* As a condition of participating in the consumer choices option, a member shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the member has been informed of the responsibilities and risks of electing the consumer choices option.

*b. Individual budget amount.* A monthly individual budget amount shall be established for each member based on the assessed needs of the member and on the services and supports authorized in the member's service plan. The member shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a member in the HCBS elderly waiver are:

1. Assistive devices.
2. Chore service.
3. Consumer-directed attendant care (unskilled).
4. Home and vehicle modification.
5. Home-delivered meals.
6. Homemaker service.
7. Basic individual respite care.
8. Senior companion.
9. Transportation.

(2) The department shall determine an average unit cost for each service listed in subparagraph 78.37(16) "b"(1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment

factor to the amount of service authorized in the member's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.37(16) "b"(2). Respite services are not subject to the utilization adjustment factor in subparagraph 78.37(16) "b"(3).

(6) Anticipated costs for home and vehicle modification and assistive devices are not subject to the average cost in subparagraph 78.37(16) "b"(2) or the utilization adjustment factor in subparagraph 78.37(16) "b"(3). Anticipated costs for home and vehicle modification and assistive devices shall not include the costs of the financial management services or the independent support broker. Before becoming part of the individual budget, all home and vehicle modifications and assistive devices shall be identified in the member's service plan and approved by the case manager or service worker. Costs for home and vehicle modification and assistive devices may be paid to the financial management services provider in a one-time payment.

(7) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

*c. Required service components.* To participate in the consumer choices option, a member must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid provider. Before hiring the independent support broker, the member shall receive the results of the background check conducted pursuant to 441—Chapter 119.

*d. Optional service components.* A member who elects the consumer choices option may purchase the following goods, services and supports, which shall be provided in the member's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the member remain in the home and community. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the member in developing and maintaining independence and community integration. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address an assessed need or goal identified in the member's service plan. The item or service shall meet the following requirements:

1. Promote opportunities for community living and inclusion.
2. Increase independence or substitute for human assistance, to the extent the expenditures would otherwise be made for that human assistance.
3. Be accommodated within the member's budget without compromising the member's health and safety.
4. Be provided to the member or directed exclusively toward the benefit of the member.
5. Be the least costly to meet the member's needs.
6. Not be available through another source.

*e. Development of the individual budget.* The independent support broker shall assist the member in developing and implementing the member's individual budget. The individual budget shall include:

- (1) The costs of the financial management service.
- (2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual

budget. The independent support broker shall not be paid for more than 30 hours of service for an individual member during a 12-month period without prior approval by the department.

(3) The costs of any optional service component chosen by the member as described in paragraph 78.37(16)“d.” Costs of the following items and services shall not be covered by the individual budget:

1. Child care services.
2. Clothing not related to an assessed medical need.
3. Conference, meeting or similar venue expenses other than the costs of approved services the member needs while attending the conference, meeting or similar venue.
4. Costs associated with shipping items to the member.
5. Experimental and non-FDA-approved medications, therapies, or treatments.
6. Goods or services covered by other Medicaid programs.
7. Home furnishings.
8. Home repairs or home maintenance.
9. Homeopathic treatments.
10. Insurance premiums or copayments.
11. Items purchased on installment payments.
12. Motorized vehicles.
13. Nutritional supplements.
14. Personal entertainment items.
15. Repairs and maintenance of motor vehicles.
16. Room and board, including rent or mortgage payments.
17. School tuition.
18. Service animals.
19. Services covered by third parties or services that are the responsibility of a non-Medicaid program.
20. Sheltered workshop services.
21. Social or recreational purchases not related to an assessed need or goal identified in the member’s service plan.
22. Vacation expenses, other than the costs of approved services the member needs while on vacation.

(4) The costs of any approved home or vehicle modification or assistive device. When authorized, the budget may include an amount allocated for a home or vehicle modification or an assistive device. Before becoming part of the individual budget, all home and vehicle modifications and assistive devices shall be identified in the member’s service plan and approved by the case manager or service worker. The authorized amount shall not be used for anything other than the specific modification or device.

(5) Any amount set aside in a savings plan to reserve funds for the future purchase of self-directed personal care, individual-directed goods and services, or self-directed community supports and services as defined in paragraph 78.37(16)“d.” The savings plan shall meet the requirements in paragraph 78.37(16)“f.”

*f. Savings plan.* A member savings plan must be in writing and be approved by the department before the start of the savings plan. Amounts allocated to the savings plan must result from efficiencies in meeting identified needs of the member.

- (1) The savings plan shall identify:
  1. The specific goods, services, supports or supplies to be purchased through the savings plan.
  2. The amount of the individual budget allocated each month to the savings plan.
  3. The amount of the individual budget allocated each month to meet the member’s identified service needs.
  4. How the member’s assessed needs will continue to be met through the individual budget when funds are placed in savings.

(2) With the exception of funds allocated for respite care, the savings plan shall not include funds budgeted for direct services that were not received. The budgeted amount associated with unused direct services other than respite care shall revert to the Medicaid program at the end of each month. Funds

from unused respite services may be allocated to the savings plan but shall not be used for anything other than future respite care.

(3) Funds accumulated under a savings plan shall be used only to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies. The self-directed personal care, individual-directed goods and services, or self-directed community supports and services purchased with funds from a savings plan must:

1. Be used to meet a member's identified need,
2. Be medically necessary, and
3. Be approved by the member's case manager or service worker.

(4) All funds allocated to a savings plan that are not expended by December 31 of each year shall revert to the Medicaid program.

(5) The annual reassessment of a member's needs must take into account the purchases of goods and services that substitute for human assistance. Adjustments shall be made to the services used to determine the individual budget based on the reassessment.

*g. Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for optional service components identified in the individual budget.

(5) Reallocate funds among services included in the budget. Every purchase of a good or service must be identified and approved in the individual budget before the purchase is made.

*h. Delegation of budget authority.* The member may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the member.

(3) The member shall sign a consent form that designates who the member has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

*i. Employer authority.* The member shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The member may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

*j. Employment agreement.* Any person employed by the member to provide services under the consumer choices option shall sign an employment agreement with the member that outlines the employee's and member's responsibilities.

*k. Responsibilities of the independent support broker.* The independent support broker shall perform the following services as directed by the member or the member's representative:

(1) Assist the member with developing the member's initial and subsequent individual budgets and with making any changes to the individual budget.

- (2) Have monthly contact with the member for the first four months of implementation of the initial individual budget and have quarterly contact thereafter.
- (3) Complete the required employment packet with the financial management service.
- (4) Assist with interviewing potential employees and entities providing services and supports if requested by the member.
- (5) Assist the member with determining whether a potential employee meets the qualifications necessary to perform the job.
- (6) Assist the member with obtaining a signed consent from a potential employee to conduct background checks if requested by the member.
- (7) Assist the member with negotiating with entities providing services and supports if requested by the member.
- (8) Assist the member with contracts and payment methods for services and supports if requested by the member.
- (9) Assist the member with developing an emergency backup plan. The emergency backup plan shall address any health and safety concerns.
- (10) Review expenditure reports from the financial management service to ensure that services and supports in the individual budget are being provided.
- (11) Document in writing on the independent support broker timecard every contact the broker has with the member. Contact documentation shall include information on the extent to which the member's individual budget has addressed the member's needs and the satisfaction of the member.
  1. *Responsibilities of the financial management service.* The financial management service shall perform all of the following services:
    - (1) Receive Medicaid funds in an electronic transfer.
    - (2) Process and pay invoices for approved goods and services included in the individual budget.
    - (3) Enter the individual budget into the Web-based tracking system chosen by the department and enter expenditures as they are paid.
    - (4) Provide real-time individual budget account balances for the member, the independent support broker, and the department, available at a minimum during normal business hours (9 a.m. to 5 p.m., Monday through Friday).
    - (5) Conduct criminal background checks on potential employees pursuant to 441—Chapter 119.
    - (6) Verify for the member an employee's citizenship or alien status.
    - (7) Assist the member with fiscal and payroll-related responsibilities including, but not limited to:
      1. Verifying that hourly wages comply with federal and state labor rules.
      2. Collecting and processing timecards.
      3. Withholding, filing, and paying federal, state and local income taxes, Medicare and Social Security (FICA) taxes, and federal (FUTA) and state (SUTA) unemployment and disability insurance taxes, as applicable.
      4. Computing and processing other withholdings, as applicable.
      5. Processing all judgments, garnishments, tax levies, or other withholding on an employee's pay as may be required by federal, state, or local laws.
      6. Preparing and issuing employee payroll checks.
      7. Preparing and disbursing IRS Forms W-2 and W-3 annually.
      8. Processing federal advance earned income tax credit for eligible employees.
      9. Refunding over-collected FICA, when appropriate.
      10. Refunding over-collected FUTA, when appropriate.
    - (8) Assist the member in completing required federal, state, and local tax and insurance forms.
    - (9) Establish and manage documents and files for the member and the member's employees.
    - (10) Monitor timecards, receipts, and invoices to ensure that they are consistent with the individual budget. Keep records of all timecards and invoices for each member for a total of five years.
    - (11) Provide to the department, the independent support broker, and the member monthly and quarterly status reports that include a summary of expenditures paid and amount of budget unused.

(12) Establish an accessible customer service system and a method of communication for the member and the independent support broker that includes alternative communication formats.

(13) Establish a customer services complaint reporting system.

(14) Develop a policy and procedures manual that is current with state and federal regulations and update as necessary.

(15) Develop a business continuity plan in the case of emergencies and natural disasters.

(16) Provide to the department an annual independent audit of the financial management service.

(17) Assist in implementing the state's quality management strategy related to the financial management service.

**78.37(17) Case management services.** Case management services are services that assist Medicaid members who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other appropriate services in order to ensure the health, safety, and welfare of the member. Case management is provided at the direction of the member and the interdisciplinary team established pursuant to 441—subrule 83.22(2).

a. Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).

b. Case management shall not include the provision of direct services by the case managers.

c. Payment for case management shall not be made until the consumer is enrolled in the waiver. Payment shall be made only for case management services performed on behalf of the consumer during a month when the consumer is enrolled.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 7957B, IAB 7/15/09, effective 7/1/09; ARC 9045B, IAB 9/8/10, effective 11/1/10; ARC 9403B, IAB 3/9/11, effective 5/1/11; ARC 9704B, IAB 9/7/11, effective 9/1/11]

**441—78.38(249A) HCBS AIDS/HIV waiver services.** Payment will be approved for the following services to clients eligible for the HCBS AIDS/HIV waiver services as established in 441—Chapter 83. Services must be billed in whole units.

**78.38(1) Counseling services.** Counseling services are face-to-face mental health services provided to the client and caregiver by a mental health professional as defined in rule 441—24.61(225C,230A) to facilitate home management of the client and prevent institutionalization. Counseling services are nonpsychiatric services necessary for the management of depression, assistance with the grief process, alleviation of psychosocial isolation and support in coping with a disability or illness, including terminal illness. Counseling services may be provided both for the purpose of training the client's family or other caregiver to provide care, and for the purpose of helping the client and those caring for the client to adjust to the client's disability or terminal condition. Counseling services may be provided to the client's caregiver only when included in the case plan for the client.

Payment will be made for individual and group counseling. A unit of individual counseling for the waiver client or the waiver client and the client's caregiver is 15 minutes. A unit of group counseling is one hour. Payment for group counseling is based on the group rate divided by six, or, if the number of persons who comprise the group exceeds six, the actual number of persons who comprise the group.

**78.38(2) Home health aide services.** Home health aide services are personal or direct care services provided to the client which are not payable under Medicaid as set forth in rule 441—78.9(249A). A unit of service is a visit. Components of the service are:

a. Observation and reporting of physical or emotional needs.

b. Helping a client with bath, shampoo, or oral hygiene.

c. Helping a client with toileting.

d. Helping a client in and out of bed and with ambulation.

e. Helping a client reestablish activities of daily living.

f. Assisting with oral medications ordinarily self-administered and ordered by a physician.

g. Performing incidental household services which are essential to the client's health care at home and are necessary to prevent or postpone institutionalization in order to complete a full unit of service.

**78.38(3) *Homemaker services.*** Homemaker services are those services provided when the client lives alone or when the person who usually performs these functions for the client needs assistance with performing the functions. A unit of service is one hour. Components of the service are directly related to the care of the client and are:

*a.* Essential shopping: shopping for basic need items such as food, clothing or personal care items, or drugs.

*b.* Limited housecleaning: maintenance cleaning such as vacuuming, dusting, scrubbing floors, defrosting refrigerators, cleaning stoves, cleaning medical equipment, washing and mending clothes, washing personal items used by the client, and dishes.

*c.* Accompaniment to medical or psychiatric services or for children aged 18 and under to school.

*d.* Meal preparation: planning and preparing balanced meals.

**78.38(4) *Nursing care services.*** Nursing care services are services provided by licensed agency nurses to clients in the home which are ordered by and included in the plan of treatment established by the physician. The services shall be reasonable and necessary to the treatment of an illness or injury and include: observation; evaluation; teaching; training; supervision; therapeutic exercise; bowel and bladder care; administration of medications; intravenous and enteral feedings; skin care; preparation of clinical and progress notes; coordination of services; and informing the physician and other personnel of changes in the patient's conditions and needs. A unit of service is a visit.

**78.38(5) *Respite care services.*** Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

*a.* Services provided outside the member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

*b.* Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team.

*c.* A unit of service is one hour.

*d.* The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.41(249A).

*e.* When respite care is provided, the provision of, or payment for, other duplicative services under the waiver is precluded.

*f.* A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

*g.* Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

*h.* Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.

**78.38(6) *Home-delivered meals.*** Home-delivered meals are meals prepared elsewhere and delivered to a member at the member's residence.

*a.* Each meal shall ensure the member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement which meets the minimum one-third standard.

*b.* When a restaurant provides the home-delivered meal, the member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the member and what constitutes the minimum one-third daily dietary allowance.

*c.* A maximum of two meals is allowed per day. A unit of service is a meal.

**78.38(7) *Adult day care services.*** Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full

day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service include health-related care, social services, and other related support services.

**78.38(8) Consumer-directed attendant care service.** Consumer-directed attendant care services are service activities performed by a person to help a member with self-care tasks which the member would typically do independently if the member were otherwise able.

*a.* The service activities may include helping the member with any of the following nonskilled service activities:

- (1) Dressing.
- (2) Bath, shampoo, hygiene, and grooming.
- (3) Access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. It is recommended that the provider receive certification of training and return demonstration for transferring. Certification for this is available through the area community colleges.
- (4) Toilet assistance, including bowel, bladder, and catheter assistance. It is recommended that the provider receive certification of training and return demonstration for catheter assistance. Certification for this is available through the area community colleges.
- (5) Meal preparation, cooking, and assistance with eating but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.
- (6) Housekeeping services which are essential to the member's health care at home.
- (7) Medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. It is recommended the provider successfully complete a medication aide course administered by an area community college.
- (8) Wound care.
- (9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the member is on the job site. The cost of transportation for the member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.
- (10) Cognitive assistance with tasks such as handling money and scheduling.
- (11) Fostering communication through interpreting and reading services as well as assistive devices for communication.
- (12) Assisting or accompanying a member in using transportation essential to the health and welfare of the member. The cost of the transportation is not included.

*b.* The service activities may include helping the member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program.

- (1) Tube feedings of members unable to eat solid foods.
- (2) Intravenous therapy administered by a registered nurse.
- (3) Parenteral injections required more than once a week.
- (4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.
- (5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.
- (6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.
- (7) Rehabilitation services including, but not limited to, bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.
- (8) Colostomy care.

(9) Care of medical conditions out of control which includes brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nursing care.

(11) Monitoring medications requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood-altering or psychotropic drugs, or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

c. A unit of service is 1 hour or one 8- to 24-hour day. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency that will provide the components of the attendant care services.

e. The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the member.

f. The service activities shall not include parenting or child care for or on behalf of the member or on behalf of the provider.

g. The member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan and kept in the member's records.

h. If the member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the member, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

**78.38(9) Consumer choices option.** The consumer choices option provides a member with a flexible monthly individual budget that is based on the member's service needs. With the individual budget, the member shall have the authority to purchase goods and services to meet the member's assessed needs and may choose to employ providers of services and supports. The services, supports, and items that are purchased with an individual budget must be directly related to a member's assessed need or goal established in the member's service plan. Components of this service are set forth below.

a. *Agreement.* As a condition of participating in the consumer choices option, a member shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the member has been informed of the responsibilities and risks of electing the consumer choices option.

b. *Individual budget amount.* A monthly individual budget amount shall be established for each member based on the assessed needs of the member and on the services and supports authorized in the member's service plan. The member shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a member in the HCBS AIDS/HIV waiver are:

1. Consumer-directed attendant care (unskilled).
2. Home-delivered meals.
3. Homemaker service.
4. Basic individual respite care.

(2) The department shall determine an average unit cost for each service listed in subparagraph 78.38(9)“b”(1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the member’s service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.38(9)“b”(2). Respite services are not subject to the utilization adjustment factor in subparagraph 78.38(9)“b”(3).

(6) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

*c. Required service components.* To participate in the consumer choices option, a member must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid provider. Before hiring the independent support broker, the member shall receive the results of the background check conducted pursuant to 441—Chapter 119.

*d. Optional service components.* A member who elects the consumer choices option may purchase the following goods, services and supports, which shall be provided in the member’s home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the member remain in the home and community. These services must be identified in the member’s service plan developed by the member’s case manager or service worker.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the member in developing and maintaining independence and community integration. These services must be identified in the member’s service plan developed by the member’s case manager or service worker.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address an assessed need or goal identified in the member’s service plan. The item or service shall meet the following requirements:

1. Promote opportunities for community living and inclusion.
2. Increase independence or substitute for human assistance, to the extent the expenditures would otherwise be made for that human assistance.
3. Be accommodated within the member’s budget without compromising the member’s health and safety.
4. Be provided to the member or directed exclusively toward the benefit of the member.
5. Be the least costly to meet the member’s needs.
6. Not be available through another source.

*e. Development of the individual budget.* The independent support broker shall assist the member in developing and implementing the member’s individual budget. The individual budget shall include:

- (1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. The independent support broker shall not be paid for more than 30 hours of service for an individual member during a 12-month period without prior approval by the department.

(3) The costs of any optional service component chosen by the member as described in paragraph 78.38(9) "d." Costs of the following items and services shall not be covered by the individual budget:

1. Child care services.
2. Clothing not related to an assessed medical need.
3. Conference, meeting or similar venue expenses other than the costs of approved services the member needs while attending the conference, meeting or similar venue.
4. Costs associated with shipping items to the member.
5. Experimental and non-FDA-approved medications, therapies, or treatments.
6. Goods or services covered by other Medicaid programs.
7. Home furnishings.
8. Home repairs or home maintenance.
9. Homeopathic treatments.
10. Insurance premiums or copayments.
11. Items purchased on installment payments.
12. Motorized vehicles.
13. Nutritional supplements.
14. Personal entertainment items.
15. Repairs and maintenance of motor vehicles.
16. Room and board, including rent or mortgage payments.
17. School tuition.
18. Service animals.
19. Services covered by third parties or services that are the responsibility of a non-Medicaid program.
20. Sheltered workshop services.
21. Social or recreational purchases not related to an assessed need or goal identified in the member's service plan.
22. Vacation expenses, other than the costs of approved services the member needs while on vacation.

(4) The costs of any approved home or vehicle modification. When authorized, the budget may include an amount allocated for a home or vehicle modification. Before becoming part of the individual budget, all home and vehicle modifications shall be identified in the member's service plan and approved by the case manager or service worker. The authorized amount shall not be used for anything other than the specific modification.

(5) Any amount set aside in a savings plan to reserve funds for the future purchase of self-directed personal care, individual-directed goods and services, or self-directed community supports and services as defined in paragraph 78.38(9) "d." The savings plan shall meet the requirements in paragraph 78.38(9) "f."

*f. Savings plan.* A member savings plan must be in writing and be approved by the department before the start of the savings plan. Amounts allocated to the savings plan must result from efficiencies in meeting identified needs of the member.

- (1) The savings plan shall identify:
  1. The specific goods, services, supports or supplies to be purchased through the savings plan.
  2. The amount of the individual budget allocated each month to the savings plan.
  3. The amount of the individual budget allocated each month to meet the member's identified service needs.
  4. How the member's assessed needs will continue to be met through the individual budget when funds are placed in savings.

(2) With the exception of funds allocated for respite care, the savings plan shall not include funds budgeted for direct services that were not received. The budgeted amount associated with unused direct services other than respite care shall revert to the Medicaid program at the end of each month. Funds from unused respite services may be allocated to the savings plan but shall not be used for anything other than future respite care.

(3) Funds accumulated under a savings plan shall be used only to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies. The self-directed personal care, individual-directed goods and services, or self-directed community supports and services purchased with funds from a savings plan must:

1. Be used to meet a member's identified need,
2. Be medically necessary, and
3. Be approved by the member's case manager or service worker.

(4) All funds allocated to a savings plan that are not expended by December 31 of each year shall revert to the Medicaid program.

(5) The annual reassessment of a member's needs must take into account the purchases of goods and services that substitute for human assistance. Adjustments shall be made to the services used to determine the individual budget based on the reassessment.

*g. Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

- (1) Contract with entities to provide services and supports as described in this subrule.
- (2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).
- (3) Schedule the provision of services.
- (4) Authorize payment for optional service components identified in the individual budget.
- (5) Reallocate funds among services included in the budget. Every purchase of a good or service must be identified and approved in the individual budget before the purchase is made.

*h. Delegation of budget authority.* The member may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

- (1) The representative must be at least 18 years old.
- (2) The representative shall not be a current provider of service to the member.
- (3) The member shall sign a consent form that designates who the member has chosen as a representative and what responsibilities the representative shall have.
- (4) The representative shall not be paid for this service.

*i. Employer authority.* The member shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The member may perform the following functions:

- (1) Recruit employees.
- (2) Select employees from a worker registry.
- (3) Verify employee qualifications.
- (4) Specify additional employee qualifications.
- (5) Determine employee duties.
- (6) Determine employee wages and benefits.
- (7) Schedule employees.
- (8) Train and supervise employees.

*j. Employment agreement.* Any person employed by the member to provide services under the consumer choices option shall sign an employment agreement with the member that outlines the employee's and member's responsibilities.

*k. Responsibilities of the independent support broker.* The independent support broker shall perform the following services as directed by the member or the member's representative:

- (1) Assist the member with developing the member's initial and subsequent individual budgets and with making any changes to the individual budget.
- (2) Have monthly contact with the member for the first four months of implementation of the initial individual budget and have quarterly contact thereafter.
- (3) Complete the required employment packet with the financial management service.
- (4) Assist with interviewing potential employees and entities providing services and supports if requested by the member.
- (5) Assist the member with determining whether a potential employee meets the qualifications necessary to perform the job.
- (6) Assist the member with obtaining a signed consent from a potential employee to conduct background checks if requested by the member.
- (7) Assist the member with negotiating with entities providing services and supports if requested by the member.
- (8) Assist the member with contracts and payment methods for services and supports if requested by the member.
- (9) Assist the member with developing an emergency backup plan. The emergency backup plan shall address any health and safety concerns.
- (10) Review expenditure reports from the financial management service to ensure that services and supports in the individual budget are being provided.
- (11) Document in writing on the independent support broker timecard every contact the broker has with the member. Contact documentation shall include information on the extent to which the member's individual budget has addressed the member's needs and the satisfaction of the member.

*l. Responsibilities of the financial management service.* The financial management service shall perform all of the following services:

- (1) Receive Medicaid funds in an electronic transfer.
- (2) Process and pay invoices for approved goods and services included in the individual budget.
- (3) Enter the individual budget into the Web-based tracking system chosen by the department and enter expenditures as they are paid.
- (4) Provide real-time individual budget account balances for the member, the independent support broker, and the department, available at a minimum during normal business hours (9 a.m. to 5 p.m., Monday through Friday).
- (5) Conduct criminal background checks on potential employees pursuant to 441—Chapter 119.
- (6) Verify for the member an employee's citizenship or alien status.
- (7) Assist the member with fiscal and payroll-related responsibilities including, but not limited to:
  1. Verifying that hourly wages comply with federal and state labor rules.
  2. Collecting and processing timecards.
  3. Withholding, filing, and paying federal, state and local income taxes, Medicare and Social Security (FICA) taxes, and federal (FUTA) and state (SUTA) unemployment and disability insurance taxes, as applicable.
  4. Computing and processing other withholdings, as applicable.
  5. Processing all judgments, garnishments, tax levies, or other withholding on an employee's pay as may be required by federal, state, or local laws.
  6. Preparing and issuing employee payroll checks.
  7. Preparing and disbursing IRS Forms W-2 and W-3 annually.
  8. Processing federal advance earned income tax credit for eligible employees.
  9. Refunding over-collected FICA, when appropriate.
  10. Refunding over-collected FUTA, when appropriate.
- (8) Assist the member in completing required federal, state, and local tax and insurance forms.
- (9) Establish and manage documents and files for the member and the member's employees.

(10) Monitor timecards, receipts, and invoices to ensure that they are consistent with the individual budget. Keep records of all timecards and invoices for each member for a total of five years.

(11) Provide to the department, the independent support broker, and the member monthly and quarterly status reports that include a summary of expenditures paid and amount of budget unused.

(12) Establish an accessible customer service system and a method of communication for the member and the independent support broker that includes alternative communication formats.

(13) Establish a customer services complaint reporting system.

(14) Develop a policy and procedures manual that is current with state and federal regulations and update as necessary.

(15) Develop a business continuity plan in the case of emergencies and natural disasters.

(16) Provide to the department an annual independent audit of the financial management service.

(17) Assist in implementing the state's quality management strategy related to the financial management service.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 9045B, IAB 9/8/10, effective 11/1/10; ARC 9403B, IAB 3/9/11, effective 5/1/11 (See Delay note at end of chapter)]

**441—78.39(249A) Federally qualified health centers.** Payment shall be made for services as defined in Section 1905(a)(2)(C) of the Social Security Act.

**78.39(1) Utilization review.** Utilization review shall be conducted of Medicaid members who access more than 24 outpatient visits in any 12-month period from physicians, advanced registered nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the member lock-in program.

**78.39(2) Risk assessment.** Risk assessment, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed at the initial visit during a Medicaid member's pregnancy.

*a.* If the risk assessment reflects a low-risk pregnancy, the assessment shall be completed again at approximately the twenty-eighth week of pregnancy.

*b.* If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)

**78.39(3) Vaccines.** Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered services. Federally qualified health centers that wish to administer those vaccines to Medicaid members shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. However, vaccine administration is a covered service.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.40(249A) Advanced registered nurse practitioners.** Payment shall be approved for services provided by advanced registered nurse practitioners within their scope of practice and the limitations of state law, with the exception of services not payable to physicians under rule 441—78.1(249A) or otherwise not payable under any other applicable rule.

**78.40(1) Direct payment.** Payment shall be made to advanced registered nurse practitioners directly, without regard to whether the advanced registered nurse practitioner is employed by or associated with a physician, hospital, birth center, clinic or other health care provider recognized under state law. An established protocol between a physician and the advanced registered nurse practitioner shall not cause an advanced registered nurse practitioner to be considered auxiliary personnel of a physician, or an employee of a hospital, birth center, or clinic.

**78.40(2) Location of service.** Payment shall be approved for services rendered in any location in which the advanced registered nurse practitioner is legally authorized to provide services under state law. The nurse practitioner shall have promptly available the necessary equipment and personnel to handle emergencies.

**78.40(3) Utilization review.** Utilization review shall be conducted of Medicaid members who access more than 24 outpatient visits in any 12-month period from physicians, advanced registered

nurse practitioners, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the member lock-in program.

**78.40(4) Vaccine administration.** Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered services. Advanced registered nurse practitioners who wish to administer those vaccines to Medicaid members shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. Advanced registered nurse practitioners shall receive reimbursement for the administration of vaccines to Medicaid members.

**78.40(5) Prenatal risk assessment.** Risk assessment, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed at the initial visit during a Medicaid member's pregnancy.

*a.* If the risk assessment reflects a low-risk pregnancy, the assessment shall be completed again at approximately the twenty-eighth week of pregnancy.

*b.* If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)

This rule is intended to implement Iowa Code section 249A.4.

**441—78.41(249A) HCBS intellectual disability waiver services.** Payment will be approved for the following services to members eligible for the HCBS intellectual disability waiver as established in 441—Chapter 83 and as identified in the member's service plan. All services include the applicable and necessary instruction, supervision, assistance and support as required by the member in achieving the member's life goals. The services, amount and supports provided under the HCBS intellectual disability waiver shall be delivered in the least restrictive environment and in conformity with the member's service plan. Reimbursement shall not be available under the waiver for any services that the member can obtain through the Medicaid state plan. All services shall be billed in whole units.

**78.41(1) Supported community living services.** Supported community living services are provided by the provider within the member's home and community, according to the individualized member need as identified in the service plan.

*a.* Available components of the service are personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.

(1) Personal and home skills training services are activities which assist a member to develop or maintain skills for self-care, self-directedness, and care of the immediate environment.

(2) Individual advocacy is the act or process of representing the member's rights and interests in order to realize the rights to which the member is entitled and to remove barriers to meeting the member's needs.

(3) Community skills training services are activities which assist a member to develop or maintain skills allowing better participation in the community. Services shall focus on the following areas as they apply to the member being served:

1. Personal management skills training services are activities which assist a member to maintain or develop skills necessary to sustain the member in the physical environment and are essential to the management of the member's personal business and property. This includes self-advocacy skills. Examples of personal management skills are the ability to maintain a household budget, plan and prepare nutritional meals, use community resources such as public transportation and libraries, and select foods at the grocery store.

2. Socialization skills training services are activities which assist a member to develop or maintain skills which include self-awareness and self-control, social responsiveness, community participation, social amenities, and interpersonal skills.

3. Communication skills training services are activities which assist a member to develop or maintain skills including expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

(4) Personal and environmental support services are activities and expenditures provided to or on behalf of a member in the areas of personal needs in order to allow the member to function in the least restrictive environment.

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life's activities.

(6) Treatment services are activities designed to assist the member to maintain or improve physiological, emotional and behavioral functioning and to prevent conditions that would present barriers to the member's functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

1. Physiological treatment includes medication regimens designed to prevent, halt, control, relieve, or reverse symptoms or conditions that interfere with the normal functioning of the human body. Physiological treatment shall be provided by or under the direct supervision of a certified or licensed health care professional.

2. Psychotherapeutic treatment means activities provided to assist a member in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the member's functioning in response to the physical, emotional, and social environment.

*b.* The supported community living services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) Supported community living services shall be available at a daily rate to members living outside the home of their family, legal representative, or foster family and for whom a provider has primary responsibility for supervision or structure during the month. This service will provide supervision or structure in identified periods when another resource is not available.

(2) Supported community living services shall be available at an hourly rate to members for whom a daily rate is not established.

*c.* Services may be provided to a child or an adult. A maximum of four persons may reside in a living unit.

(1) A member may live within the home of the member's family or legal representative or in another typical community living arrangement.

(2) A member living with the member's family or legal representative is not subject to the maximum of four residents in a living unit.

(3) A member may not live in a licensed medical or health care facility or in a setting that is required to be licensed as a medical or health care facility.

*d.* A member aged 17 or under living in the home of the member's family, legal representative, or foster family shall receive services based on development of adaptive, behavior, or health skills. Duration of services shall be based on age-appropriateness and individual attention span.

*e.* Maintenance and room and board costs are not reimbursable.

*f.* Provider budgets shall reflect all staff-to-member ratios and shall reflect costs associated with members' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each member. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per member per year, and the provider must maintain records to support the expenditures. A unit of service is:

(1) One full calendar day when a member residing in the living unit receives on-site staff supervision for eight or more hours per day as an average over a calendar month and the member's service plan identifies and reflects the need for this amount of supervision.

(2) One hour when subparagraph 78.41(1)"f"(1) does not apply.

*g.* The maximum number of units available per member is as follows:

(1) 365 daily units per state fiscal year except a leap year when 366 daily units are available.

(2) 5,110 hourly units are available per state fiscal year except a leap year when 5,124 hourly units are available.

*h.* The service shall be identified in the member's service plan.

*i.* Supported community living services shall not be simultaneously reimbursed with other residential services or with respite, nursing, or home health aide services provided through Medicaid or the HCBS intellectual disability waiver.

**78.41(2) Respite care services.** Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

*a.* Services provided outside the member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

*b.* Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team.

*c.* A unit of service is one hour.

*d.* Payment for respite services shall not exceed \$7,050 per the member's waiver year.

*e.* The service shall be identified in the member's individual comprehensive plan.

*f.* Respite services shall not be simultaneously reimbursed with other residential or respite services or with supported community living, nursing, or home health aide services provided through Medicaid or the HCBS intellectual disability waiver.

*g.* Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.

*h.* The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.60(249A).

*i.* A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

*j.* Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

**78.41(3) Personal emergency response or portable locator system.**

*a.* The personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of the system are:

1. An in-home medical communications transceiver.

2. A remote, portable activator.

3. A central monitoring station with backup systems staffed by trained attendants at all times.

4. Current data files at the central monitoring station containing response protocols and personal, medical and emergency information for each member.

(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

*b.* A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

**78.41(4) Home and vehicle modification.** Covered home and vehicle modifications are physical modifications to the member's home or vehicle that directly address the member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the member and enable the member to function with greater independence in the home or vehicle.

*a.* Modifications that are necessary or desirable without regard to the member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Home and vehicle repairs are also excluded.

*b.* Only the following modifications are covered:

- (1) Kitchen counters, sink space, cabinets, special adaptations to refrigerators, stoves, and ovens.
- (2) Bathtubs and toilets to accommodate transfer, special handles and hoses for shower heads, water faucet controls, and accessible showers and sink areas.
- (3) Grab bars and handrails.
- (4) Turnaround space adaptations.
- (5) Ramps, lifts, and door, hall and window widening.
- (6) Fire safety alarm equipment specific for disability.
- (7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the member's disability.
- (8) Vehicle lifts, driver-specific adaptations, remote-start systems, including such modifications already installed in a vehicle.

(9) Keyless entry systems.

(10) Automatic opening device for home or vehicle door.

(11) Special door and window locks.

(12) Specialized doorknobs and handles.

(13) Plexiglas replacement for glass windows.

(14) Modification of existing stairs to widen, lower, raise or enclose open stairs.

(15) Motion detectors.

(16) Low-pile carpeting or slip-resistant flooring.

(17) Telecommunications device for the deaf.

(18) Exterior hard-surface pathways.

(19) New door opening.

(20) Pocket doors.

(21) Installation or relocation of controls, outlets, switches.

(22) Air conditioning and air filtering if medically necessary.

(23) Heightening of existing garage door opening to accommodate modified van.

(24) Bath chairs.

*c.* A unit of service is the completion of needed modifications or adaptations.

*d.* All modifications and adaptations shall be provided in accordance with applicable federal, state, and local building and vehicle codes.

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the provider and the member.

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

*g.* Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications.

*h.* Services shall be included in the member's service plan and shall exceed the Medicaid state plan services.

**78.41(5) *Nursing services.*** Nursing services are individualized in-home medical services provided by licensed nurses. Services shall exceed the Medicaid state plan services and be included in the consumer's individual comprehensive plan.

*a.* A unit of service is one hour.

*b.* A maximum of ten units are available per week.

**78.41(6) *Home health aide services.*** Home health aide services are personal or direct care services provided to the member which are not payable under Medicaid as set forth in rule 441—78.9(249A). Services shall include unskilled medical services and shall exceed those services provided under HCBS intellectual disability waiver supported community living. Instruction, supervision, support or assistance in personal hygiene, bathing, and daily living shall be provided under supported community living.

*a.* Services shall be included in the member's service plan.

*b.* A unit is one hour.

*c.* A maximum of 14 units are available per week.

**78.41(7) *Supported employment services.*** Supported employment services are individualized services associated with obtaining and maintaining competitive paid employment in the least restrictive environment possible, provided to individuals for whom competitive employment at or above minimum wage is unlikely and who, because of their disability, need intense and ongoing support to perform in a work setting. Individual placements are the preferred service model. Covered services are those listed in paragraphs "*a*" and "*b*" that address the disability-related challenges to securing and keeping a job.

*a. Activities to obtain a job.* Covered services directed to obtaining a job must be provided to or on behalf of a consumer for whom competitive employment is reasonably expected within less than one year. Services must be focused on job placement, not on teaching generalized employment skills or habilitative goals. Three conditions must be met before services are provided. First, the consumer and the interdisciplinary team described in 441—subrule 83.67(1) must complete the form that Iowa vocational rehabilitation services uses to identify the supported employment services appropriate to meet a person's employment needs. Second, the consumer's interdisciplinary team must determine that the identified services are necessary. Third, the consumer's case manager must approve the services. Available components of activities to obtain a job are as follows:

(1) Job development services. Job development services are directed toward obtaining competitive employment. A unit of service is a job placement that the consumer holds for 30 consecutive calendar days or more. Payment is available once the service is authorized in the member's service plan. A consumer may receive two units of job development services during a 12-month period. The activities provided to the consumer may include:

1. Job procurement training, including grooming and hygiene, application, résumé development, interviewing skills, follow-up letters, and job search activities.

2. Job retention training, including promptness, coworker relations, transportation skills, disability-related supports, job benefits, and an understanding of employee rights and self-advocacy.

3. Customized job development services specific to the consumer.

(2) Employer development services. The focus of employer development services is to support employers in hiring and retaining consumers in their workforce and to communicate expectations of the employers to the interdisciplinary team described in 441—subrule 83.67(1). Employer development services may be provided only to consumers who are reasonably expected to work for no more than 10 hours per week. A unit of service is one job placement that the consumer holds for 30 consecutive calendar days or more. Payment for this service may be made only after the consumer holds the job for 30 days. A consumer may receive two units of employer development services during a 12-month period if the consumer is competitively employed for 30 or more consecutive calendar days and the other conditions for service approval are met. The services provided may include:

1. Developing relationships with employers and providing leads for individual consumers when appropriate.

2. Job analysis for a specific job.

3. Development of a customized training plan identifying job-specific skill requirements, employer expectations, teaching strategies, time frames, and responsibilities.

4. Identifying and arranging reasonable accommodations with the employer.

5. Providing disability awareness and training to the employer when it is deemed necessary.

6. Providing technical assistance to the employer regarding the training progress as identified on the consumer's customized training plan.

(3) Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided for a minimum of 30 days or with assisting the consumer in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the consumer's employment goals. A unit of service is an hour. A maximum of 26 units may be provided in a 12-month period. The services provided may include:

1. Job opening identification with the consumer.

2. Assistance with applying for a job, including completion of applications or interviews.

3. Work site assessment and job accommodation evaluation.

b. Supports to maintain employment.

(1) Covered services provided to or on behalf of the consumer associated with maintaining competitive paid employment are the following:

1. Individual work-related behavioral management.

2. Job coaching.

3. On-the-job or work-related crisis intervention.

4. Assisting the consumer to use skills related to sustaining competitive paid employment, including assistance with communication skills, problem solving, and safety.

5. Consumer-directed attendant care services as defined in subrule 78.41(8).

6. Assistance with time management.

7. Assistance with appropriate grooming.

8. Employment-related supportive contacts.

9. Employment-related transportation between work and home and to or from activities related to employment and disability. Other forms of community transportation (including car pools, coworkers, self or public transportation, families, and volunteers) must be attempted before transportation is provided as a supported employment service.

10. On-site vocational assessment after employment.

11. Employer consultation.

(2) Services for maintaining employment may include services associated with sustaining consumers in a team of no more than eight individuals with disabilities in a teamwork or "enclave" setting.

(3) A unit of service is one hour.

(4) A maximum of 40 units may be received per week.

c. The following requirements apply to all supported employment services:

(1) Employment-related adaptations required to assist the consumer within the performance of the consumer's job functions shall be provided by the provider as part of the services.

(2) Employment-related transportation between work and home and to or from activities related to employment and disability shall be provided by the provider as part of the services. Other forms of community transportation (car pools, coworkers, self or public transportation, families, volunteers) must be attempted before the service provider provides transportation.

(3) The majority of coworkers at any employment site with more than two employees where consumers seek, obtain, or maintain employment must be persons without disabilities. In the performance of job duties at any site where consumers seek, obtain, or maintain employment, the consumer must have daily contact with other employees or members of the general public who do not have disabilities, unless the absence of daily contact with other employees or the general public is typical for the job as performed by persons without disabilities.

(4) All supported employment services shall provide individualized and ongoing support contacts at intervals necessary to promote successful job retention. Each provider contact shall be documented.

(5) Documentation that services provided are not currently available under a program funded under the Rehabilitation Act of 1973 or Public Law 94-142 shall be maintained in the provider file of each consumer.

(6) All services shall be identified in the consumer's service plan maintained pursuant to rule 441—83.67(249A).

(7) The following services are not covered:

1. Services involved in placing or maintaining consumers in day activity programs, work activity programs or sheltered workshop programs;

2. Supports for volunteer work or unpaid internships;

3. Tuition for education or vocational training; or

4. Individual advocacy that is not consumer specific.

(8) Services to maintain employment shall not be provided simultaneously with day activity programs, work activity programs, sheltered workshop programs, other HCBS services, or other Medicaid services. However, services to obtain a job and services to maintain employment may be provided simultaneously for the purpose of job advancement or job change.

**78.41(8) Consumer-directed attendant care service.** Consumer-directed attendant care services are service activities performed by a person to help a member with self-care tasks which the member would typically do independently if the member were otherwise able.

a. The service activities may include helping the member with any of the following nonskilled service activities:

(1) Dressing.

(2) Bath, shampoo, hygiene, and grooming.

(3) Access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. It is recommended that the provider receive certification of training and return demonstration for transferring. Certification for this is available through the area community colleges.

(4) Toilet assistance, including bowel, bladder, and catheter assistance. It is recommended that the provider receive certification of training and return demonstration for catheter assistance. Certification for this is available through the area community colleges.

(5) Meal preparation, cooking, and assistance with eating but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the member's health care at home.

(7) Medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. It is recommended the provider successfully complete a medication aide course administered by an area community college.

(8) Wound care.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the member is on the job site. The cost of transportation for the member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) Cognitive assistance with tasks such as handling money and scheduling.

(11) Fostering communication through interpreting and reading services as well as assistive devices for communication.

(12) Assisting or accompanying a member in using transportation essential to the health and welfare of the member. The cost of the transportation is not included.

b. The service activities may include helping the member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private

insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program.

- (1) Tube feedings of members unable to eat solid foods.
  - (2) Intravenous therapy administered by a registered nurse.
  - (3) Parenteral injections required more than once a week.
  - (4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.
  - (5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.
  - (6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.
  - (7) Rehabilitation services including, but not limited to, bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.
  - (8) Colostomy care.
  - (9) Care of medical conditions out of control which includes brittle diabetes and comfort care of terminal conditions.
  - (10) Postsurgical nursing care.
  - (11) Monitoring medications requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood-altering or psychotropic drugs, or narcotics.
  - (12) Preparing and monitoring response to therapeutic diets.
  - (13) Recording and reporting of changes in vital signs to the nurse or therapist.
- c.* A unit of service is 1 hour or one 8- to 24-hour day. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.
- d.* The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency that will provide the components of the attendant care services.
- e.* The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the member.
- f.* The service activities shall not include parenting or child care for or on behalf of the member or on behalf of the provider.
- g.* The member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan and kept in the member's records.
- h.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.
- i.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the member, indicating that the service has been provided as presented on the claim.
- j.* The frequency or intensity of services shall be indicated in the service plan.
- k.* Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.
- l.* Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

*m.* Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

**78.41(9)** *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

*a.* Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

*b.* Service requirements. Interim medical monitoring and treatment services shall:

- (1) Provide experiences for each member's social, emotional, intellectual, and physical development;
- (2) Include comprehensive developmental care and any special services for a member with special needs; and
- (3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

*c.* Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

*d.* Limitations.

- (1) A maximum of 12 one-hour units of service is available per day.
- (2) Covered services do not include a complete nutritional regimen.
- (3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.
- (4) Interim medical monitoring and treatment services shall be provided only in the member's home; in a registered child development home; in a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.
- (5) The member-to-staff ratio shall not be more than six members to one staff person.
- (6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

*e.* A unit of service is one hour.

**78.41(10)** *Residential-based supported community living services.* Residential-based supported community living services are medical or remedial services provided to children under the age of 18 while living outside their home in a residential-based living environment furnished by the residential-based supported community living service provider. The services eliminate barriers to family reunification or develop self-help skills for maximum independence.

*a.* Allowable service components are the following:

(1) Daily living skills development. These are services to develop the child's ability to function independently in the community on a daily basis, including training in food preparation, maintenance of living environment, time and money management, personal hygiene, and self-care.

(2) Social skills development. These are services to develop a child's communication and socialization skills, including interventions to develop a child's ability to solve problems, resolve conflicts, develop appropriate relationships with others, and develop techniques for controlling behavior.

(3) Family support development. These are services necessary to allow a child to return to the child's family or another less restrictive service environment. These services must include counseling and therapy sessions that involve both the child and the child's family at least 50 percent of the time and that focus on techniques for dealing with the special care needs of the child and interventions needed to alleviate behaviors that are disruptive to the family or other group living unit.

(4) Counseling and behavior intervention services. These are services to halt, control, or reverse stress and social, emotional, or behavioral problems that threaten or have negatively affected the child's stability. Activities under this service include counseling and behavior intervention with the child, including interventions to ameliorate problem behaviors.

*b.* Residential-based supported community living services must also address the ordinary daily-living needs of the child, excluding room and board, such as needs for safety and security, social functioning, and other medical care.

*c.* Residential-based supported community living services do not include services associated with vocational needs, academics, day care, Medicaid case management, other case management, or any other services that the child can otherwise obtain through Medicaid.

*d.* Room and board costs are not reimbursable as residential-based supported community living services.

*e.* The scope of service shall be identified in the child's service plan pursuant to 441—paragraph 77.37(23)“*d.*”

*f.* Residential-based supported community living services shall not be simultaneously reimbursed with other residential services provided under an HCBS waiver or otherwise provided under the Medicaid program.

*g.* A unit of service is a day.

*h.* The maximum number of units of residential-based supported community living services available per child is 365 daily units per state fiscal year, except in a leap year when 366 daily units are available.

**78.41(11) *Transportation.*** Transportation services may be provided for members to conduct business errands and essential shopping, to receive medical services when not reimbursed through medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is either per mile, per trip, or the unit established by an area agency on aging. Transportation may not be reimbursed simultaneously with HCBS intellectual disability waiver supported community living service.

**78.41(12) *Adult day care services.*** Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis. A unit of service is a full day (4 to 8 hours) or a half-day (1 to 4 hours) or an extended day (8 to 12 hours).

**78.41(13) *Prevocational services.*** Prevocational services are services that are aimed at preparing a member for paid or unpaid employment, but that are not job-task oriented. These services include teaching the member concepts necessary for job readiness, such as following directions, attending to tasks, task completion, problem solving, and safety and mobility training.

*a.* Prevocational services are intended to have a more generalized result as opposed to vocational training for a specific job or supported employment. Services include activities that are not primarily directed at teaching specific job skills but at more generalized habilitative goals, and are reflected in a habilitative plan that focuses on general habilitative rather than specific employment objectives.

*b.* Prevocational services do not include:

(1) Services defined in Section 4(a)(4) of the 1975 amendments to the Education of the Handicapped Act (20 U.S.C. 1404(16) and (17)) that are otherwise available to the member through a state or local education agency.

(2) Vocational rehabilitation services that are otherwise available to the member through a program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

*c.* A unit of service is a full day (4 to 8 hours), a half day (1 to 4 hours), or an hour.

**78.41(14) Day habilitation services.**

*a. Scope.* Day habilitation services are services that assist or support the consumer in developing or maintaining life skills and community integration. Services must enable or enhance the consumer's intellectual functioning, physical and emotional health and development, language and communication development, cognitive functioning, socialization and community integration, functional skill development, behavior management, responsibility and self-direction, daily living activities, self-advocacy skills, or mobility.

*b. Family training option.* Day habilitation services may include training families in treatment and support methodologies or in the care and use of equipment. Family training may be provided in the consumer's home. The unit of service is an hour. The units of services payable are limited to a maximum of 10 hours per month.

*c. Unit of service.* Except as provided in paragraph "b," the unit of service may be an hour, a half-day (1 to 4 hours), or a full day (4 to 8 hours).

*d. Exclusions.*

(1) Services shall not be provided in the consumer's home, except as provided in paragraph "b." For this purpose, services provided in a residential care facility where the consumer lives are not considered to be provided in the consumer's home.

(2) Services shall not include vocational or prevocational services and shall not involve paid work.

(3) Services shall not duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(4) Services shall not be provided simultaneously with other Medicaid-funded services.

**78.41(15) Consumer choices option.** The consumer choices option provides a member with a flexible monthly individual budget that is based on the member's service needs. With the individual budget, the member shall have the authority to purchase goods and services to meet the member's assessed needs and may choose to employ providers of services and supports. The services, supports, and items that are purchased with an individual budget must be directly related to a member's assessed need or goal established in the member's service plan. Components of this service are set forth below.

*a. Agreement.* As a condition of participating in the consumer choices option, a member shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the member has been informed of the responsibilities and risks of electing the consumer choices option.

*b. Individual budget amount.* A monthly individual budget amount shall be established for each member based on the assessed needs of the member and on the services and supports authorized in the member's service plan. The member shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a member in the HCBS intellectual disabilities waiver are:

1. Consumer-directed attendant care (unskilled).
2. Day habilitation.
3. Home and vehicle modification.
4. Prevocational services.
5. Basic individual respite care.
6. Supported community living.
7. Supported employment.
8. Transportation.

(2) The department shall determine an average unit cost for each service listed in subparagraph 78.41(15) "b"(1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the member's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.41(15) "b"(2). Respite services are not subject to the utilization adjustment factor in subparagraph 78.41(15) "b"(3).

(6) Anticipated costs for home and vehicle modification and supported employment services to obtain a job are not subject to the average cost in subparagraph 78.41(15) "b"(2) or the utilization adjustment factor in subparagraph 78.41(15) "b"(3). Anticipated costs for these services shall not include the costs of the financial management services or the independent support broker. Costs for home and vehicle modification and supported employment services to obtain a job may be paid to the financial management services provider in a one-time payment. Before becoming part of the individual budget, all home and vehicle modifications and supported employment services to obtain a job shall be identified in the member's service plan and approved by the case manager or service worker.

(7) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

*c. Required service components.* To participate in the consumer choices option, a member must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid provider. Before hiring the independent support broker, the member shall receive the results of the background check conducted pursuant to 441—Chapter 119.

*d. Optional service components.* A member who elects the consumer choices option may purchase the following goods, services and supports, which shall be provided in the member's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the member remain in the home and community. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the member in developing and maintaining independence and community integration. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address an assessed need or goal identified in the member's service plan. The item or service shall meet the following requirements:

1. Promote opportunities for community living and inclusion.
2. Increase independence or substitute for human assistance, to the extent the expenditures would otherwise be made for that human assistance.
3. Be accommodated within the member's budget without compromising the member's health and safety.
4. Be provided to the member or directed exclusively toward the benefit of the member.
5. Be the least costly to meet the member's needs.
6. Not be available through another source.

*e. Development of the individual budget.* The independent support broker shall assist the member in developing and implementing the member's individual budget. The individual budget shall include:

- (1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. The independent support broker shall not be paid for more than 30 hours of service for an individual member during a 12-month period without prior approval by the department.

(3) The costs of any optional service component chosen by the member as described in paragraph 78.41(15)“d.” Costs of the following items and services shall not be covered by the individual budget:

1. Child care services.
2. Clothing not related to an assessed medical need.
3. Conference, meeting or similar venue expenses other than the costs of approved services the member needs while attending the conference, meeting or similar venue.
4. Costs associated with shipping items to the member.
5. Experimental and non-FDA-approved medications, therapies, or treatments.
6. Goods or services covered by other Medicaid programs.
7. Home furnishings.
8. Home repairs or home maintenance.
9. Homeopathic treatments.
10. Insurance premiums or copayments.
11. Items purchased on installment payments.
12. Motorized vehicles.
13. Nutritional supplements.
14. Personal entertainment items.
15. Repairs and maintenance of motor vehicles.
16. Room and board, including rent or mortgage payments.
17. School tuition.
18. Service animals.
19. Services covered by third parties or services that are the responsibility of a non-Medicaid program.
20. Sheltered workshop services.
21. Social or recreational purchases not related to an assessed need or goal identified in the member’s service plan.
22. Vacation expenses, other than the costs of approved services the member needs while on vacation.

(4) The costs of any approved home or vehicle modification. When authorized, the budget may include an amount allocated for a home or vehicle modification. Before becoming part of the individual budget, all home and vehicle modifications shall be identified in the member’s service plan and approved by the case manager or service worker. The authorized amount shall not be used for anything other than the specific modification.

(5) Any amount set aside in a savings plan to reserve funds for the future purchase of self-directed personal care, individual-directed goods and services, or self-directed community supports and services as defined in paragraph 78.41(15)“d.” The savings plan shall meet the requirements in paragraph 78.41(15)“f.”

*f. Savings plan.* A member savings plan must be in writing and be approved by the department before the start of the savings plan. Amounts allocated to the savings plan must result from efficiencies in meeting identified needs of the member.

- (1) The savings plan shall identify:
  1. The specific goods, services, supports or supplies to be purchased through the savings plan.
  2. The amount of the individual budget allocated each month to the savings plan.
  3. The amount of the individual budget allocated each month to meet the member’s identified service needs.
  4. How the member’s assessed needs will continue to be met through the individual budget when funds are placed in savings.

(2) With the exception of funds allocated for respite care, the savings plan shall not include funds budgeted for direct services that were not received. The budgeted amount associated with unused direct services other than respite care shall revert to the Medicaid program at the end of each month. Funds from unused respite services may be allocated to the savings plan but shall not be used for anything other than future respite care.

(3) Funds accumulated under a savings plan shall be used only to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies. The self-directed personal care, individual-directed goods and services, or self-directed community supports and services purchased with funds from a savings plan must:

1. Be used to meet a member's identified need,
2. Be medically necessary, and
3. Be approved by the member's case manager or service worker.

(4) All funds allocated to a savings plan that are not expended by December 31 of each year shall revert to the Medicaid program.

(5) The annual reassessment of a member's needs must take into account the purchases of goods and services that substitute for human assistance. Adjustments shall be made to the services used to determine the individual budget based on the reassessment.

*g. Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for optional service components identified in the individual budget.

(5) Reallocate funds among services included in the budget. Every purchase of a good or service must be identified and approved in the individual budget before the purchase is made.

*h. Delegation of budget authority.* The member may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the member.

(3) The member shall sign a consent form that designates who the member has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

*i. Employer authority.* The member shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The member may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

*j. Employment agreement.* Any person employed by the member to provide services under the consumer choices option shall sign an employment agreement with the member that outlines the employee's and member's responsibilities.

*k. Responsibilities of the independent support broker.* The independent support broker shall perform the following services as directed by the member or the member's representative:

- (1) Assist the member with developing the member's initial and subsequent individual budgets and with making any changes to the individual budget.
- (2) Have monthly contact with the member for the first four months of implementation of the initial individual budget and have quarterly contact thereafter.
- (3) Complete the required employment packet with the financial management service.
- (4) Assist with interviewing potential employees and entities providing services and supports if requested by the member.
- (5) Assist the member with determining whether a potential employee meets the qualifications necessary to perform the job.
- (6) Assist the member with obtaining a signed consent from a potential employee to conduct background checks if requested by the member.
- (7) Assist the member with negotiating with entities providing services and supports if requested by the member.
- (8) Assist the member with contracts and payment methods for services and supports if requested by the member.
- (9) Assist the member with developing an emergency backup plan. The emergency backup plan shall address any health and safety concerns.
- (10) Review expenditure reports from the financial management service to ensure that services and supports in the individual budget are being provided.
- (11) Document in writing on the independent support broker timecard every contact the broker has with the member. Contact documentation shall include information on the extent to which the member's individual budget has addressed the member's needs and the satisfaction of the member.

*l. Responsibilities of the financial management service.* The financial management service shall perform all of the following services:

- (1) Receive Medicaid funds in an electronic transfer.
- (2) Process and pay invoices for approved goods and services included in the individual budget.
- (3) Enter the individual budget into the Web-based tracking system chosen by the department and enter expenditures as they are paid.
- (4) Provide real-time individual budget account balances for the member, the independent support broker, and the department, available at a minimum during normal business hours (9 a.m. to 5 p.m., Monday through Friday).
- (5) Conduct criminal background checks on potential employees pursuant to 441—Chapter 119.
- (6) Verify for the member an employee's citizenship or alien status.
- (7) Assist the member with fiscal and payroll-related responsibilities including, but not limited to:
  1. Verifying that hourly wages comply with federal and state labor rules.
  2. Collecting and processing timecards.
  3. Withholding, filing, and paying federal, state and local income taxes, Medicare and Social Security (FICA) taxes, and federal (FUTA) and state (SUTA) unemployment and disability insurance taxes, as applicable.
  4. Computing and processing other withholdings, as applicable.
  5. Processing all judgments, garnishments, tax levies, or other withholding on an employee's pay as may be required by federal, state, or local laws.
  6. Preparing and issuing employee payroll checks.
  7. Preparing and disbursing IRS Forms W-2 and W-3 annually.
  8. Processing federal advance earned income tax credit for eligible employees.
  9. Refunding over-collected FICA, when appropriate.
  10. Refunding over-collected FUTA, when appropriate.
- (8) Assist the member in completing required federal, state, and local tax and insurance forms.
- (9) Establish and manage documents and files for the member and the member's employees.

(10) Monitor timecards, receipts, and invoices to ensure that they are consistent with the individual budget. Keep records of all timecards and invoices for each member for a total of five years.

(11) Provide to the department, the independent support broker, and the member monthly and quarterly status reports that include a summary of expenditures paid and amount of budget unused.

(12) Establish an accessible customer service system and a method of communication for the member and the independent support broker that includes alternative communication formats.

(13) Establish a customer services complaint reporting system.

(14) Develop a policy and procedures manual that is current with state and federal regulations and update as necessary.

(15) Develop a business continuity plan in the case of emergencies and natural disasters.

(16) Provide to the department an annual independent audit of the financial management service.

(17) Assist in implementing the state's quality management strategy related to the financial management service.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 9045B, IAB 9/8/10, effective 11/1/10; ARC 9403B, IAB 3/9/11, effective 5/1/11 (See Delay note at end of chapter); ARC 9650B, IAB 8/10/11, effective 10/1/11; ARC 9704B, IAB 9/7/11, effective 9/1/11]

**441—78.42(249A) Pharmacies administering influenza vaccine to children.** Payment will be made to a pharmacy for the administration of influenza vaccine available through the vaccines for children program administered by the department of public health if the pharmacy is enrolled in the vaccines for children program. No payment will be made for the vaccine.

[ARC 9132B, IAB 10/6/10, effective 11/1/10; ARC 9316B, IAB 12/29/10, effective 2/2/11]

**441—78.43(249A) HCBS brain injury waiver services.** Payment shall be approved for the following services to consumers eligible for the HCBS brain injury services as established in 441—Chapter 83 and as identified in the consumer's service plan. All services shall include the applicable and necessary instructions, supervision, assistance and support as required by the consumer in achieving the goals written specifically in the service plan. The services, amount and supports provided under the HCBS brain injury waiver shall be delivered in the least restrictive environment and in conformity with the consumer's service plan.

Reimbursement shall not be available under the waiver for any services that the consumer can obtain through regular Medicaid.

All services shall be billed in whole units.

**78.43(1) Case management services.** Individual case management services means services that assist members who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other appropriate services in order to ensure the health, safety, and welfare of the member.

*a.* Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).

*b.* The service shall be delivered in such a way as to enhance the capabilities of consumers and their families to exercise their rights and responsibilities as citizens in the community. The goal is to enhance the ability of the consumer to exercise choice, make decisions, take risks that are a typical part of life, and fully participate as members of the community.

*c.* The case manager must develop a relationship with the consumer so that the abilities, needs and desires of the consumer can be clearly identified and communicated and the case manager can help to ensure that the system and specific services are responsive to the needs of the individual consumers.

*d.* Members who are at the ICF/MR level of care whose county has voluntarily chosen to participate in the HCBS brain injury waiver are eligible for targeted case management and, therefore, are not eligible for case management as a waiver service.

**78.43(2) Supported community living services.** Supported community living services are provided by the provider within the member's home and community, according to the individualized member need as identified in the service plan.

*a.* The basic components of the service may include, but are not limited to, personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.

(1) Personal and home skills training services are activities which assist a member to develop or maintain skills for self-care, self-directedness, and care of the immediate environment.

(2) Individual advocacy is the act or process of representing the member's rights and interests in order to realize the rights to which the member is entitled and to remove barriers to meeting the member's needs.

(3) Community skills training services are activities which assist a member to develop or maintain skills allowing better participation in the community. Services shall focus on the following areas as they apply to the member being served:

1. Personal management skills training services are activities which assist a member to maintain or develop skills necessary to sustain the member in the physical environment and are essential to the management of the member's personal business and property. This includes self-advocacy skills. Examples of personal management skills are the ability to maintain a household budget, plan and prepare nutritional meals, use community resources such as public transportation and libraries, and select foods at the grocery store.

2. Socialization skills training services are activities which assist a member to develop or maintain skills which include self-awareness and self-control, social responsiveness, community participation, social amenities, and interpersonal skills.

3. Communication skills training services are activities which assist a member to develop or maintain skills including expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

(4) Personal and environmental support services are those activities and expenditures provided to or on behalf of a member in the areas of personal needs in order to allow the member to function in the least restrictive environment.

(5) Transportation services are activities and expenditures designed to assist the member to travel from one place to another to obtain services or carry out life's activities. The service excludes transportation to and from work or day programs.

(6) Treatment services are activities designed to assist the member to maintain or improve physiological, emotional and behavioral functioning and to prevent conditions that would present barriers to the member's functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

1. Physiological treatment includes medication regimens designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the normal functioning of the human body. Physiological treatment shall be provided by or under the direct supervision of a certified or licensed health care professional.

2. Psychotherapeutic treatment means activities provided to assist a member in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the member's functioning in response to the physical, emotional, and social environment.

*b.* The supported community living services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) Supported community living services shall be available at a daily rate to members living outside the home of their family, legal representative, or foster family and for whom a provider has primary responsibility for supervision or structure during the month. This service shall provide supervision or structure in identified periods when another resource is not available.

(2) Supported community living services shall be available at an hourly rate to members for whom a daily rate is not established.

c. Services may be provided to a child or an adult. Children must first access all other services for which they are eligible and which are appropriate to meet their needs before accessing the HCBS brain injury waiver services. A maximum of four persons may reside in a living unit.

(1) A member may live in the home of the member's family or legal representative or in another typical community living arrangement.

(2) A member living with the member's family or legal representative is not subject to the maximum of four residents in a living unit.

(3) A member may not live in a licensed medical or health care facility or in a setting that is required to be licensed as a medical or health care facility.

d. A member aged 17 or under living in the home of the member's family, legal representative, or foster family shall receive services based on development of adaptive, behavior, or health skills. Duration of services shall be based on age-appropriateness and individual attention span.

e. Provider budgets shall reflect all staff-to-member ratios and shall reflect costs associated with members' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each member. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per member per year, and the provider must maintain records to support the expenditures. A unit of service is:

(1) One full calendar day when a member residing in the living unit receives on-site staff supervision for eight or more hours per day as an average over a calendar month and the member's service plan identifies and reflects the need for this amount of supervision.

(2) One hour when subparagraph 78.43(2)"e"(1) does not apply.

f. The maximum number of units available per member is as follows:

(1) 365 daily units per state fiscal year except a leap year, when 366 daily units are available.

(2) 8,395 hourly units are available per state fiscal year except a leap year, when 8,418 hourly units are available.

g. The service shall be identified in the member's service plan.

h. Supported community living services shall not be simultaneously reimbursed with other residential services or with respite, transportation, personal assistance, nursing, or home health aide services provided through Medicaid or the HCBS brain injury waiver.

**78.43(3) Respite care services.** Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The purpose of respite care is to enable the member to remain in the member's current living situation.

a. Services provided outside the member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

b. Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team.

c. A unit of service is one hour.

d. Respite care is not to be provided to members during the hours in which the usual caregiver is employed except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite care cannot be provided to a member whose usual caregiver is a consumer-directed attendant care provider for the member.

e. Respite services shall not be simultaneously reimbursed with other residential or respite services, HCBS brain injury waiver supported community living services, Medicaid nursing, or Medicaid home health aide services.

f. The interdisciplinary team shall determine if the member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.81(249A).

g. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

h. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

**78.43(4) Supported employment services.** Supported employment services are individualized services associated with obtaining and maintaining competitive paid employment in the least restrictive environment possible, provided to individuals for whom competitive employment at or above minimum wage is unlikely and who, because of their disability, need intense and ongoing support to perform in a work setting. Individual placements are the preferred service model. Covered services are those listed in paragraphs “a” and “b” that address the disability-related challenges to securing and keeping a job.

*a. Activities to obtain a job.* Covered services directed to obtaining a job must be provided to or on behalf of a consumer for whom competitive employment is reasonably expected within less than one year. Services must be focused on job placement, not on teaching generalized employment skills or habilitative goals. Three conditions must be met before services are provided. First, the consumer and the interdisciplinary team described in rule 441—83.87(249A) must complete the form that Iowa vocational rehabilitation services uses to identify the supported employment services appropriate to meet the consumer’s employment needs. Second, the consumer’s interdisciplinary team must determine that the identified services are necessary. Third, the consumer’s case manager must approve the services. Available components of activities to obtain a job are as follows:

(1) Job development services. Job development services are directed toward obtaining competitive employment. A unit of service is a job placement that the consumer holds for 30 consecutive calendar days or more. Payment is available once the service is authorized in the member’s service plan. A consumer may receive two units of job development services during a 12-month period. The activities provided to the consumer may include:

1. Job procurement training, including grooming and hygiene, application, résumé development, interviewing skills, follow-up letters, and job search activities.
2. Job retention training, including promptness, coworker relations, transportation skills, disability-related supports, job benefits, and an understanding of employee rights and self-advocacy.
3. Customized job development services specific to the consumer.

(2) Employer development services. The focus of employer development services is to support employers in hiring and retaining consumers in their workforce and to communicate expectations of the employers to the interdisciplinary team described in rule 441—83.87(249A). Employer development services may be provided only to consumers who are reasonably expected to work for no more than 10 hours per week. A unit of service is one job placement that the consumer holds for 30 consecutive calendar days or more. Payment for this service may be made only after the consumer holds the job for 30 days. A consumer may receive two units of employer development services during a 12-month period if the consumer is competitively employed for 30 or more consecutive calendar days and the other conditions for service approval are met. The services provided may include:

1. Developing relationships with employers and providing leads for individual consumers when appropriate.
2. Job analysis for a specific job.
3. Development of a customized training plan identifying job-specific skill requirements, employer expectations, teaching strategies, time frames, and responsibilities.
4. Identifying and arranging reasonable accommodations with the employer.
5. Providing disability awareness and training to the employer when it is deemed necessary.
6. Providing technical assistance to the employer regarding the training progress as identified on the consumer’s customized training plan.

(3) Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided to the consumer for a minimum of 30 days or with assisting the consumer in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the consumer’s employment goals. A unit of service is an hour. A maximum of 26 units may be provided in a 12-month period. The services provided may include:

1. Job opening identification with the consumer.
2. Assistance with applying for a job, including completion of applications or interviews.

3. Work site assessment and job accommodation evaluation.
- b. Supports to maintain employment.
  - (1) Covered services provided to or on behalf of the consumer associated with maintaining competitive paid employment are the following:
    1. Individual work-related behavioral management.
    2. Job coaching.
    3. On-the-job or work-related crisis intervention.
    4. Assisting the consumer to use skills related to sustaining competitive paid employment, including assistance with communication skills, problem solving, and safety.
    5. Consumer-directed attendant care services as defined in subrule 78.43(13).
    6. Assistance with time management.
    7. Assistance with appropriate grooming.
    8. Employment-related supportive contacts.
    9. Employment-related transportation between work and home and to or from activities related to employment and disability. Other forms of community transportation (including car pools, coworkers, self or public transportation, families, and volunteers) must be attempted before transportation is provided as a supported employment service.
    10. On-site vocational assessment after employment.
    11. Employer consultation.
  - (2) Services for maintaining employment may include services associated with sustaining consumers in a team of no more than eight individuals with disabilities in a teamwork or “enclave” setting.
  - (3) A unit of service is one hour.
  - (4) A maximum of 40 units may be received per week.
- c. The following requirements apply to all supported employment services:
  - (1) Employment-related adaptations required to assist the consumer within the performance of the consumer’s job functions shall be provided by the provider as part of the services.
  - (2) Employment-related transportation between work and home and to or from activities related to employment and disability shall be provided by the provider as part of the services. Other forms of community transportation (car pools, coworkers, self or public transportation, families, volunteers) must be attempted before the service provider provides transportation.
  - (3) The majority of coworkers at any employment site with more than two employees where consumers seek, obtain, or maintain employment must be persons without disabilities. In the performance of job duties at any site where consumers seek, obtain, or maintain employment, the consumer must have daily contact with other employees or members of the general public who do not have disabilities, unless the absence of daily contact with other employees or the general public is typical for the job as performed by persons without disabilities.
  - (4) All supported employment services shall provide individualized and ongoing support contacts at intervals necessary to promote successful job retention. Each provider contact shall be documented.
  - (5) Documentation that services provided are not currently available under a program funded under the Rehabilitation Act of 1973 or Public Law 94-142 shall be maintained in the provider file of each consumer.
  - (6) All services shall be identified in the consumer’s service plan maintained pursuant to rule 441—83.67(249A).
  - (7) The following services are not covered:
    1. Services involved in placing or maintaining consumers in day activity programs, work activity programs or sheltered workshop programs;
    2. Supports for volunteer work or unpaid internships;
    3. Tuition for education or vocational training; or
    4. Individual advocacy that is not consumer specific.
  - (8) Services to maintain employment shall not be provided simultaneously with day activity programs, work activity programs, sheltered workshop programs, other HCBS services, or other

Medicaid services. However, services to obtain a job and services to maintain employment may be provided simultaneously for the purpose of job advancement or job change.

**78.43(5) Home and vehicle modification.** Covered home and vehicle modifications are physical modifications to the member's home or vehicle that directly address the member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the member and enable the member to function with greater independence in the home or vehicle.

*a.* Modifications that are necessary or desirable without regard to the member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Home and vehicle repairs are also excluded.

*b.* Only the following modifications are covered:

- (1) Kitchen counters, sink space, cabinets, special adaptations to refrigerators, stoves, and ovens.
- (2) Bathtubs and toilets to accommodate transfer, special handles and hoses for shower heads, water faucet controls, and accessible showers and sink areas.
- (3) Grab bars and handrails.
- (4) Turnaround space adaptations.
- (5) Ramps, lifts, and door, hall and window widening.
- (6) Fire safety alarm equipment specific for disability.
- (7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the member's disability.
- (8) Vehicle lifts, driver-specific adaptations, remote-start systems, including such modifications already installed in a vehicle.

(9) Keyless entry systems.

(10) Automatic opening device for home or vehicle door.

(11) Special door and window locks.

(12) Specialized doorknobs and handles.

(13) Plexiglas replacement for glass windows.

(14) Modification of existing stairs to widen, lower, raise or enclose open stairs.

(15) Motion detectors.

(16) Low-pile carpeting or slip-resistant flooring.

(17) Telecommunications device for the deaf.

(18) Exterior hard-surface pathways.

(19) New door opening.

(20) Pocket doors.

(21) Installation or relocation of controls, outlets, switches.

(22) Air conditioning and air filtering if medically necessary.

(23) Heightening of existing garage door opening to accommodate modified van.

(24) Bath chairs.

*c.* A unit of service is the completion of needed modifications or adaptations.

*d.* All modifications and adaptations shall be provided in accordance with applicable federal, state, and local building and vehicle codes.

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the provider and the member.

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

*g.* Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The case

manager or service worker may encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.

*h.* Services shall be included in the member's service plan and shall exceed the Medicaid state plan services.

**78.43(6)** *Personal emergency response or portable locator system.*

*a.* A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

1. An in-home medical communications transceiver.
2. A remote, portable activator.
3. A central monitoring station with backup systems staffed by trained attendants at all times.
4. Current data files at the central monitoring station containing response protocols and personal, medical and emergency information for each member.

(2) The service shall be identified in the member's service plan.

(3) A unit is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

*b.* A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.
2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

**78.43(7)** *Transportation.* Transportation services may be provided for consumers to conduct business errands and essential shopping, to receive medical services when not reimbursed through medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is either per mile, per trip, or the unit established by an area agency on aging. Transportation may not be reimbursed simultaneously with HCBS brain injury waiver supported community living service.

**78.43(8)** *Specialized medical equipment.*

*a.* Specialized medical equipment shall include medically necessary items which are for personal use by members with a brain injury and which:

- (1) Provide for health and safety of the member,
- (2) Are not ordinarily covered by Medicaid,
- (3) Are not funded by educational or vocational rehabilitation programs, and
- (4) Are not provided by voluntary means.

*b.* Coverage includes, but is not limited to:

- (1) Electronic aids and organizers.
- (2) Medicine dispensing devices.
- (3) Communication devices.
- (4) Bath aids.
- (5) Noncovered environmental control units.
- (6) Repair and maintenance of items purchased through the waiver.

c. Payment of up to \$6,060 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.

d. The need for specialized medical equipment shall be:

- (1) Documented by a health care professional as necessary for the member's health and safety, and
- (2) Identified in the member's service plan.

e. Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

**78.43(9) *Adult day care services.*** Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a full day (4 to 8 hours) or a half day (1 to 4 hours) or an extended day (8 to 12 hours). Components of the service include health-related care, social services, and other related support services.

**78.43(10) *Family counseling and training services.*** Family counseling and training services are face-to-face mental health services provided to the consumer and the family with whom the consumer lives, or who routinely provide care to the consumer to increase the consumer's or family members' capabilities to maintain and care for the consumer in the community. Counseling may include helping the consumer or the consumer's family members with crisis, coping strategies, stress reduction, management of depression, alleviation of psychosocial isolation and support in coping with the effects of a brain injury. It may include the use of treatment regimes as specified in the ITP. Periodic training updates may be necessary to safely maintain the consumer in the community.

Family may include spouse, children, friends, or in-laws of the consumer. Family does not include individuals who are employed to care for the consumer.

**78.43(11) *Prevocational services.*** Prevocational services are services which are aimed at preparing a member for paid or unpaid employment, but which are not job-task oriented. These services include teaching the member concepts necessary for job readiness, such as following directions, attending to tasks, task completion, problem solving, and safety and mobility training.

a. Prevocational services are intended to have a more generalized result as opposed to vocational training for a specific job or supported employment. Services include activities which are not primarily directed at teaching specific job skills but at more generalized habilitative goals and are reflected in a habilitative plan which focuses on general habilitative rather than specific employment objectives.

b. Prevocational services do not include:

(1) Services defined in Section 4(a)(4) of the 1975 amendments to the Education of the Handicapped Act (20 U.S.C. 1404(16) and (17)) which are otherwise available to the member through a state or local education agency, or

(2) Vocational rehabilitation services which are otherwise available to the member through a program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

c. A unit of service is a full day (4 to 8 hours), a half day (1 to 4 hours), or an hour.

**78.43(12) *Behavioral programming.*** Behavioral programming consists of individually designed strategies to increase the consumer's appropriate behaviors and decrease the consumer's maladaptive behaviors which have interfered with the consumer's ability to remain in the community. Behavioral programming includes:

a. A complete assessment of both appropriate and maladaptive behaviors.

b. Development of a structured behavioral intervention plan which should be identified in the ITP.

c. Implementation of the behavioral intervention plan.

d. Ongoing training and supervision to caregivers and behavioral aides.

e. Periodic reassessment of the plan.

Types of appropriate behavioral programming include, but are not limited to, clinical redirection, token economies, reinforcement, extinction, modeling, and over-learning.

**78.43(13) Consumer-directed attendant care service.** Consumer-directed attendant care services are service activities performed by a person to help a member with self-care tasks which the member would typically do independently if the member were otherwise able.

*a.* The service activities may include helping the member with any of the following nonskilled service activities:

- (1) Dressing.
- (2) Bath, shampoo, hygiene, and grooming.
- (3) Access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. It is recommended that the provider receive certification of training and return demonstration for transferring. Certification for this is available through the area community colleges.
- (4) Toilet assistance, including bowel, bladder, and catheter assistance. It is recommended that the provider receive certification of training and return demonstration for catheter assistance. Certification for this is available through the area community colleges.
- (5) Meal preparation, cooking, and assistance with eating but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.
- (6) Housekeeping services which are essential to the member's health care at home.
- (7) Medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. It is recommended the provider successfully complete a medication aide course administered by an area community college.
- (8) Wound care.
- (9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the member is on the job site. The cost of transportation for the member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.
- (10) Cognitive assistance with tasks such as handling money and scheduling.
- (11) Fostering communication through interpreting and reading services as well as assistive devices for communication.
- (12) Assisting or accompanying a member in using transportation essential to the health and welfare of the member. The cost of the transportation is not included.

*b.* The service activities may include helping the member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program.

- (1) Tube feedings of members unable to eat solid foods.
- (2) Intravenous therapy administered by a registered nurse.
- (3) Parenteral injections required more than once a week.
- (4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.
- (5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.
- (6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.
- (7) Rehabilitation services including, but not limited to, bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.
- (8) Colostomy.
- (9) Care of medical conditions out of control which includes brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nursing care.

(11) Monitoring medications requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood-altering or psychotropic drugs, or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

c. A unit of service is 1 hour or one 8- to 24-hour day. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency that will provide the components of the attendant care services.

e. The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the member.

f. The service activities shall not include parenting or child care for or on behalf of the member or on behalf of the provider.

g. The member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan and kept in the member's records.

h. If the member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the member, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

m. Services may be provided in the absence of a parent or guardian if the parent or guardian has given advanced direction for the service provision.

**78.43(14)** *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. Services must be ordered by a physician.

a. Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

*b.* Service requirements. Interim medical monitoring and treatment services shall:

(1) Provide experiences for each member's social, emotional, intellectual, and physical development;

(2) Include comprehensive developmental care and any special services for a member with special needs; and

(3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

*c.* Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

*d.* Limitations.

(1) A maximum of 12 one-hour units of service is available per day.

(2) Covered services do not include a complete nutritional regimen.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.

(4) Interim medical monitoring and treatment services shall be provided only in the member's home; in a registered child development home; in a licensed child care center, residential care facility, or adult day care facility; or during the time when the member is being transported to and from school.

(5) The member-to-staff ratio shall not be more than six members to one staff person.

(6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

*e.* A unit of service is one hour.

**78.43(15) Consumer choices option.** The consumer choices option provides a member with a flexible monthly individual budget that is based on the member's service needs. With the individual budget, the member shall have the authority to purchase goods and services to meet the member's assessed needs and may choose to employ providers of services and supports. The services, supports, and items that are purchased with an individual budget must be directly related to a member's assessed need or goal established in the member's service plan. Components of this service are set forth below.

*a. Agreement.* As a condition of participating in the consumer choices option, a member shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the member has been informed of the responsibilities and risks of electing the consumer choices option.

*b. Individual budget amount.* A monthly individual budget amount shall be established for each member based on the assessed needs of the member and based on the services and supports authorized in the member's service plan. The member shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a member in the HCBS brain injury waiver are:

1. Consumer-directed attendant care (unskilled).

2. Day habilitation.

3. Home and vehicle modification.

4. Prevocational services.

5. Basic individual respite care.

6. Specialized medical equipment.

7. Supported community living.

8. Supported employment.

9. Transportation.

(2) The department shall determine an average unit cost for each service listed in subparagraph 78.43(15) "b"(1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the member's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.43(15) "b"(2). Respite services are not subject to the utilization adjustment factor in subparagraph 78.43(15) "b"(3).

(6) Anticipated costs for home and vehicle modification, specialized medical equipment, and supported employment services to obtain a job are not subject to the average cost in subparagraph 78.43(15) "b"(2) or the utilization adjustment factor in subparagraph 78.43(15) "b"(3). Anticipated costs for these services shall not include the costs of the financial management services or the independent support broker. Before becoming part of the individual budget, all home and vehicle modifications, specialized medical equipment, and supported employment services to obtain a job shall be identified in the member's service plan and approved by the case manager or service worker. Costs for these services may be paid to the financial management services provider in a one-time payment.

(7) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

*c. Required service components.* To participate in the consumer choices option, a member must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid provider. Before hiring the independent support broker, the member shall receive the results of the background check conducted pursuant to 441—Chapter 119.

*d. Optional service components.* A member who elects the consumer choices option may purchase the following goods, services and supports, which shall be provided in the member's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the member remain in the home and community. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the member in developing and maintaining independence and community integration. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address an assessed need or goal identified in the member's service plan. The item or service shall meet the following requirements:

1. Promote opportunities for community living and inclusion.
2. Increase independence or substitute for human assistance, to the extent the expenditures would otherwise be made for that human assistance.
3. Be accommodated within the member's budget without compromising the member's health and safety.
4. Be provided to the member or directed exclusively toward the benefit of the member.
5. Be the least costly to meet the member's needs.
6. Not be available through another source.

*e. Development of the individual budget.* The independent support broker shall assist the member in developing and implementing the member's individual budget. The individual budget shall include:

- (1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. The independent support broker shall not be paid for more than 30 hours of service for an individual member during a 12-month period without prior approval by the department.

(3) The costs of any optional service component chosen by the member as described in paragraph 78.43(15)“d.” Costs of the following items and services shall not be covered by the individual budget:

1. Child care services.
2. Clothing not related to an assessed medical need.
3. Conference, meeting or similar venue expenses other than the costs of approved services the member needs while attending the conference, meeting or similar venue.
4. Costs associated with shipping items to the member.
5. Experimental and non-FDA-approved medications, therapies, or treatments.
6. Goods or services covered by other Medicaid programs.
7. Home furnishings.
8. Home repairs or home maintenance.
9. Homeopathic treatments.
10. Insurance premiums or copayments.
11. Items purchased on installment payments.
12. Motorized vehicles.
13. Nutritional supplements.
14. Personal entertainment items.
15. Repairs and maintenance of motor vehicles.
16. Room and board, including rent or mortgage payments.
17. School tuition.
18. Service animals.
19. Services covered by third parties or services that are the responsibility of a non-Medicaid program.
20. Sheltered workshop services.
21. Social or recreational purchases not related to an assessed need or goal identified in the member’s service plan.
22. Vacation expenses, other than the costs of approved services the member needs while on vacation.

(4) The costs of any approved home or vehicle modification or specialized medical equipment. When authorized, the budget may include an amount allocated for a home or vehicle modification or specialized medical equipment. Before becoming part of the individual budget, all home and vehicle modifications and specialized medical equipment shall be identified in the member’s service plan and approved by the case manager or service worker. The authorized amount shall not be used for anything other than the specific modification or equipment.

(5) Any amount set aside in a savings plan to reserve funds for the future purchase of self-directed personal care, individual-directed goods and services, or self-directed community supports and services as defined in paragraph 78.43(15)“d.” The savings plan shall meet the requirements in paragraph 78.43(15)“f.”

*f. Savings plan.* A member savings plan must be in writing and be approved by the department before the start of the savings plan. Amounts allocated to the savings plan must result from efficiencies in meeting identified needs of the member.

- (1) The savings plan shall identify:
  1. The specific goods, services, supports or supplies to be purchased through the savings plan.
  2. The amount of the individual budget allocated each month to the savings plan.
  3. The amount of the individual budget allocated each month to meet the member’s identified service needs.
  4. How the member’s assessed needs will continue to be met through the individual budget when funds are placed in savings.

(2) With the exception of funds allocated for respite care, the savings plan shall not include funds budgeted for direct services that were not received. The budgeted amount associated with unused direct services other than respite care shall revert to the Medicaid program at the end of each month. Funds from unused respite services may be allocated to the savings plan but shall not be used for anything other than future respite care.

(3) Funds accumulated under a savings plan shall be used only to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies. The self-directed personal care, individual-directed goods and services, or self-directed community supports and services purchased with funds from a savings plan must:

1. Be used to meet a member's identified need,
2. Be medically necessary, and
3. Be approved by the member's case manager or service worker.

(4) All funds allocated to a savings plan that are not expended by December 31 of each year shall revert to the Medicaid program.

(5) The annual reassessment of a member's needs must take into account the purchases of goods and services that substitute for human assistance. Adjustments shall be made to the services used to determine the individual budget based on the reassessment.

*g. Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for optional service components identified in the individual budget.

(5) Reallocate funds among services included in the budget. Every purchase of a good or service must be identified and approved in the individual budget before the purchase is made.

*h. Delegation of budget authority.* The member may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the member.

(3) The member shall sign a consent form that designates who the member has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

*i. Employer authority.* The member shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The member may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

*j. Employment agreement.* Any person employed by the member to provide services under the consumer choices option shall sign an employment agreement with the member that outlines the employee's and member's responsibilities.

*k. Responsibilities of the independent support broker.* The independent support broker shall perform the following services as directed by the member or the member's representative:

- (1) Assist the member with developing the member's initial and subsequent individual budgets and with making any changes to the individual budget.
- (2) Have monthly contact with the member for the first four months of implementation of the initial individual budget and have quarterly contact thereafter.
- (3) Complete the required employment packet with the financial management service.
- (4) Assist with interviewing potential employees and entities providing services and supports if requested by the member.
- (5) Assist the member with determining whether a potential employee meets the qualifications necessary to perform the job.
- (6) Assist the member with obtaining a signed consent from a potential employee to conduct background checks if requested by the member.
- (7) Assist the member with negotiating with entities providing services and supports if requested by the member.
- (8) Assist the member with contracts and payment methods for services and supports if requested by the member.
- (9) Assist the member with developing an emergency backup plan. The emergency backup plan shall address any health and safety concerns.
- (10) Review expenditure reports from the financial management service to ensure that services and supports in the individual budget are being provided.
- (11) Document in writing on the independent support broker timecard every contact the broker has with the member. Contact documentation shall include information on the extent to which the member's individual budget has addressed the member's needs and the satisfaction of the member.

*l. Responsibilities of the financial management service.* The financial management service shall perform all of the following services:

- (1) Receive Medicaid funds in an electronic transfer.
- (2) Process and pay invoices for approved goods and services included in the individual budget.
- (3) Enter the individual budget into the Web-based tracking system chosen by the department and enter expenditures as they are paid.
- (4) Provide real-time individual budget account balances for the member, the independent support broker, and the department, available at a minimum during normal business hours (9 a.m. to 5 p.m., Monday through Friday).
- (5) Conduct criminal background checks on potential employees pursuant to 441—Chapter 119.
- (6) Verify for the member an employee's citizenship or alien status.
- (7) Assist the member with fiscal and payroll-related responsibilities including, but not limited to:
  1. Verifying that hourly wages comply with federal and state labor rules.
  2. Collecting and processing timecards.
  3. Withholding, filing, and paying federal, state and local income taxes, Medicare and Social Security (FICA) taxes, and federal (FUTA) and state (SUTA) unemployment and disability insurance taxes, as applicable.
  4. Computing and processing other withholdings, as applicable.
  5. Processing all judgments, garnishments, tax levies, or other withholding on an employee's pay as may be required by federal, state, or local laws.
  6. Preparing and issuing employee payroll checks.
  7. Preparing and disbursing IRS Forms W-2 and W-3 annually.
  8. Processing federal advance earned income tax credit for eligible employees.
  9. Refunding over-collected FICA, when appropriate.
  10. Refunding over-collected FUTA, when appropriate.
- (8) Assist the member in completing required federal, state, and local tax and insurance forms.
- (9) Establish and manage documents and files for the member and the member's employees.

(10) Monitor timecards, receipts, and invoices to ensure that they are consistent with the individual budget. Keep records of all timecards and invoices for each member for a total of five years.

(11) Provide to the department, the independent support broker, and the member monthly and quarterly status reports that include a summary of expenditures paid and amount of budget unused.

(12) Establish an accessible customer service system and a method of communication for the member and the independent support broker that includes alternative communication formats.

(13) Establish a customer services complaint reporting system.

(14) Develop a policy and procedures manual that is current with state and federal regulations and update as necessary.

(15) Develop a business continuity plan in the case of emergencies and natural disasters.

(16) Provide to the department an annual independent audit of the financial management service.

(17) Assist in implementing the state's quality management strategy related to the financial management service.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 7957B, IAB 7/15/09, effective 7/1/09; ARC 9045B, IAB 9/8/10, effective 11/1/10; ARC 9403B, IAB 3/9/11, effective 5/1/11 (See Delay note at end of chapter); ARC 9704B, IAB 9/7/11, effective 9/1/11]

**441—78.44(249A) Lead inspection services.** Payment shall be approved for lead inspection services. This service shall be provided for children who have had two venous blood lead levels of 15 to 19 micrograms per deciliter or one venous level greater than or equal to 20 micrograms per deciliter. This service includes, but is not limited to, X-ray fluorescence analyzer (XRF) readings, visual examination of paint, preventive education of the resident and homeowner, health education about lead poisoning, and a written report to the family, homeowner, medical provider, and local childhood lead poisoning prevention program.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.45(249A) Assertive community treatment.** Assertive community treatment (ACT) services are comprehensive, integrated, and intensive outpatient services provided by a multidisciplinary team under the supervision of a psychiatrist. ACT services are directed toward the rehabilitation of behavioral, social, or emotional deficits or the amelioration of symptoms of a mental disorder. Most services are delivered in the member's home or another community setting.

**78.45(1) Applicability.** ACT services may be provided only to a member who meets all of the following criteria:

a. The member is at least 17 years old.

b. The member has a severe and persistent mental illness or complex mental health symptomatology. A severe and persistent mental illness is a psychiatric disorder that causes symptoms and impairments in basic mental and behavioral processes that produce distress and major functional disability in adult role functioning (such as social, personal, family, educational or vocational roles). Specifically, the member has a degree of impairment arising from a psychiatric disorder such that:

(1) The member does not have the resources or skills necessary to maintain an adequate level of functioning in the home or community environment without assistance or support;

(2) The member's judgment, impulse control, or cognitive perceptual abilities are compromised; and

(3) The member exhibits significant impairment in social, interpersonal, or familial functioning.

c. The member has a validated principal DSM-IV-TR Axis I diagnosis consistent with a severe and persistent mental illness. Members with a primary diagnosis of substance disorder, developmental disability, or organic disorder are not eligible for ACT services.

d. The member needs a consistent team of professionals and multiple mental health and support services to maintain the member in the community and reduce hospitalizations, as evidenced by:

(1) A pattern of repeated treatment failures with at least two hospitalizations within the previous 24 months, or

(2) A need for multiple or combined mental health and basic living supports to prevent the need for a more intrusive level of care.

e. The member presents a reasonable likelihood that ACT services will lead to specific, observable improvements in the member's functioning and assist the member in achieving or maintaining community tenure. Specifically, the member:

- (1) Is medically stable;
- (2) Does not require a level of care that includes more intensive medical monitoring;
- (3) Presents a low risk to self, others, or property, with treatment and support; and
- (4) Lives independently in the community or demonstrates a capacity to live independently and move from a dependent residential setting to independent living.

f. At the time of admission, the member has a comprehensive assessment that includes psychiatric history, medical history, work and educational history, substance use, problems with activities of daily living, social interests, and family relationships.

g. The member has a written treatment plan containing a work evaluation and the necessary psychiatric rehabilitation treatment and support services. The plan shall identify:

- (1) Treatment objectives and outcomes,
- (2) The expected frequency and duration of each service,
- (3) The location where the services will be provided,
- (4) A crisis plan, and
- (5) The schedule for updates of the treatment plan.

**78.45(2) Services.** The ACT team shall participate in all mental health services provided to the member and shall provide 24-hour service for the psychiatric needs of the member. Available ACT services are:

a. *Evaluation and medication management.*

(1) The evaluation portion of ACT services consists of a comprehensive mental health evaluation and assessment of the member by a psychiatrist, advanced registered nurse practitioner, or physician assistant.

(2) Medication management consists of the prescription and management of medication by a psychiatrist, advanced registered nurse practitioner, or physician assistant to respond to the member's complaints and symptoms. A psychiatric registered nurse assists in this management by contact with the member regarding medications and their effect on the member's complaints and symptoms.

b. *Integrated therapy and counseling for mental health and substance abuse.* This service consists of direct counseling for treatment of mental health and substance abuse symptoms by a psychiatrist, licensed mental health professional, advanced registered nurse practitioner, physician assistant, or substance abuse specialist. Individual counseling is provided by other team members under the supervision of a psychiatrist or licensed mental health practitioner.

c. *Skill teaching.* Skill teaching consists of side-by-side demonstration and observation of daily living activities by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, peer specialist, community support specialist, advanced registered nurse practitioner, or physician assistant.

d. *Community support.* Community support is provided by a licensed mental health professional, psychologist, substance abuse counselor, peer specialist, community support specialist, advanced registered nurse practitioner, or physician assistant. Community support consists of the following activities focused on recovery and rehabilitation:

(1) Personal and home skills training to assist the member to develop and maintain skills for self-direction and coping with the living situation.

(2) Community skills training to assist the member in maintaining a positive level of participation in the community through development of socialization skills and personal coping skills.

e. *Medication monitoring.* Medication monitoring services are provided by a psychiatric nurse and other team members under the supervision of a psychiatrist or psychiatric nurse and consist of:

- (1) Monitoring the member's day-to-day functioning, medication compliance, and access to medications; and
- (2) Ensuring that the member keeps appointments.

*f. Case management for treatment and service plan coordination.* Case management consists of the development by the ACT team of an individualized treatment and service plan, including personalized goals and outcomes, to address the member's medical symptoms and remedial functional impairments.

(1) Case management includes:

1. Assessments, referrals, follow-up, and monitoring.
2. Assisting the member in gaining access to necessary medical, social, educational, and other services.
3. Assessing the member to determine service needs by collecting relevant historical information through member records and other information from relevant professionals and natural supports.

(2) The team shall:

1. Develop a specific care plan based on the assessment of needs, including goals and actions to address the needed medical, social, educational, and other necessary services.
2. Make referrals to services and related activities to assist the member with the assessed needs.
3. Monitor and perform follow-up activities necessary to ensure that the plan is carried out and that the member has access to necessary services. Activities may include monitoring contacts with providers, family members, natural supports, and others.
4. Hold daily team meetings to facilitate ACT services and coordinate the member's care with other members of the team.

*g. Crisis response.* Crisis response consists of direct assessment and treatment of the member's urgent or crisis symptoms in the community by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, community support specialist, case manager, advanced registered nurse practitioner, or physician assistant, as appropriate.

*h. Work-related services.* Work-related services may be provided by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, community support specialist, case manager, advanced registered nurse practitioner, or physician assistant. Services consist of assisting the member in managing mental health symptoms as they relate to job performance. Services may include:

- (1) Collaborating with the member to look for job situations that may cause symptoms to increase and creating strategies to manage these situations.
- (2) Assisting the member to develop or enhance skills to obtain a work placement, such as individual work-related behavioral management.
- (3) Providing supports to maintain employment, such as crisis intervention related to employment.
- (4) Teaching communication, problem solving, and safety skills.
- (5) Teaching personal skills such as time management and appropriate grooming for employment.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 9440B, IAB 4/6/11, effective 4/1/11]

**441—78.46(249A) Physical disability waiver service.** Payment shall be approved for the following services to consumers eligible for the HCBS physical disability waiver established in 441—Chapter 83 when identified in the consumer's service plan. All services shall include the applicable and necessary instructions, supervision, assistance and support as required by the consumer in achieving the goals written specifically in the service plan and those delineated in Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. The service shall be delivered in the least restrictive environment consistent with the consumer's needs and in conformity with the consumer's service plan.

Reimbursement shall not be available under the waiver for any services that the consumer can obtain through regular Medicaid or from any other funding source.

All services shall be billed in whole units as specified in the following subrules.

**78.46(1) Consumer-directed attendant care service.** Consumer-directed attendant care services are service activities performed by a person to help a member with self-care tasks which the member would typically do independently if the member were otherwise able. The services must be cost-effective and necessary to prevent institutionalization.

*a.* Providers must demonstrate proficiency in delivery of the services in the member's plan of care. Proficiency must be demonstrated through documentation of prior training or experience or a certificate of formal training.

(1) All training or experience will be detailed on Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, which must be reviewed and approved by the service worker for appropriateness of training or experience prior to the provision of services. Form 470-3372 becomes an attachment to and part of the case plan.

(2) The member shall give direction and training for activities which are not medical in nature to maintain independence. Licensed registered nurses and therapists must provide on-the-job training and supervision to the provider for skilled activities listed below and described on Form 470-3372. The training and experience must be sufficient to protect the health, welfare and safety of the member.

*b.* Nonskilled service activities covered are:

(1) Help with dressing.

(2) Help with bath, shampoo, hygiene, and grooming.

(3) Help with access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. Certification for this is available through the area community colleges.

(4) Toilet assistance, including bowel, bladder, and catheter assistance which includes emptying the catheter bag, collecting a specimen and cleaning the external area around the catheter. Certification of training which includes demonstration of competence for catheter assistance is available through the area community colleges.

(5) Meal preparation, cooking, and assistance with eating but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the member's health care at home.

(7) Help with medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. Certification of training in a medication aide course is available through the area community colleges.

(8) Minor wound care which does not require skilled nursing care.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the member is on the job site. The cost of transportation for the member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) Cognitive assistance with tasks such as handling money and scheduling.

(11) Fostering communication through interpreting and reading services as well as assistance in use of assistive devices for communication.

(12) Assisting or accompanying a member in using transportation essential to the health and welfare of the member. The cost of the transportation is not included.

*c.* Skilled service activities covered are the following performed under the supervision of a licensed nurse or licensed therapist working under the direction of a licensed physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall not be included in the reimbursement for consumer-directed attendant care services.

(1) Tube feedings of members unable to eat solid foods.

(2) Assistance with intravenous therapy which is administered by a registered nurse.

(3) Parenteral injections required more than once a week.

(4) Catheterizations, continuing care of indwelling catheters with supervision of irrigations, and changing of Foley catheters when required.

(5) Respiratory care including inhalation therapy and tracheotomy care or tracheotomy care and ventilator.

(6) Care of decubiti and other ulcerated areas, noting and reporting to the nurse or therapist.

(7) Rehabilitation services including bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activities of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation, and behavior modification.

(8) Colostomy care.

(9) Care of medical conditions such as brittle diabetes and comfort care of terminal conditions.

(10) Postsurgical nurse-delegated activities under the supervision of the registered nurse.

(11) Monitoring medication reactions requiring close supervision because of fluctuating physical or psychological conditions, e.g., antihypertensives, digitalis preparations, mood altering or psychotropic drugs or narcotics.

(12) Preparing and monitoring response to therapeutic diets.

(13) Recording and reporting of changes in vital signs to the nurse or therapist.

*d.* A unit of service is 1 hour or one 8- to 24-hour day. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

*e.* The member, guardian, or attorney in fact under a durable power of attorney for health care shall:

(1) Select the person or agency that will provide the components of the attendant care services.

(2) Determine the components of the attendant care services to be provided with the person who is providing the services to the member.

*f.* The service activities shall not include parenting or child care on behalf of the member or on behalf of the provider.

*g.* The member, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan and kept in the member's records.

*h.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

*i.* If the member has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the member, indicating that the service has been provided as presented on the claim.

*j.* The frequency or intensity of services shall be indicated in the service plan.

*k.* Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

*l.* Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

*m.* Services may be provided in the absence of a guardian if the guardian has given advanced direction for the service provision.

**78.46(2) Home and vehicle modification.** Covered home and vehicle modifications are physical modifications to the member's home or vehicle that directly address the member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the member and enable the member to function with greater independence in the home or vehicle.

*a.* Modifications that are necessary or desirable without regard to the member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Home and vehicle repairs are also excluded.

*b.* Only the following modifications are covered:

(1) Kitchen counters, sink space, cabinets, special adaptations to refrigerators, stoves, and ovens.

(2) Bathtubs and toilets to accommodate transfer, special handles and hoses for shower heads, water faucet controls, and accessible showers and sink areas.

(3) Grab bars and handrails.

(4) Turnaround space adaptations.

(5) Ramps, lifts, and door, hall and window widening.

(6) Fire safety alarm equipment specific for disability.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the member's disability.

(8) Vehicle lifts, driver-specific adaptations, remote-start systems, including such modifications already installed in a vehicle.

(9) Keyless entry systems.

(10) Automatic opening device for home or vehicle door.

(11) Special door and window locks.

(12) Specialized doorknobs and handles.

(13) Plexiglas replacement for glass windows.

(14) Modification of existing stairs to widen, lower, raise or enclose open stairs.

(15) Motion detectors.

(16) Low-pile carpeting or slip-resistant flooring.

(17) Telecommunications device for the deaf.

(18) Exterior hard-surface pathways.

(19) New door opening.

(20) Pocket doors.

(21) Installation or relocation of controls, outlets, switches.

(22) Air conditioning and air filtering if medically necessary.

(23) Heightening of existing garage door opening to accommodate modified van.

(24) Bath chairs.

c. A unit of service is the completion of needed modifications or adaptations.

d. All modifications and adaptations shall be provided in accordance with applicable federal, state, and local building and vehicle codes.

e. Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the provider and the member.

f. All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The case manager or service worker shall encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.

h. Services shall be included in the member's service plan and shall exceed the Medicaid state plan services.

**78.46(3) Personal emergency response or portable locator system.**

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

1. An in-home medical communications transceiver.

2. A remote, portable activator.

3. A central monitoring station with backup systems staffed by trained attendants at all times.

4. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each member.

(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

*b.* A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

**78.46(4) *Specialized medical equipment.***

*a.* Specialized medical equipment shall include medically necessary items which are for personal use by members with a physical disability and which:

(1) Provide for the health and safety of the member,

(2) Are not ordinarily covered by Medicaid,

(3) Are not funded by educational or vocational rehabilitation programs, and

(4) Are not provided by voluntary means.

*b.* Coverage includes, but is not limited to:

(1) Electronic aids and organizers.

(2) Medicine dispensing devices.

(3) Communication devices.

(4) Bath aids.

(5) Noncovered environmental control units.

(6) Repair and maintenance of items purchased through the waiver.

*c.* Payment of up to \$6,060 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.

*d.* The need for specialized medical equipment shall be:

(1) Documented by a health care professional as necessary for the member's health and safety, and

(2) Identified in the member's service plan.

*e.* Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

**78.46(5) *Transportation.*** Transportation services may be provided for consumers to conduct business errands and essential shopping, to receive medical services when not reimbursed through Medicaid as medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is either per mile, per trip, or the unit established by an area agency on aging.

**78.46(6) *Consumer choices option.*** The consumer choices option provides a member with a flexible monthly individual budget that is based on the member's service needs. With the individual budget, the member shall have the authority to purchase goods and services to meet the member's assessed needs and may choose to employ providers of services and supports. The services, supports, and items that are purchased with an individual budget must be directly related to a member's assessed need or goal established in the member's service plan. Components of this service are set forth below.

*a. Agreement.* As a condition of participating in the consumer choices option, a member shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the member has been informed of the responsibilities and risks of electing the consumer choices option.

*b. Individual budget amount.* A monthly individual budget amount shall be established for each member based on the assessed needs of the member and on the services and supports authorized in the member's service plan. The member shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a member in the HCBS physical disability waiver are:

1. Consumer-directed attendant care (unskilled).
2. Home and vehicle modification.
3. Specialized medical equipment.
4. Transportation.

(2) The department shall determine an average unit cost for each service listed in subparagraph 78.46(6) "b"(1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the member's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.46(6) "b"(2). Respite services are not subject to the utilization adjustment factor in subparagraph 78.46(6) "b"(3).

(6) Anticipated costs for home and vehicle modification and specialized medical equipment are not subject to the average cost in subparagraph 78.46(6) "b"(2) or the utilization adjustment factor in subparagraph 78.46(6) "b"(3). Anticipated costs for home and vehicle modification and specialized medical equipment shall not include the costs of the financial management services or the independent support broker. Before becoming part of the individual budget, all home and vehicle modifications and specialized medical equipment shall be identified in the member's service plan and approved by the case manager or service worker. Costs for home and vehicle modification and specialized medical equipment may be paid to the financial management services provider in a one-time payment.

(7) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

*c. Required service components.* To participate in the consumer choices option, a member must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid provider. Before hiring the independent support broker, the member shall receive the results of the background check conducted pursuant to 441—Chapter 119.

*d. Optional service components.* A member who elects the consumer choices option may purchase the following goods, services and supports, which shall be provided in the member's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the member remain in the home and community. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the member in developing and maintaining independence and community integration. These services must be identified in the member's service plan developed by the member's case manager or service worker.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address an assessed need or goal identified in the member's service plan. The item or service shall meet the following requirements:

1. Promote opportunities for community living and inclusion.
2. Increase independence or substitute for human assistance, to the extent the expenditures would otherwise be made for that human assistance.
3. Be accommodated within the member's budget without compromising the member's health and safety.

4. Be provided to the member or directed exclusively toward the benefit of the member.
5. Be the least costly to meet the member's needs.
6. Not be available through another source.

*e. Development of the individual budget.* The independent support broker shall assist the member in developing and implementing the member's individual budget. The individual budget shall include:

- (1) The costs of the financial management service.
- (2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. The independent support broker shall not be paid for more than 30 hours of service for an individual member during a 12-month period without prior approval by the department.

(3) The costs of any optional service component chosen by the member as described in paragraph 78.46(6) "d." Costs of the following items and services shall not be covered by the individual budget:

1. Child care services.
2. Clothing not related to an assessed medical need.
3. Conference, meeting or similar venue expenses other than the costs of approved services the member needs while attending the conference, meeting or similar venue.
4. Costs associated with shipping items to the member.
5. Experimental and non-FDA-approved medications, therapies, or treatments.
6. Goods or services covered by other Medicaid programs.
7. Home furnishings.
8. Home repairs or home maintenance.
9. Homeopathic treatments.
10. Insurance premiums or copayments.
11. Items purchased on installment payments.
12. Motorized vehicles.
13. Nutritional supplements.
14. Personal entertainment items.
15. Repairs and maintenance of motor vehicles.
16. Room and board, including rent or mortgage payments.
17. School tuition.
18. Service animals.
19. Services covered by third parties or services that are the responsibility of a non-Medicaid program.
20. Sheltered workshop services.
21. Social or recreational purchases not related to an assessed need or goal identified in the member's service plan.
22. Vacation expenses, other than the costs of approved services the member needs while on vacation.

(4) The costs of any approved home or vehicle modification or specialized medical equipment. When authorized, the budget may include an amount allocated for a home or vehicle modification or specialized medical equipment. Before becoming part of the individual budget, all home and vehicle modifications and specialized medical equipment shall be identified in the member's service plan and

approved by the case manager or service worker. The authorized amount shall not be used for anything other than the specific modification or equipment.

(5) Any amount set aside in a savings plan to reserve funds for the future purchase of self-directed personal care, individual-directed goods and services, or self-directed community supports and services as defined in paragraph 78.46(6)“d.” The savings plan shall meet the requirements in paragraph 78.46(6)“f.”

*f. Savings plan.* A member savings plan must be in writing and be approved by the department before the start of the savings plan. Amounts allocated to the savings plan must result from efficiencies in meeting identified needs of the member.

(1) The savings plan shall identify:

1. The specific goods, services, supports or supplies to be purchased through the savings plan.
2. The amount of the individual budget allocated each month to the savings plan.
3. The amount of the individual budget allocated each month to meet the member’s identified service needs.

4. How the member’s assessed needs will continue to be met through the individual budget when funds are placed in savings.

(2) With the exception of funds allocated for respite care, the savings plan shall not include funds budgeted for direct services that were not received. The budgeted amount associated with unused direct services other than respite care shall revert to the Medicaid program at the end of each month. Funds from unused respite services may be allocated to the savings plan but shall not be used for anything other than future respite care.

(3) Funds accumulated under a savings plan shall be used only to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies. The self-directed personal care, individual-directed goods and services, or self-directed community supports and services purchased with funds from a savings plan must:

1. Be used to meet a member’s identified need,
2. Be medically necessary, and
3. Be approved by the member’s case manager or service worker.

(4) All funds allocated to a savings plan that are not expended by December 31 of each year shall revert to the Medicaid program.

(5) The annual reassessment of a member’s needs must take into account the purchases of goods and services that substitute for human assistance. Adjustments shall be made to the services used to determine the individual budget based on the reassessment.

*g. Budget authority.* The member shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services. Reimbursement rates shall be consistent with rates paid by others in the community for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for waiver goods and services optional service components identified in the individual budget.

(5) Reallocate funds among services included in the budget. Every purchase of a good or service must be identified and approved in the individual budget before the purchase is made.

*h. Delegation of budget authority.* The member may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the member.

(3) The member shall sign a consent form that designates who the member has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

*i. Employer authority.* The member shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The member may perform the following functions:

- (1) Recruit employees.
- (2) Select employees from a worker registry.
- (3) Verify employee qualifications.
- (4) Specify additional employee qualifications.
- (5) Determine employee duties.
- (6) Determine employee wages and benefits.
- (7) Schedule employees.
- (8) Train and supervise employees.

*j. Employment agreement.* Any person employed by the member to provide services under the consumer choices option shall sign an employment agreement with the member that outlines the employee's and member's responsibilities.

*k. Responsibilities of the independent support broker.* The independent support broker shall perform the following services as directed by the member or the member's representative:

- (1) Assist the member with developing the member's initial and subsequent individual budgets and with making any changes to the individual budget.
- (2) Have monthly contact with the member for the first four months of implementation of the initial individual budget and have quarterly contact thereafter.
- (3) Complete the required employment packet with the financial management service.
- (4) Assist with interviewing potential employees and entities providing services and supports if requested by the member.
- (5) Assist the member with determining whether a potential employee meets the qualifications necessary to perform the job.
- (6) Assist the member with obtaining a signed consent from a potential employee to conduct background checks if requested by the member.
- (7) Assist the member with negotiating with entities providing services and supports if requested by the member.
- (8) Assist the member with contracts and payment methods for services and supports if requested by the member.
- (9) Assist the member with developing an emergency backup plan. The emergency backup plan shall address any health and safety concerns.
- (10) Review expenditure reports from the financial management service to ensure that services and supports in the individual budget are being provided.
- (11) Document in writing on the independent support broker timecard every contact the broker has with the member. Contact documentation shall include information on the extent to which the member's individual budget has addressed the member's needs and the satisfaction of the member.

*l. Responsibilities of the financial management service.* The financial management service shall perform all of the following services:

- (1) Receive Medicaid funds in an electronic transfer.
- (2) Process and pay invoices for approved goods and services included in the individual budget.
- (3) Enter the individual budget into the Web-based tracking system chosen by the department and enter expenditures as they are paid.
- (4) Provide real-time individual budget account balances for the member, the independent support broker, and the department, available at a minimum during normal business hours (9 a.m. to 5 p.m., Monday through Friday).
- (5) Conduct criminal background checks on potential employees pursuant to 441—Chapter 119.
- (6) Verify for the member an employee's citizenship or alien status.
- (7) Assist the member with fiscal and payroll-related responsibilities including, but not limited to:

1. Verifying that hourly wages comply with federal and state labor rules.
2. Collecting and processing timecards.
3. Withholding, filing, and paying federal, state and local income taxes, Medicare and Social Security (FICA) taxes, and federal (FUTA) and state (SUTA) unemployment and disability insurance taxes, as applicable.
4. Computing and processing other withholdings, as applicable.
5. Processing all judgments, garnishments, tax levies, or other withholding on an employee's pay as may be required by federal, state, or local laws.
6. Preparing and issuing employee payroll checks.
7. Preparing and disbursing IRS Forms W-2 and W-3 annually.
8. Processing federal advance earned income tax credit for eligible employees.
9. Refunding over-collected FICA, when appropriate.
10. Refunding over-collected FUTA, when appropriate.
- (8) Assist the member in completing required federal, state, and local tax and insurance forms.
- (9) Establish and manage documents and files for the member and the member's employees.
- (10) Monitor timecards, receipts, and invoices to ensure that they are consistent with the individual budget. Keep records of all timecards and invoices for each member for a total of five years.
- (11) Provide to the department, the independent support broker, and the member monthly and quarterly status reports that include a summary of expenditures paid and amount of budget unused.
- (12) Establish an accessible customer service system and a method of communication for the member and the independent support broker that includes alternative communication formats.
- (13) Establish a customer services complaint reporting system.
- (14) Develop a policy and procedures manual that is current with state and federal regulations and update as necessary.
- (15) Develop a business continuity plan in the case of emergencies and natural disasters.
- (16) Provide to the department an annual independent audit of the financial management service.
- (17) Assist in implementing the state's quality management strategy related to the financial management service.

This rule is intended to implement Iowa Code section 249A.4.

[ARC 9045B, IAB 9/8/10, effective 11/1/10; ARC 9403B, IAB 3/9/11, effective 5/1/11; ARC 9704B, IAB 9/7/11, effective 9/1/11]

**441—78.47(249A) Pharmaceutical case management services.** Payment will be approved for pharmaceutical case management services provided by an eligible physician and pharmacist for Medicaid recipients determined to be at high risk for medication-related problems. These services are designed to identify, prevent, and resolve medication-related problems and improve drug therapy outcomes.

**78.47(1) Medicaid recipient eligibility.** Patients are eligible for pharmaceutical case management services if they have active prescriptions for four or more regularly scheduled nontopical medications, are ambulatory, do not reside in a nursing facility, and have at least one of the eligible disease states of congestive heart disease, ischemic heart disease, diabetes mellitus, hypertension, hyperlipidemia, asthma, depression, atrial fibrillation, osteoarthritis, gastroesophageal reflux, or chronic obstructive pulmonary disease.

**78.47(2) Provider eligibility.** Physicians and pharmacists shall meet the following criteria to provide pharmaceutical case management services.

*a.* Physicians and pharmacists must be enrolled in the Iowa Medicaid program, have an Iowa Medicaid provider number, and receive training under the direction of the department regarding the provision of pharmaceutical case management services under the Iowa Medicaid program.

A copy of pharmaceutical case management records, including documentation of services provided, shall be maintained on file in each provider's facility and be made available for audit by the department on request.

*b.* Physicians shall be licensed to practice medicine.

c. Pharmacists shall present to the department evidence of competency including state licensure, submit five acceptable patient care plans, and have successfully completed professional training on patient-oriented, medication-related problem prevention and resolution. Pharmacists shall also maintain problem-oriented patient records, provide a private patient consultation area, and submit a statement indicating that the submitted patient care plans are representative of the pharmacists' usual patient care plans.

Acceptable professional training programs are:

- (1) A doctor of pharmacy degree program.
- (2) The Iowa Center for Pharmaceutical Care (ICPC) training program, which is a cooperative training initiative of the University of Iowa College of Pharmacy, Drake University College of Pharmacy and Health Sciences, and the Iowa Pharmacy Foundation.
- (3) Other programs containing similar coursework and supplemental practice site evaluation and reengineering, approved by the department with input from a peer review advisory committee.

**78.47(3) Services.** Eligible patients may choose whether to receive the services. If patients elect to receive the services, they must receive the services from any eligible physician and pharmacist acting as a pharmaceutical case management (PCM) team. Usually the eligible physician and pharmacist will be the patient's primary physician and pharmacist. Pharmaceutical case management services are to be value-added services complementary to the basic medical services provided by the primary physician and pharmacist.

The PCM team shall provide the following services:

- a. *Initial assessment.* The initial assessment shall consist of:
  - (1) A patient evaluation by the pharmacist, including:
    1. Medication history;
    2. Assessment of indications, effectiveness, safety, and compliance of medication therapy;
    3. Assessment for the presence of untreated illness; and
    4. Identification of medication-related problems such as unnecessary medication therapy, suboptimal medication selection, inappropriate compliance, adverse drug reactions, and need for additional medication therapy.
  - (2) A written report and recommendation from the pharmacist to the physician.
  - (3) A patient care action plan developed by the PCM team with the patient's agreement and implemented by the PCM team. Specific components of the action plan will vary based on patient needs and conditions but may include changes in medication regimen, focused patient or caregiver education, periodic assessment for changes in the patient's condition, periodic monitoring of the effectiveness of medication therapy, self-management training, provision of patient-specific educational and informational materials, compliance enhancement, and reinforcement of healthy lifestyles. An action plan must be completed for each initial assessment.

b. *New problem assessments.* These assessments are initiated when a new medication-related problem is identified. The action plan is modified and new components are implemented to address the new problem. This assessment may occur in the interim between scheduled follow-up assessments.

c. *Problem follow-up assessments.* These assessments are based on patient need and a problem identified by a prior assessment. The patient's status is evaluated at an appropriate interval. The effectiveness of the implemented action plan is determined and modifications are made as needed.

d. *Preventive follow-up assessments.* These assessments occur approximately every six months when no current medication-related problems have been identified in prior assessments. The patient is reassessed for newly developed medication-related problems and the action plan is reviewed.

This rule is intended to implement Iowa Code section 249A.4 and 2000 Iowa Acts, chapter 1228, section 9.

**441—78.48(249A) Rehabilitation services for adults with chronic mental illness.** Rescinded IAB 8/1/07, effective 9/5/07.

**441—78.49(249A) Infant and toddler program services.** Subject to the following subrules, payment shall be made for medical services provided to Medicaid eligible children by infant and toddler program providers under the infants and toddlers with disabilities program administered by the Iowa Child Health Specialty Clinics and the departments of education, public health, and human services.

**78.49(1) Covered services.** Covered services include, but are not limited to, audiology, psychological evaluation and counseling, health and nursing services, nutrition services, occupational therapy services, physical therapy services, developmental services, speech-language services, vision services, case management, and medical transportation.

**78.49(2) Case management services.** Payment shall also be approved for infant and toddler case management services subject to the following requirements:

*a. Definition.* “Case management” means services that will assist eligible children in gaining access to needed medical, social, educational, and other services. Case management is intended to address the complexities of coordinated service delivery for children with medical needs. The case manager should be the focus for coordinating and overseeing the effectiveness of all providers and programs in responding to the assessed need. Case management does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible child has been referred or any activities that are an integral part or an extension of the direct services.

*b. Choice of provider.* Children who also are eligible to receive targeted case management services under 441—Chapter 90 must choose whether to receive case management through the infant and toddler program or through 441—Chapter 90. The chosen provider must meet the requirements of this subrule.

(1) When a child resides in a medical institution, the institution is responsible for case management. The child is not eligible for any other case management services. However, noninstitutional case management services may be provided during the last 14 days before the child’s planned discharge if the child’s stay in the institution has been less than 180 consecutive days. If the child has been in the institution 180 consecutive days or longer, the child may receive noninstitutional case management services during the last 60 days before the child’s planned discharge.

(2) If the case management agency also provides direct services, the case management unit must be designed so that conflict of interest is addressed and does not result in self-referrals.

(3) If the costs of any part of case management services are reimbursable under another program, the costs must be allocated between those programs and Medicaid in accordance with OMB Circular No. A-87 or any related or successor guidance or regulations regarding allocation of costs.

(4) The case manager must complete a competency-based training program with content related to knowledge and understanding of eligible children, Early ACCESS rules, the nature and scope of services in Early ACCESS, and the system of payments for services, as well as case management responsibilities and strategies. The department of education or its designee shall determine whether a person has successfully completed the training.

*c. Assessment.* The case manager shall conduct a comprehensive assessment and periodic reassessment of an eligible child to identify all of the child’s service needs, including the need for any medical, educational, social, or other services. Assessment activities are defined to include the following:

- (1) Taking the child’s history;
- (2) Identifying the needs of the child;
- (3) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the child;
- (4) Completing documentation of the information gathered and the assessment results; and
- (5) Repeating the assessment every six months to determine whether the child’s needs or preferences have changed.

*d. Plan of care.* The case manager shall develop a plan of care based on the information collected through the assessment or reassessment. The plan of care shall:

- (1) Include the child’s strengths and preferences;
- (2) Consider the child’s physical and social environment;
- (3) Specify goals of providing services to the child; and

(4) Specify actions to address the child's medical, social, educational, and other service needs. These actions may include activities such as ensuring the active participation of the child and working with the child or the child's authorized health care decision maker and others to develop goals and identify a course of action to respond to the assessed needs of the child.

*e. Other service components.* Case management must include the following components:

(1) Contacts with the child and family. The case manager shall have face-to-face contact with the child and family within the first 30 days of service and every three months thereafter. In months in which there is no face-to-face contact, a telephone contact between the service coordinator and the family is required.

(2) Referral and related activities to help a child obtain needed services. The case manager shall help to link the child with medical, social, or educational providers or other programs and services that are capable of providing needed services. Referral activities do not include provision of the direct services, program, or activity to which the child has been linked. Referral activities include:

1. Assisting the family in gaining access to the infant and toddler program services and other services identified in the child's plan of care.

2. Assisting the family in identifying available service providers and funding resources and documenting unmet needs and gaps in services.

3. Making referrals to providers for needed services.

4. Scheduling appointments for the child.

5. Facilitating the timely delivery of services.

6. Arranging payment for medical transportation.

(3) Monitoring and follow-up activities. Monitoring activities shall take place at least once annually for the duration of the child's eligibility, but may be conducted as frequently as necessary to ensure that the plan of care is effectively implemented and adequately addresses the needs of the child. Monitoring and follow-up activities may be with the child, family members, providers, or other entities. The purpose of these activities is to help determine:

1. Whether services are being furnished in accordance with the child's plan of care.

2. Whether the services in the plan of care are adequate to meet the needs of the child.

3. Whether there are changes in the needs or status of the child. If there are changes in the child's needs or status, follow-up activities shall include making necessary adjustments to the plan of care and to service arrangements with providers.

(4) Keeping records, including preparing reports, updating the plan of care, making notes about plan activities in the child's record, and preparing and responding to correspondence with the family and others.

*f. Documentation of case management.* For each child receiving case management, case records must document:

(1) The name of the child;

(2) The dates of case management services;

(3) The agency chosen by the family to provide the case management services;

(4) The nature, content, and units of case management services received;

(5) Whether the goals specified in the care plan have been achieved;

(6) Whether the family has declined services in the care plan;

(7) Time lines for providing services and reassessment; and

(8) The need for and occurrences of coordination with case managers of other programs.

**78.49(3) Child's eligibility.** Payable services must be provided to a child under the age of 36 months who is experiencing developmental delay or who has a condition that is known to have a high probability of resulting in developmental delay at a later date.

**78.49(4) Delivery of services.** Services must be delivered directly by the infant and toddler program provider or by a practitioner under contract with the infant and toddler program provider.

**78.49(5) Remission of nonfederal share of costs.** Payment for services shall be made only when the following conditions are met:

*a.* Rescinded IAB 5/10/06, effective 7/1/06.

b. The infant and toddler program provider has executed an agreement to remit the nonfederal share of the cost to the department.

c. The infant and toddler program provider shall sign and return Form 470-3816, Medicaid Billing Remittance, along with the funds remitted for the nonfederal share of the costs of the services specified on the form.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.50(249A) Local education agency services.** Subject to the following subrules, payment shall be made for medical services provided by local education agency services providers to Medicaid members under the age of 21.

**78.50(1) Covered services.** Covered services include, but are not limited to, audiology services, behavior services, consultation services, medical transportation, nursing services, nutrition services, occupational therapy services, personal assistance, physical therapy services, psychologist services, speech-language services, social work services, vision services, and school-based clinic visit services.

a. Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as local education agency services. Agencies that wish to administer those vaccines to Medicaid members shall enroll in the Vaccines for Children program and obtain the vaccines from the department of public health. However, the administration of vaccines is a covered service.

b. Payment for supplies shall be approved when the supplies are incidental to the patient's care, e.g., syringes for injections, and do not exceed \$25 per month. Durable medical equipment and other supplies are not covered as local education agency services.

c. To the extent that federal funding is not available under Title XIX of the Social Security Act, payment for transportation between home and school is not a covered service.

**78.50(2) Coordination services.** Rescinded IAB 12/3/08, effective 2/1/09.

**78.50(3) Delivery of services.** Services must be delivered directly by the local education agency services providers or by a practitioner under contract with the local education agency services provider.

**78.50(4) Remission of nonfederal share of costs.** Payment for services shall be made only when the following conditions are met:

a. Rescinded IAB 5/10/06, effective 7/1/06.

b. The local education agency services provider has executed an agreement to remit the nonfederal share of the cost to the department.

c. The local education agency provider shall sign and return Form 470-3816, Medicaid Billing Remittance, along with the funds remitted for the nonfederal share of the costs of the services as specified on the form.

This rule is intended to implement Iowa Code section 249A.4.

**441—78.51(249A) Indian health service 638 facility services.** Payment shall be made for all medically necessary services and supplies provided by a licensed practitioner at an Indian health service 638 facility, as defined at rule 441—77.45(249A), within the practitioner's scope of practice and subject to the limitations and exclusions set forth in subrule 78.1(1).

This rule is intended to implement Iowa Code section 249A.4.

**441—78.52(249A) HCBS children's mental health waiver services.** Payment will be approved for the following services to consumers eligible for the HCBS children's mental health waiver as established in 441—Chapter 83. All services shall be provided in accordance with the general standards in subrule 78.52(1), as well as standards provided specific to each waiver service in subrules 78.52(2) through 78.52(5).

**78.52(1) General service standards.** All children's mental health waiver services shall be provided in accordance with the following standards:

a. Services must be based on the consumer's needs as identified in the consumer's service plan developed pursuant to 441—83.127(249A).

(1) Services must be delivered in the least restrictive environment consistent with the consumer's needs.

(2) Services must include the applicable and necessary instruction, supervision, assistance and support as required by the consumer to achieve the consumer's goals.

*b.* Payment for services shall be made only upon departmental approval of the services. Waiver services provided before approval of the consumer's eligibility for the waiver shall not be paid.

*c.* Services or service components must not be duplicative.

(1) Reimbursement shall not be available under the waiver for any services that the consumer may obtain through the Iowa Medicaid program outside of the waiver.

(2) Reimbursement shall not be available under the waiver for any services that the consumer may obtain through natural supports or community resources.

(3) Services may not be simultaneously reimbursed for the same period as nonwaiver Medicaid services or other Medicaid waiver services.

(4) Costs for waiver services are not reimbursable while the consumer is in a medical institution.

**78.52(2)** *Environmental modifications and adaptive devices.*

*a.* Environmental modifications and adaptive devices include medically necessary items installed or used within the member's home that are used by the member to address specific, documented health, mental health, or safety concerns. The following items are excluded under this service:

(1) Items ordinarily covered by Medicaid.

(2) Items funded by educational or vocational rehabilitation programs.

(3) Items provided by voluntary means.

(4) Repair and maintenance of items purchased through the waiver.

(5) Fencing.

*b.* A unit of service is one modification or device.

*c.* For each unit of service provided, the case manager shall maintain in the member's case file a signed statement from a mental health professional on the member's interdisciplinary team that the service has a direct relationship to the member's diagnosis of serious emotional disturbance.

*d.* Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

**78.52(3)** *Family and community support services.* Family and community support services shall support the consumer and the consumer's family by the development and implementation of strategies and interventions that will result in the reduction of stress and depression and will increase the consumer's and the family's social and emotional strength.

*a.* Dependent on the needs of the consumer and the consumer's family members individually or collectively, family and community support services may be provided to the consumer, to the consumer's family members, or to the consumer and the family members as a family unit.

*b.* Family and community support services shall be provided under the recommendation and direction of a mental health professional who is a member of the consumer's interdisciplinary team pursuant to 441—83.127(249A).

*c.* Family and community support services shall incorporate recommended support interventions and activities, which may include the following:

(1) Developing and maintaining a crisis support network for the consumer and for the consumer's family.

(2) Modeling and coaching effective coping strategies for the consumer's family members.

(3) Building resilience to the stigma of serious emotional disturbance for the consumer and the family.

(4) Reducing the stigma of serious emotional disturbance by the development of relationships with peers and community members.

(5) Modeling and coaching the strategies and interventions identified in the consumer's crisis intervention plan as defined in 441—24.1(225C) for life situations with the consumer's family and in the community.

(6) Developing medication management skills.

(7) Developing personal hygiene and grooming skills that contribute to the consumer's positive self-image.

(8) Developing positive socialization and citizenship skills.

*d.* Family and community support services may include an amount not to exceed \$1500 per consumer per year for transportation within the community and purchase of therapeutic resources. Therapeutic resources may include books, training materials, and visual or audio media.

(1) The interdisciplinary team must identify the transportation or therapeutic resource as a support need.

(2) The annual amount available for transportation and therapeutic resources must be listed in the consumer's service plan.

(3) The consumer's parent or legal guardian shall submit a signed statement that the transportation or therapeutic resource cannot be provided by the consumer or the consumer's family or legal guardian.

(4) The consumer's Medicaid targeted case manager shall maintain a signed statement that potential community resources are unavailable and shall list the community resources contacted to fund the transportation or therapeutic resource.

(5) The transportation or therapeutic resource must not be otherwise eligible for Medicaid reimbursement.

(6) Family and community support services providers shall maintain records to:

1. Ensure that the transportation and therapeutic resources provided to not exceed the maximum amount authorized; and

2. Support the annual reporting requirements in 441—subparagraph 79.1(15) "a"(1).

*e.* The following components are specifically excluded from family and community support services:

(1) Vocational services.

(2) Prevocational services.

(3) Supported employment services.

(4) Room and board.

(5) Academic services.

(6) General supervision and consumer care.

*f.* A unit of family and community support services is one hour.

**78.52(4) *In-home family therapy.*** In-home family therapy provides skilled therapeutic services to the consumer and family that will increase their ability to cope with the effects of serious emotional disturbance on the family unit and the familial relationships. The service must support the family by the development of coping strategies that will enable the consumer to continue living within the family environment.

*a.* The goal of in-home family therapy is to maintain a cohesive family unit.

*b.* In-home family therapy is exclusive of and cannot serve as a substitute for individual therapy, family therapy, or other mental health therapy that may be obtained through the Iowa Plan or other funding sources.

*c.* A unit of in-home family therapy service is one hour. Any period less than one hour shall be prorated.

**78.52(5) *Respite care services.*** Respite care services are services provided to the member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The "usual caregiver" means a person or persons who reside with the member and are available on a 24-hour-per-day basis to assume responsibility for the care of the member.

*a.* Respite care shall not be provided to members during the hours in which the usual caregiver is employed, except when the member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care.

*b.* The usual caregiver cannot be absent from the home for more than 14 consecutive days during respite provision.

*c.* Member-to-staff ratios shall be appropriate to the individual needs of the member as determined by the member's interdisciplinary team. The team shall determine the type of respite care to be provided according to these definitions:

(1) Basic individual respite is provided on a ratio of one staff to one member. The member does not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(2) Specialized respite is provided on a ratio of one or more nursing staff to one member. The member has specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(3) Group respite is provided on a ratio of one staff to two or more members receiving respite. These members do not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

*d.* Respite services provided for a period exceeding 24 consecutive hours to three or more members who require nursing care because of a mental or physical condition must be provided by a health care facility licensed under Iowa Code chapter 135C.

*e.* Respite services provided outside the member's home shall not be reimbursable if the living unit where respite care is provided is reserved for another person on a temporary leave of absence.

*f.* A unit of service is one hour.

This rule is intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3.

[ARC 9403B, IAB 3/9/11, effective 5/1/11 (See Delay note at end of chapter); ARC 9704B, IAB 9/7/11, effective 9/1/11]

[Filed 3/11/70; amended 3/20/74]

[Filed 11/25/75, Notice 10/6/75—published 12/15/75, effective 1/19/76]

[Filed emergency 12/23/75—published 1/12/76, effective 2/1/76]

[Filed emergency 1/16/76—published 2/9/76, effective 2/1/76]

[Filed emergency 1/29/76—published 2/9/76, effective 1/29/76]

[Filed 4/30/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]

[Filed emergency 6/9/76—published 6/28/76, effective 6/9/76]

[Filed 6/25/76, Notice 5/17/76—published 7/12/76, effective 8/16/76]

[Filed emergency 12/17/76—published 1/12/77, effective 1/1/77]

[Filed 2/25/77, Notice 1/12/77—published 3/23/77, effective 4/27/77]

[Filed emergency 4/13/77—published 5/4/77, effective 4/13/77]

[Filed emergency 7/20/77—published 8/10/77, effective 7/20/77]

[Filed emergency 8/24/77—published 9/21/77, effective 8/26/77]

[Filed emergency 9/1/77—published 9/21/77, effective 9/1/77]

[Filed 11/22/77, Notice 9/7/77—published 12/14/77, effective 2/1/78]

[Filed 12/6/77, Notice 10/19/77—published 12/28/77, effective 2/1/78]

[Filed 1/16/78, Notice 11/30/77—published 2/8/78, effective 4/1/78]

[Filed 3/27/78, Notice 2/8/78—published 4/19/78, effective 5/24/78]

[Filed without Notice 3/31/78—published 4/19/78, effective 7/1/78]

[Filed emergency 6/9/78—published 6/28/78, effective 7/5/78]

[Filed emergency 6/28/78—published 7/26/78, effective 7/1/78]

[Filed 8/9/78, Notice 6/28/78—published 9/6/78, effective 10/11/78]

[Filed 8/18/78, Notice 5/31/78—published 9/6/78, effective 10/11/78]

[Filed 9/12/78, Notice 4/19/78—published 10/4/78, effective 11/8/78]

[Filed 9/12/78, Notice 7/26/78—published 10/4/78, effective 12/1/78]

[Filed 11/20/78, Notice 10/4/78—published 12/13/78, effective 1/17/79]

[Filed 12/6/78, Notice 10/4/78—published 12/27/78, effective 2/1/79]

[Filed 12/6/78, Notice 5/31/78—published 12/27/78, effective 2/1/79]

[Filed 1/4/79, Notice 11/29/78—published 1/24/79, effective 3/1/79]

[Filed emergency 1/31/79—published 2/21/79, effective 3/8/79]

[Filed 3/30/79, Notice 2/21/79—published 4/18/79, effective 6/1/79]

- [Filed 7/3/79, Notice 4/18/79—published 7/25/79, effective 8/29/79]
- [Filed emergency 6/26/79—published 7/25/79, effective 7/1/79]
- [Filed 9/6/79, Notice 6/27/79—published 10/3/79, effective 11/7/79]
- [Filed emergency 9/6/79 after Notice 7/11/79—published 10/3/79, effective 10/1/79]
- [Filed 10/24/79, Notice 5/30/79—published 11/14/79, effective 12/19/79]
- [Filed 10/24/79, Notice 8/22/79—published 11/14/79, effective 12/19/79]
- [Filed emergency 1/23/80—published 2/20/80, effective 1/23/80]
- [Filed 4/4/80, Notice 1/23/80—published 4/30/80, effective 6/4/80]
- [Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]
- [Filed emergency 7/3/80—published 7/23/80, effective 7/8/80 to 1/1/81]
- [Filed 7/3/80, Notice 4/14/80—published 7/23/80, effective 8/27/80]
- [Filed 9/25/80, Notice 8/6/80—published 10/15/80, effective 11/19/80]
- [Filed without Notice 9/26/80—published 10/15/80, effective 12/1/80]
- [Filed 10/23/80, Notice 7/23/80—published 11/12/80, effective 12/17/80]
- [Filed 11/21/80, Notice 9/3/80—published 12/10/80, effective 1/14/81]
- [Filed 12/19/80, Notices 10/15/80, 10/29/80—published 1/7/81, effective 2/11/81]
- [Filed emergency 1/20/81—published 2/18/81, effective 1/20/81]
- [Filed 2/12/81, Notice 11/12/80—published 3/4/81, effective 7/1/81]
- [Filed 3/24/81, Notice 2/4/81—published 4/15/81, effective 6/1/81]
- [Filed emergency 6/30/81—published 7/22/81, effective 7/1/81]
- [Filed emergency 8/24/81 after Notice 7/8/81—published 9/16/81, effective 9/1/81]
- [Filed 10/23/81, Notice 9/2/81—published 11/11/81, effective 1/1/82]
- [Filed emergency 12/3/81—published 12/23/81, effective 1/1/82]
- [Filed 1/28/82, Notice 10/28/81—published 2/17/82, effective 4/1/82]
- [Filed 1/28/82, Notice 11/25/81—published 2/17/82, effective 4/1/82]
- [Filed 2/26/82, Notice 10/14/81—published 3/17/82, effective 5/1/82]
- [Filed emergency 3/26/82—published 4/14/82, effective 4/1/82]
- [Filed 4/5/82, Notice 1/20/82—published 4/28/82, effective 6/2/82]
- [Filed 4/29/82, Notice 12/9/81—published 5/26/82, effective 7/1/82]
- [Filed 7/30/82, Notices 3/3/82, 4/28/82—published 8/18/82, effective 10/1/82]
- [Filed emergency 9/23/82 after Notice 6/23/82—published 10/13/82, effective 10/1/82]
- [Filed 11/5/82, Notice 9/15/82—published 11/24/82, effective 1/1/83]
- [Filed 2/25/83, Notice 1/5/83—published 3/16/83, effective 5/1/83]
- [Filed 5/20/83, Notices 3/30/83, 4/13/83—published 6/8/83, effective 8/1/83]<sup>◇</sup>
- [Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
- [Filed emergency 7/29/83—published 8/17/83, effective 8/1/83]<sup>◇</sup>
- [Filed 7/29/83, Notice 5/25/83—published 8/17/83, effective 10/1/83]
- [Filed emergency 10/7/83—published 10/26/83, effective 11/1/83]
- [Filed without Notice 10/7/83—published 10/26/83, effective 12/1/83]
- [Filed 10/28/83, Notices 8/31/83, 9/14/83—published 11/23/83, effective 1/1/84]<sup>◇</sup>
- [Filed emergency 11/18/83—published 12/7/83, effective 12/1/83]
- [Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
- [Filed 5/4/84, Notice 3/14/84—published 5/23/84, effective 7/1/84]
- [Filed emergency 6/15/84—published 7/4/84, effective 7/1/84]
- [Filed 6/15/84, Notice 5/9/84—published 7/4/84, effective 9/1/84]
- [Filed emergency 8/31/84—published 9/26/84, effective 10/1/84]
- [Filed 11/1/84, Notice 9/12/84—published 11/21/84, effective 1/1/85]
- [Filed 12/11/84, Notice 10/10/84—published 1/2/85, effective 3/1/85]
- [Filed 1/21/85, Notice 10/24/84—published 2/13/85, effective 4/1/85]
- [Filed 4/29/85, Notice 12/19/84—published 5/22/85, effective 7/1/85]
- [Filed 4/29/85, Notice 2/27/85—published 5/22/85, effective 7/1/85]
- [Filed 5/29/85, Notice 3/27/85—published 6/19/85, effective 8/1/85]

- [Filed emergency 8/23/85—published 9/11/85, effective 9/1/85]
- [Filed emergency 10/1/85—published 10/23/85, effective 11/1/85]
- [Filed without Notice 10/1/85—published 10/23/85, effective 12/1/85]
- [Filed emergency 10/18/85 after Notice 9/11/85—published 11/6/85, effective 11/1/85]
- [Filed 11/15/85, Notice 9/25/85—published 12/4/85, effective 2/1/86]
- [Filed emergency 12/2/85—published 12/18/85, effective 1/1/86]
- [Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 2/1/86]
- [Filed 1/22/86, Notice 12/4/85—published 2/12/86, effective 4/1/86]
- [Filed 2/21/86, Notices 12/18/85, 1/1/86, 1/15/86—published 3/12/86, effective 5/1/86]
- [Filed emergency 6/26/86—published 7/16/86, effective 7/1/86]
- [Filed 9/26/86, Notice 8/13/86—published 10/22/86, effective 12/1/86]
- [Filed emergency 12/22/86—published 1/14/87, effective 2/1/87]
- [Filed 12/22/86, Notice 11/5/86—published 1/14/87, effective 3/1/87]
- [Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
- [Filed 3/3/87, Notices 12/17/86, 12/31/86, 1/14/87—published 3/25/87, effective 5/1/87]
- [Filed 4/29/87, Notice 3/11/87—published 5/20/87, effective 7/1/87]
- [Filed 5/29/87, Notices 4/8/87, 4/22/87—published 6/17/87, effective 8/1/87]
- [Filed emergency 6/19/87—published 7/15/87, effective 7/1/87]
- [Filed 6/19/87, Notice 5/6/87—published 7/15/87, effective 9/1/87]
- [Filed 7/24/87, Notice 5/20/87—published 8/12/87, effective 10/1/87]
- [Filed emergency 8/28/87—published 9/23/87, effective 9/1/87]
- [Filed 8/28/87, Notices 6/17/87, 7/15/87—published 9/23/87, effective 11/1/87]
- [Filed 9/24/87, Notice 8/12/87—published 10/21/87, effective 12/1/87]
- [Filed 12/10/87, Notice 10/21/87—published 12/30/87, effective 3/1/88]
- [Filed emergency 4/28/88 after Notice 3/23/88—published 5/18/88, effective 6/1/88]
- [Filed emergency 6/9/88—published 6/29/88, effective 7/1/88]
- [Filed 9/2/88, Notice 6/29/88—published 9/21/88, effective 11/1/88]
- [Filed emergency 11/16/88 after Notice 10/5/88—published 12/14/88, effective 1/1/89]
- [Filed emergency 11/23/88 after Notices 7/13/88, 9/21/88—published 12/14/88, effective 12/1/88, 1/1/89]
- [Filed 12/8/88, Notice 10/19/88—published 12/28/88, effective 2/1/89]
- [Filed 3/15/89, Notice 2/8/89—published 4/5/89, effective 6/1/89]
- [Filed emergency 6/8/89 after Notice 2/22/89—published 6/28/89, effective 7/1/89]
- [Filed emergency 6/9/89—published 6/28/89, effective 7/1/89]
- [Filed 7/14/89, Notices 4/19/89, 5/31/89—published 8/9/89, effective 10/1/89]
- [Filed 8/17/89, Notice 6/28/89—published 9/6/89, effective 11/1/89]
- [Filed 9/15/89, Notice 8/9/89—published 10/4/89, effective 12/1/89]
- [Filed 10/11/89, Notice 8/23/89—published 11/1/89, effective 1/1/90]
- [Filed 11/16/89, Notice 8/23/89—published 12/13/89, effective 2/1/90]
- [Filed emergency 12/15/89 after Notice 10/4/89—published 1/10/90, effective 1/1/90]
- [Filed 1/17/90, Notice 8/23/89—published 2/7/90, effective 4/1/90<sup>2</sup>]
- [Filed emergency 2/14/90—published 3/7/90, effective 2/14/90]
- [Filed 3/16/90, Notices 11/15/89, 1/24/90, 2/7/90—published 4/4/90, effective 6/1/90]
- [Filed 4/13/90, Notice 3/7/90—published 5/2/90, effective 7/1/90]
- [Filed 4/13/90, Notice 11/29/89—published 5/2/90, effective 8/1/90]
- [Filed emergency 6/20/90—published 7/11/90, effective 7/1/90]
- [Filed 7/13/90, Notices 5/16/90, 5/30/90—published 8/8/90, effective 10/1/90]
- [Filed 8/16/90, Notice 7/11/90—published 9/5/90, effective 11/1/90]
- [Filed 9/28/90, Notices 7/11/90, 7/25/90, 8/8/90—published 10/17/90, effective 12/1/90]
- [Filed 10/12/90, Notice 7/11/90—published 10/31/90, effective 1/1/91]
- [Filed 10/12/90, Notice 8/8/90—published 10/31/90, effective 2/1/91]
- [Filed 11/16/90, Notices 9/19/90, 10/3/90—published 12/12/90, effective 2/1/91]

- [Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
- [Filed emergency 1/17/91—published 2/6/91, effective 2/1/91]
- [Filed 1/17/91, Notices 11/14/90, 11/28/90—published 2/6/91, effective 4/1/91<sup>3</sup>]
- [Filed emergency 2/22/91—published 3/20/91, effective 3/1/91]
- [Filed 3/14/91, Notice 2/6/91—published 4/3/91, effective 6/1/91]
- [Filed 4/11/91, Notice 3/6/91—published 5/1/91, effective 7/1/91]
- [Filed emergency 6/14/91—published 7/10/91, effective 7/1/91]
- [Filed 6/14/91, Notice 3/20/91—published 7/10/91, effective 9/1/91]
- [Filed 7/10/91, Notice 5/29/91—published 8/7/91, effective 10/1/91]
- [Filed 9/18/91, Notices 7/10/91, 7/24/91—published 10/16/91, effective 12/1/91]
- [Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]
- [Filed 12/11/91, Notice 10/30/91—published 1/8/92, effective 3/1/92]
- [Filed emergency 1/16/92 after Notice 11/27/91—published 2/5/92, effective 3/1/92<sup>4</sup>]
- [Filed 2/13/92, Notice 1/8/92—published 3/4/92, effective 5/1/92]
- [Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
- [Filed emergency 6/12/92—published 7/8/92, effective 7/1/92]
- [Filed 6/11/92, Notices 3/18/92, 4/29/92—published 7/8/92, effective 9/1/92]
- [Filed emergency 7/17/92—published 8/5/92, effective 8/1/92]
- [Filed 7/17/92, Notices 5/27/92—published 8/5/92, effective 10/1/92<sup>o</sup>]
- [Filed emergency 8/14/92—published 9/2/92, effective 9/1/92]
- [Filed 8/14/92, Notices 6/24/92, 7/8/92, 8/5/92—published 9/2/92, effective 11/1/92]
- [Filed emergency 9/11/92—published 9/30/92, effective 10/1/92]
- [Filed 9/11/92, Notices 7/8/92, 8/5/92—published 9/30/92, effective 12/1/92]
- [Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 1/1/93]
- [Filed 10/15/92, Notices 8/19/92, 9/2/92—published 11/11/92, effective 1/1/93]
- [Filed emergency 11/10/92—published 12/9/92, effective 11/10/92]
- [Filed 11/10/92, Notice 9/30/92—published 12/9/92, effective 2/1/93]
- [Filed 1/14/93, Notices 10/28/92, 11/25/92—published 2/3/93, effective 4/1/93]
- [Filed emergency 4/15/93 after Notice 3/3/93—published 5/12/93, effective 5/1/93]
- [Filed 4/15/93, Notice 3/3/93—published 5/12/93, effective 7/1/93]
- [Filed emergency 5/14/93 after Notice 3/31/93—published 6/9/93, effective 6/1/93]
- [Filed 5/14/93, Notice 3/31/93—published 6/9/93, effective 8/1/93]
- [Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
- [Filed emergency 7/13/93 after Notice 5/12/93—published 8/4/93, effective 8/1/93]
- [Filed emergency 7/14/93—published 8/4/93, effective 8/1/93]
- [Filed without Notice 8/12/93—published 9/1/93, effective 11/1/93]
- [Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
- [Filed 9/17/93, Notice 8/4/93—published 10/13/93, effective 12/1/93]
- [Filed 10/14/93, Notice 8/18/93—published 11/10/93, effective 1/1/94]
- [Filed 11/12/93, Notice 9/15/93—published 12/8/93, effective 2/1/94]
- [Filed emergency 12/16/93 after Notice 10/13/93—published 1/5/94, effective 1/1/94]
- [Filed 12/16/93, Notice 9/1/93—published 1/5/94, effective 3/1/94]
- [Filed 1/12/94, Notice 11/10/93—published 2/2/94, effective 4/1/94]
- [Filed emergency 2/10/94 after Notice 12/22/93—published 3/2/94, effective 3/1/94]
- [Filed 3/10/94, Notice 2/2/94—published 3/30/94, effective 6/1/94]
- [Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
- [Filed 8/12/94, Notice 6/22/94—published 8/31/94, effective 11/1/94]
- [Filed 9/15/94, Notices 7/6/94, 8/3/94—published 10/12/94, effective 12/1/94]
- [Filed 11/9/94, Notice 9/14/94—published 12/7/94, effective 2/1/95]
- [Filed 12/15/94, Notices 10/12/94, 11/9/94—published 1/4/95, effective 3/5/95]
- [Filed 5/11/95, Notices 3/29/95—published 6/7/95, effective 8/1/95]
- [Filed 6/7/95, Notice 4/26/95—published 7/5/95, effective 9/1/95]

- [Filed 6/14/95, Notice 5/10/95—published 7/5/95, effective 9/1/95]
- [Filed 10/12/95, Notice 8/30/95—published 11/8/95, effective 1/1/96]
- [Filed 11/16/95, Notices 8/2/95, 9/27/95<sup>o</sup>—published 12/6/95, effective 2/1/96]
- [Filed 12/12/95, Notice 10/25/95—published 1/3/96, effective 3/1/96]
- [Filed 5/15/96, Notice 2/14/96—published 6/5/96, effective 8/1/96]
- [Filed 6/13/96, Notice 4/24/96—published 7/3/96, effective 9/1/96]
- [Filed 7/10/96, Notice 4/24/96—published 7/31/96, effective 10/1/96]
- [Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
- [Filed 9/17/96, Notice 7/31/96—published 10/9/96, effective 12/1/96]
- [Filed 1/15/97, Notice 12/4/96—published 2/12/97, effective 4/1/97]
- [Filed 3/12/97, Notices 1/1/97, 1/29/97—published 4/9/97, effective 6/1/97]
- [Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
- [Filed emergency 5/14/97 after Notice 3/12/97—published 6/4/97, effective 7/1/97]
- [Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
- [Filed 6/12/97, Notice 4/23/97—published 7/2/97, effective 9/1/97]
- [Filed 7/9/97, Notice 5/21/97—published 7/30/97, effective 10/1/97]
- [Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
- [Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
- [Filed 1/14/98, Notice 11/19/97—published 2/11/98, effective 4/1/98]
- [Filed 4/8/98, Notices 2/11/98, 2/25/98—published 5/6/98, effective 7/1/98]
- [Filed 5/13/98, Notice 3/25/98—published 6/3/98, effective 8/1/98]
- [Filed emergency 6/10/98—published 7/1/98, effective 6/10/98]
- [Filed without Notice 6/10/98—published 7/1/98, effective 8/15/98]
- [Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
- [Filed 9/15/98, Notice 7/15/98—published 10/7/98, effective 12/1/98]
- [Filed 10/14/98, Notice 7/1/98—published 11/4/98, effective 12/9/98]
- [Filed 12/9/98, Notice 10/7/98—published 12/30/98, effective 3/1/99]
- [Filed 1/13/99, Notice 11/4/98—published 2/10/99, effective 4/1/99]
- [Filed 2/10/99, Notice 12/16/98—published 3/10/99, effective 5/1/99]
- [Filed 3/10/99, Notice 1/27/99—published 4/7/99, effective 6/1/99]
- [Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
- [Filed 7/15/99, Notice 6/2/99—published 8/11/99, effective 10/1/99]
- [Filed 8/12/99, Notice 6/30/99—published 9/8/99, effective 11/1/99]
- [Filed 10/13/99, Notice 6/30/99—published 11/3/99, effective 1/1/00]
- [Filed 4/12/00, Notice 2/23/00—published 5/3/00, effective 7/1/00]
- [Filed emergency 6/8/00—published 6/28/00, effective 7/1/00]
- [Filed 6/8/00, Notice 4/19/00—published 6/28/00, effective 8/2/00]
- [Filed 6/8/00, Notices 1/26/00, 4/19/00—published 6/28/00, effective 9/1/00]
- [Filed 8/9/00, Notices 6/14/00, 6/28/00—published 9/6/00, effective 11/1/00]
- [Filed emergency 9/12/00 after Notice 7/26/00—published 10/4/00, effective 10/1/00]
- [Filed 9/12/00, Notice 6/14/00—published 10/4/00, effective 12/1/00]
- [Filed 10/11/00, Notice 4/19/00—published 11/1/00, effective 1/1/01]
- [Filed emergency 12/14/00 after Notice 9/20/00—published 1/10/01, effective 1/1/01]
- [Filed 12/14/00, Notice 11/1/00—published 1/10/01, effective 3/1/01]
- [Filed 2/14/01, Notice 12/13/00—published 3/7/01, effective 5/1/01]
- [Filed 5/9/01, Notice 3/21/01—published 5/30/01, effective 7/4/01]
- [Filed 5/9/01, Notices 1/24/01, 3/7/01—published 5/30/01, effective 8/1/01]
- [Filed emergency 6/13/01 after Notice 4/18/01—published 7/11/01, effective 7/1/01]
- [Filed emergency 6/13/01—published 7/11/01, effective 7/1/01]<sup>o</sup>
- [Filed 6/13/01, Notice 4/18/01—published 7/11/01, effective 9/1/01]
- [Filed 7/11/01, Notice 5/16/01—published 8/8/01, effective 10/1/01]
- [Filed 11/14/01, Notices 9/19/01, 10/3/01—published 12/12/01, effective 2/1/02]

- [Filed emergency 12/12/01 after Notice 10/17/01—published 1/9/02, effective 12/12/01]
  - [Filed 12/12/01, Notice 7/11/01—published 1/9/02, effective 3/1/02]
  - [Filed 12/12/01, Notice 10/17/01—published 1/9/02, effective 3/1/02]<sup>◊</sup>
- [Filed emergency 1/9/02 after Notice 11/14/01—published 2/6/02, effective 2/1/02]<sup>◊</sup>
  - [Filed emergency 1/16/02—published 2/6/02, effective 2/1/02<sup>5</sup>]
  - [Filed emergency 2/14/02—published 3/6/02, effective 3/1/02]
  - [Filed 3/13/02, Notice 1/9/02—published 4/3/02, effective 6/1/02]
  - [Filed 3/13/02, Notice 1/23/02—published 4/3/02, effective 6/1/02]
  - [Filed emergency 4/12/02—published 5/1/02, effective 4/12/02]
  - [Filed 4/10/02, Notice 1/9/02—published 5/1/02, effective 7/1/02]
  - [Filed 4/10/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
  - [Filed emergency 7/11/02—published 8/7/02, effective 7/11/02]
  - [Filed 7/15/02, Notice 5/1/02—published 8/7/02, effective 10/1/02]
  - [Filed emergency 8/15/02—published 9/4/02, effective 9/1/02]
  - [Filed 9/12/02, Notice 8/7/02—published 10/2/02, effective 12/1/02]
  - [Filed emergency 11/18/02—published 12/11/02, effective 12/1/02]
  - [Filed emergency 11/18/02—published 12/11/02, effective 12/15/02]<sup>6</sup>
  - [Filed 11/18/02, Notice 9/4/02—published 12/11/02, effective 2/1/03]
- [Filed emergency 12/12/02 after Notice 10/16/02—published 1/8/03, effective 1/1/03]
  - [Filed 12/12/02, Notice 10/30/02—published 1/8/03, effective 3/1/03]
  - [Filed emergency 1/9/03—published 2/5/03, effective 2/1/03]<sup>◊</sup>
  - [Filed 2/13/03, Notice 11/27/02—published 3/5/03, effective 5/1/03]
  - [Filed 2/13/03, Notice 12/11/02—published 3/5/03, effective 5/1/03]
  - [Filed emergency 6/12/03—published 7/9/03, effective 7/1/03]<sup>◊</sup>
  - [Filed 9/22/03, Notice 7/9/03—published 10/15/03, effective 12/1/03]<sup>◊</sup>
  - [Filed emergency 11/19/03—published 12/10/03, effective 1/1/04]
- [Filed 1/16/04, Notices 9/17/03, 10/29/03—published 2/4/04, effective 3/10/04]
  - [Filed 3/11/04, Notice 1/21/04—published 3/31/04, effective 6/1/04]
- [Filed emergency 6/14/04 after Notice 4/28/04—published 7/7/04, effective 7/1/04]
  - [Filed 8/12/04, Notice 6/23/04—published 9/1/04, effective 11/1/04]<sup>◊</sup>
  - [Filed emergency 4/15/05—published 5/11/05, effective 5/1/05]
  - [Filed without Notice 5/4/05—published 5/25/05, effective 7/1/05]
  - [Filed 7/15/05, Notice 5/25/05—published 8/3/05, effective 10/1/05]
  - [Filed emergency 9/21/05—published 10/12/05, effective 10/1/05]
  - [Filed emergency 10/21/05—published 11/9/05, effective 11/1/05]
- [Filed 10/21/05, Notices 5/11/05 and 7/6/05—published 11/9/05, effective 12/14/05]<sup>◊</sup>
  - [Filed 10/21/05, Notice 8/31/05—published 11/9/05, effective 1/1/06]
  - [Filed 1/12/06, Notice 11/9/05—published 2/1/06, effective 3/8/06]
  - [Filed 3/10/06, Notice 10/12/05—published 3/29/06, effective 5/3/06]
  - [Filed 4/17/06, Notice 2/15/06—published 5/10/06, effective 7/1/06]
  - [Filed 5/12/06, Notice 3/15/06—published 6/7/06, effective 8/1/06]
  - [Filed emergency 6/16/06—published 7/5/06, effective 7/1/06]
- [Filed emergency 8/10/06 after Notice 3/15/06—published 8/30/06, effective 10/1/06]
  - [Filed emergency 9/14/06—published 10/11/06, effective 10/1/06]
  - [Filed 9/19/06, Notice 7/5/06—published 10/11/06, effective 11/16/06]
- [Filed emergency 10/12/06 after Notice 8/30/06—published 11/8/06, effective 11/1/06]
  - [Filed 10/20/06, Notice 8/2/06—published 11/8/06, effective 1/1/07]
  - [Filed emergency 12/13/06—published 1/3/07, effective 1/1/07]
- [Filed emergency 3/14/07 after Notice 1/3/07—published 4/11/07, effective 4/1/07]
- [Filed emergency 3/14/07 after Notice 1/17/07—published 4/11/07, effective 4/1/07]
  - [Filed 3/14/07, Notice 10/11/06—published 4/11/07, effective 5/16/07]
  - [Filed emergency 7/12/07—published 8/1/07, effective 7/12/07]

- [Filed emergency 7/12/07 after Notice 5/23/07—published 8/1/07, effective 8/1/07]
  - [Filed 7/12/07, Notice 5/23/07—published 8/1/07, effective 9/5/07]
  - [Filed without Notice 7/20/07—published 8/15/07, effective 10/1/07]
  - [Filed 8/9/07, Notice 6/20/07—published 8/29/07, effective 11/1/07]
- [Filed emergency 9/12/07 after Notice 7/18/07—published 10/10/07, effective 10/1/07]
- [Filed emergency 1/9/08 after Notice 10/10/07—published 1/30/08, effective 2/1/08]
  - [Filed 1/9/08, Notice 11/7/07—published 1/30/08, effective 4/1/08]
- [Filed emergency 5/14/08 after Notice 3/26/08—published 6/4/08, effective 5/15/08]
- [Filed emergency 5/14/08 after Notice 3/26/08—published 6/4/08, effective 6/1/08]
- [Filed emergency 6/11/08 after Notice 3/12/08—published 7/2/08, effective 7/1/08]
  - [Filed emergency 6/12/08—published 7/2/08, effective 7/1/08]
  - [Filed 6/11/08, Notice 4/23/08—published 7/2/08, effective 9/1/08]
  - [Filed emergency 8/18/08—published 9/10/08, effective 9/1/08]
- [Filed emergency 8/18/08 after Notice 7/2/08—published 9/10/08, effective 10/1/08]
  - [Filed 9/17/08, Notice 7/2/08—published 10/8/08, effective 11/12/08]
- [Filed emergency 10/14/08 after Notice 7/16/08—published 11/5/08, effective 12/1/08]
  - [Filed 10/14/08, Notice 8/13/08—published 11/5/08, effective 1/1/09]
- [Filed emergency 11/12/08 after Notice 9/10/08—published 12/3/08, effective 12/1/08]
  - [Filed 11/12/08, Notice 9/24/08—published 12/3/08, effective 2/1/09]
  - [Filed 12/11/08, Notice 9/10/08—published 1/14/09, effective 2/18/09]
  - [Filed 12/11/08, Notice 10/22/08—published 1/14/09, effective 3/1/09]
- [Filed ARC 7548B (Notice ARC 7369B, IAB 11/19/08), IAB 2/11/09, effective 4/1/09]
- [Filed Emergency After Notice ARC 7957B (Notice ARC 7631B, IAB 3/11/09; Amended Notice ARC 7732B, IAB 4/22/09), IAB 7/15/09, effective 7/1/09]<sup>7</sup>
- [Filed Emergency After Notice ARC 8008B (Notice ARC 7771B, IAB 5/20/09), IAB 7/29/09, effective 8/1/09]
  - [Filed ARC 8097B (Notice ARC 7816B, IAB 6/3/09), IAB 9/9/09, effective 11/1/09]
  - [Filed ARC 8205B (Notice ARC 7827B, IAB 6/3/09), IAB 10/7/09, effective 11/11/09]
    - [Filed Emergency ARC 8344B, IAB 12/2/09, effective 12/1/09]
  - [Filed ARC 8504B (Notice ARC 8247B, IAB 10/21/09), IAB 2/10/10, effective 3/22/10]
- [Filed Emergency After Notice ARC 8643B (Notice ARC 8345B, IAB 12/2/09), IAB 4/7/10, effective 3/11/10]
- [Filed Emergency After Notice ARC 8714B (Notice ARC 8538B, IAB 2/24/10), IAB 5/5/10, effective 5/1/10]
  - [Filed ARC 8993B (Notice ARC 8722B, IAB 5/5/10), IAB 8/11/10, effective 10/1/10]
  - [Filed ARC 8994B (Notice ARC 8756B, IAB 5/19/10), IAB 8/11/10, effective 10/1/10]
  - [Filed ARC 9045B (Notice ARC 8832B, IAB 6/2/10), IAB 9/8/10, effective 11/1/10]
    - [Filed Emergency ARC 9132B, IAB 10/6/10, effective 11/1/10]
  - [Filed ARC 9175B (Notice ARC 8975B, IAB 7/28/10), IAB 11/3/10, effective 1/1/11]
    - [Filed Emergency ARC 9256B, IAB 12/1/10, effective 1/1/11]
    - [Filed Emergency ARC 9311B, IAB 12/29/10, effective 1/1/11]
  - [Filed ARC 9315B (Notice ARC 9111B, IAB 10/6/10), IAB 12/29/10, effective 2/2/11]
  - [Filed ARC 9316B (Notice ARC 9133B, IAB 10/6/10), IAB 12/29/10, effective 2/2/11]
  - [Filed ARC 9403B (Notice ARC 9170B, IAB 10/20/10), IAB 3/9/11, effective 5/1/11]<sup>8</sup>
- [Filed Emergency After Notice ARC 9440B (Notice ARC 9276B, IAB 12/15/10), IAB 4/6/11, effective 4/1/11]
  - [Editorial change: IAC Supplement 4/20/11]
  - [Filed ARC 9487B (Notice ARC 9399B, IAB 2/23/11), IAB 5/4/11, effective 7/1/11]
- [Filed ARC 9588B (Notice ARC 9367B, IAB 2/9/11; Amended Notice ARC 9448B, IAB 4/6/11), IAB 6/29/11, effective 9/1/11]
- [Filed Emergency After Notice ARC 9649B (Notice ARC 9538B, IAB 6/1/11), IAB 8/10/11, effective 8/1/11]

[Filed ARC 9650B (Notice ARC 9497B, IAB 5/4/11), IAB 8/10/11, effective 10/1/11]

[Filed Emergency ARC 9699B, IAB 9/7/11, effective 9/1/11]

[Filed Emergency ARC 9702B, IAB 9/7/11, effective 9/1/11]

[Filed Emergency ARC 9704B, IAB 9/7/11, effective 9/1/11]

[Filed Emergency ARC 9834B, IAB 11/2/11, effective 11/1/11]

◇ Two or more ARCs

<sup>1</sup> Effective date of 78.3 and 78.31 delayed 70 days by the Administrative Rules Review Committee at its January 1, 1988 meeting.

<sup>2</sup> Effective date of 4/1/90 delayed 70 days by the Administrative Rules Review Committee at its March 12, 1990, meeting.

<sup>3</sup> Effective date of 4/1/91 delayed until adjournment of the 1991 session of the General Assembly by the Administrative Rules Review Committee at its meeting held February 12, 1991.

<sup>4</sup> Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

<sup>5</sup> At a special meeting held January 24, 2002, the Administrative Rules Review Committee voted to delay until adjournment of the 2002 Session of the General Assembly the effective date of amendments published in the February 6, 2002, Iowa Administrative Bulletin as **ARC 1365B**.

<sup>6</sup> Effective date of 12/15/02 delayed 70 days by the Administrative Rules Review Committee at its December 10, 2002, meeting.

<sup>7</sup> July 1, 2009, effective date of amendments to 78.27(2)“d” delayed 70 days by the Administrative Rules Review Committee at a special meeting held June 25, 2009.

<sup>8</sup> May 11, 2011, effective date of 78.34(5)“d,” 78.38(5)“h,” 78.41(2)“g,” 78.43(3)“d,” and 78.52(5)“a” delayed 70 days by the Administrative Rules Review Committee at its meeting held April 11, 2011.



TITLE XII  
LICENSING AND APPROVED STANDARDS  
CHAPTER 105  
JUVENILE DETENTION  
AND SHELTER CARE HOMES  
[Prior to 7/1/83, Social Services[770] Ch 105]  
[Prior to 2/11/87, Human Services[498]]

**441—105.1(232) Definitions.**

“*Administer medication*” means to remove medication from its storage place; to ensure to the extent possible that the child ingests, applies, or uses the appropriate dosage at the appropriate time of day; and to document the dosage and the time and date that the child ingested, applied, or used the medication.

“*Authorized prescriber*” means those persons identified in Iowa Code section 147.107 and Iowa Code chapter 154.

“*Chemical restraint*” means the use of chemical agents including psychotropic drugs as a form of restraint. The therapeutic use of psychotropic medications as a component of a service plan for a particular child is not considered chemical restraint.

“*Child care worker or house parent*” shall mean an individual employed by a facility whose primary responsibility is the direct care of the children in the facility.

“*Coed facility*” shall mean a facility which has both sexes in residence.

“*Control room*” shall mean a locked room in a juvenile detention home, used for the purpose of isolation or seclusion of a child. A control room shall not be allowed in a juvenile shelter care home.

“*Controlled substances*” means those substances identified in Iowa Code chapter 124.

“*County or multicounty*” shall mean that the governing body is a county board of supervisors or a combination of representatives from county boards of supervisors.

“*Facility*” shall mean a county or multicounty “juvenile detention home” or county or multicounty “juvenile shelter care home” as those terms are defined in Iowa Code section 232.2.

“*Family shelter home*” means a family home providing temporary care for a child in a physically unrestricting home at any time between the child’s initial contact with the juvenile authorities and the disposition of the case.

“*Mechanical restraint*” means restriction by the use of a mechanical device of a child’s mobility or ability to use the hands, arms or legs.

“*Nonprescription medication*” means any drug or device that is not a prescription medication as defined in this chapter.

“*Physical restraint*” means direct physical contact required on the part of a staff person to prevent a child from hurting self, others, or property.

“*Prescription medication*” means a prescription drug as defined in Iowa Code section 155A.3(30).

“*Prime programming time*” is any period of the day when special attention or supervision is necessary, for example, upon awakening in the morning, during meals, later afternoon play, transitions between activities, evenings, and bedtime, weekends and holidays, in order to maintain continuity of programs and care. Prime programming time shall be defined by the facility and approved by the department of human services.

“*Prone restraint*” means a physical restraint in which a child is held face down on the floor.  
[ARC 9488B, IAB 5/4/11, effective 7/1/11]

**441—105.2(232) Buildings and grounds.**

**105.2(1) Grounds.**

- a. An outdoor play area of 75 square feet per child shall be provided.
- b. The play area shall be identified and kept free from hazards that could cause injury to a child.
- c. Rubbish and trash shall be kept separated from the play area.
- d. The grounds shall be adequately drained.

**105.2(2) Buildings.**

- a. All living areas shall:

- (1) Have screens on windows used for ventilation.
- (2) Be maintained in clean, sanitary conditions, free from vermin, rodents, dampness, noxious gases, and objectionable odors.
- (3) Be in safe repair.
- (4) Provide for adequate lighting when natural sunlight is inadequate.
- (5) Have heating and storage areas separated from sleeping or play areas.
- (6) Have walls and ceilings surfaced with materials that are asbestos free.

b. All sleeping rooms shall be of finished construction and provide a minimum of 60 square feet per child for multiple occupancy, 80 square feet per child for single occupancy, and not sleep more than four children per room.

(1) Facilities licensed prior to July 1, 1981, having a square foot area less than that required shall be considered to meet these standards.

(2) There shall be not more than four youths per room in shelter and two youths per room in detention. Sleeping areas shall be assigned on the basis of the individual child's needs for privacy and independence of group support. For detention facilities built prior to July 1, 1979, four youths per room in detention may be allowed provided the minimum square feet per child requirement is met. When a detention facility licensed prior to July 1, 1979, remodels or makes an addition after July 1, 1979, only two youths per room shall be allowed.

c. All rooms aboveground shall:

(1) Have a ceiling height of at least 7 feet, 6 inches.

(2) Have a window area of at least 8 percent of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

d. All rooms belowground shall:

(1) Have a ceiling height of at least 6 feet, 8 inches.

(2) Have a window area of at least 2 percent of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

(3) Have floor and walls constructed of concrete or other materials with an impervious finish and free from groundwater leakage.

**105.2(3) Bedrooms.**

a. Each child in care shall have a solidly constructed bed.

b. Sheets, pillowcases and blankets shall be provided for each child and shall be kept clean and in good repair.

c. Each child in care shall have adequate storage space for private belongings.

d. No child over the age of five years shall occupy a bedroom with a member of the opposite sex.

**105.2(4) Heating.**

a. The heating unit shall be so located and operated as to maintain the temperature in the living quarters at a minimum of 65 degrees Fahrenheit during the day and 55 degrees Fahrenheit during the night. Variances may be made in case of health problems. Temperature is measured at 24 inches above the floor in the middle of the room.

b. All space heaters involving the combustion of fuel, such as gas, oil or similar fuel, shall be properly vented to the outside atmosphere.

c. Neither rubber nor plastic tubing shall be used as supply lines for gas or oil heaters.

d. The heating and cooling plant shall be checked yearly and kept in a safe working condition at all times.

**105.2(5) Bathroom facilities.**

a. Bathrooms shall have an adequate supply of hot and cold running water.

b. Each bathroom shall be properly equipped with toilet tissue, towels, soap, and other items required for personal hygiene unless children are individually given such items. Paper towels, when used, and toilet tissue shall be in dispensers. Detention facilities shall provide items required for personal hygiene but shall not be required to keep items in the bathrooms.

c. Toilets and baths or showers shall provide for individual privacy.

d. There shall be a shower or tub for each ten children or portion thereof.

- e. Tubs and showers shall have slip-proof surfaces.
- f. At least one toilet and one lavatory shall be provided for each six children or portion thereof.
- g. Toilet facilities shall be provided with natural or artificial ventilation capable of removing odors and moisture.
- h. Toilet facilities adjacent to a food preparation area shall be separated completely by a windowless door that completely fills the doorframe.
- i. All toilet facilities shall be kept clean.
- j. When more than one stool is used in one bathroom, partitions providing privacy shall be used.
- k. Toilets, wash basins, and other plumbing or sanitary facilities shall be maintained in good operating condition.

**105.2(6) Food preparation and storage.**

- a. Cracked dishes and utensils shall not be used in the preparation, serving, or storage of food.
- b. Storage areas for perishable foods shall be kept at 45 degrees Fahrenheit or below.
- c. Storage areas for frozen food shall be kept at zero degrees Fahrenheit or below.
- d. Food that is to be served hot shall be maintained at 140 degrees Fahrenheit or above.
- e. Food that is to be served cold shall be maintained at 45 degrees Fahrenheit or less.
- f. The kitchen and food storage areas shall be kept clean and neat. Food shall not be stored on the floor.
- g. The floor and walls shall be of smooth construction and in good repair.

**105.2(7) Personnel handling food.**

- a. Shall be free of infection that might be transferred while preparing or handling food.
- b. Shall be clean and neatly groomed.
- c. Shall wear clean clothes.
- d. Shall not use tobacco in any form while preparing or serving food.

**105.2(8) Dishwashing facilities.**

- a. Manual dishwashing will be allowed in facilities that normally serve 15 or less people at one meal.
- b. Automatic or commercial dishwashers shall be used in facilities normally serving more than 15 people at one meal, as long as the following conditions are met:
  - (1) When chemicals are added for sanitation purposes, they shall be automatically dispensed.
  - (2) Machines using hot water for sanitizing must maintain the wash water at least 150 degrees Fahrenheit and rinse water at a temperature of at least 180 degrees Fahrenheit or a single temperature machine at 165 degrees Fahrenheit for both wash and rinse.
  - (3) All machines shall be thoroughly cleaned and sanitized at least once each day or more often if necessary to maintain satisfactory operating condition.
- c. Soiled and clean dish table areas shall be of adequate size to accommodate the dishes for one meal.
- d. All hand-held food preparation and serving equipment shall be cleaned and sanitized following each meal. Dispensers, urns and similar equipment shall be cleaned and sanitized daily.

**105.2(9) Foods not prepared at site of serving.**

- a. The place where food is prepared for off-site serving shall conform with all requirements for on-site food preparation.
- b. Food shall be transported in covered containers or completely wrapped or packaged so as to be protected from contamination.
- c. During transportation, and until served, hot foods shall be maintained at 140 degrees Fahrenheit or above and cold food maintained at 45 degrees Fahrenheit or below.

**105.2(10) Milk supply.** When fluid milk is used, it shall be pasteurized Grade "A."

**105.2(11) Public water supply.** The water supply is approved when the water is obtained from a public water supply system.

**105.2(12) Private water supplies.**

- a. Each privately operated water supply shall be annually checked and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples must be collected and submitted by the department of human services worker or local health sanitarian to the state hygienic laboratory or other laboratory certified by the hygienic laboratory and analyzed for coliform bacteria and nitrate (NO<sub>3</sub>) content.

c. When the water supply is obtained from more than one well, proof of the quality of the water from each well is required.

d. When no apparent deficiencies exist in the well and the water sample is approved, water safety requirements have been met.

e. When the water sample is not approved, the facility shall provide a written statement as to how the water supply will be upgraded.

f. A facility with unsafe water can meet water safety requirements by utilizing an alternative safe water source for children until the facility's own water supply is tested as safe. The facility must complete Form 470-0699, Provisions for Alternate Water Supply, and obtain approval from the department.

**105.2(13) Heating or storage of hot water.** Each tank used for the heating or storage of hot water shall be provided with a pressure and temperature relief valve.

**105.2(14) Sewage treatment.**

a. Facilities shall be connected to public sewer systems where available.

b. Private disposal systems shall be designed, constructed, and maintained so that no unsanitary or nuisance conditions exist, such as surface discharge of raw or partially treated sewage or failure of the sewer lines to convey sewage properly.

**105.2(15) Garbage storage and disposal.**

a. A sufficient number of garbage and rubbish containers shall be provided to properly store all material between collections.

b. Containers shall be fly-tight, leakproof, and rodent proof and shall be maintained in a sanitary condition.

**105.2(16) General.**

a. Facilities shall take sufficient measures to ensure the safety of the children in care.

b. Stairways, halls and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

c. Radiators, registers and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

d. Fuse boxes shall be inaccessible to children.

e. Facilities shall have written procedures for the handling and storage of hazardous materials.

f. Firearms are prohibited in shelter care and detention facilities.

g. All swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

h. The facility shall have policies regarding fishing ponds, lakes or any bodies of water located on or near the institution grounds and accessible to the children.

**105.2(17) Emergency evacuation.** All living units utilized by children shall have a posted plan for evacuation in case of fire or disaster with practice drills held at least every six months.

**105.2(18) Fire inspection.** Each facility shall procure an annual fire inspection approved by the state fire marshal and shall meet the recommendations thereof.

**105.2(19) Local codes.** Each facility shall meet local building, zoning, sanitation and fire safety ordinances. Where no local standards exist, state standards shall be met.

#### **441—105.3(232) Personnel policies.**

**105.3(1) Policies in writing.** The following personnel policies and practices of the agency relating to a specific facility shall be described in writing and accessible to staff upon request:

a. Affirmative action and equal employment opportunity policies and procedures covering the hiring, assignment and promotion of employees.

b. Job descriptions for all positions.

c. Provisions for vacations, holidays and sick leave.

*d.* Effective, time-limited grievance procedures allowing the aggrieved party to bring the grievance to at least one level above that party's supervisor.

*e.* Authorized procedures, consistent with due process for the suspension and dismissal of an employee for just cause.

*f.* Written procedures for annual employee evaluation shall be in place for each facility and available to all staff upon request.

**105.3(2) *Health of employees.*** Each staff person who has direct client contact or is involved in food preparation shall be medically determined to be free of serious infectious communicable diseases and able to perform assigned duties. A statement attesting to these facts shall be secured at the time of employment and filed in the personnel records of the staff person. A new statement shall be secured at least every three years. The statement shall be signed by one of the following:

*a.* A physician as defined in Iowa Code section 135.1(4);

*b.* An advanced registered nurse practitioner who is registered with and certified by the Iowa board of nursing to practice nursing in an advanced role; or

*c.* A physician assistant licensed under Iowa Code chapter 148C.

**105.3(3) *Personnel records.*** A record shall be maintained by the facility as applicable for each volunteer who has direct responsibility for a child or access to a child when the child is alone and for each employee. The record shall contain at least the following:

*a.* Name, address, and social security number of the volunteer or employee.

*b.* A job application containing sufficient information to justify the initial and current employment.

*c.* Verification of education and experience. Applicants for positions having educational requirements shall be permanently employed only after the facility has obtained a certified copy of the transcript, diploma, or verification from the school or supervising agency. Applicants for positions having experience requirements shall be permanently employed only after the facility has obtained verification from the agency supervising the experience.

*d.* Verification of license. Applicants for positions requiring licenses shall be permanently employed only after the facility has obtained written verification of their licenses. Evidence of renewal of licenses as required by the licensing agency shall be maintained in the personnel record.

*e.* References. At least two written references or documentation of oral references shall be contained in the volunteer's or employee's personnel record. In case of unfavorable references, there shall be documentation of further checking to ensure that the person will be a reliable volunteer or employee.

*f.* A written, signed and dated statement which discloses any substantiated instances of child abuse, neglect or sexual abuse committed by the volunteer or job applicant.

*g.* Documentation of the submission of Form 470-0643, Request for Child Abuse Information, to the central abuse registry, the registry response, the department's evaluation of any abuse record discovered, and a copy of Form 470-2310, Record Check Evaluation, if the volunteer or staff person has completed and submitted it.

*h.* A written, signed and dated statement furnished by the new volunteer or applicant for employment which discloses any convictions of crimes involving the mistreatment or exploitation of a child.

*i.* Documentation of a check with the Iowa department of public safety on all new volunteers and applicants for employment using Form 595-1396, DHS Criminal History Record Check, Form B; a copy of the department's evaluation of any criminal record discovered; and a copy of Form 470-2310, Record Check Evaluation, if the volunteer or applicant has completed and submitted it.

*j.* Documentation of any checks with the Iowa department of public safety for persons hired before July 1, 1983, for whom the agency has reason to suspect a criminal record.

*k.* Current information relative to work performance evaluation.

*l.* Records of preemployment health examination or a record of a health report as required in 105.3(2) as well as a written record of subsequent health services rendered to an employee as necessary to ensure that all facility employees are physically able to perform their duties.

*m.* Information on written current reprimands or commendations.

*n.* Position in the agency, and date of employment.  
[ARC 9488B, IAB 5/4/11, effective 7/1/11; ARC 9829B, IAB 11/2/11, effective 1/1/12]

**441—105.4(232) Procedures manual.** The facility shall have written policies and procedures specifying the manner in which the program of the facility is to be carried out.

**441—105.5(232) Staff.**

**105.5(1) Number of staff.**

*a. Generally.* A sufficient number of child care or house parent staff shall be on duty at all times so as to provide adequate coverage. The number of staff required will vary depending on the size and complexity of the program. All facilities shall have at least one staff person on duty. Facilities having six or more residents shall have at least two staff persons on duty at all times that children are usually awake and present in the facility. Coed facilities having more than five residents should have both male and female staff on duty at all times. All child care or house parent staff shall be at least 18 years of age.

*b. On-call system.* There shall be an on-call system for coed facilities to provide that staff of the same sex as the resident shall perform the following:

- (1) All personal body searches.
- (2) Supervision of personal care.

*c. Prime programming time.* A minimum staff-child ratio of one child care worker or house parent to five children shall be maintained during prime programming times.

*d. Night hours.* At night, there shall be a staff person awake in each living unit and making regular visual checks throughout the night. The visual checks shall be made at least every hour in shelter care and every half hour in detention. A log shall be kept of all checks, including the time of the check and any significant observations. There shall be an on-call system which allows backup within minutes for both child care staff and casework personnel.

**105.5(2) Staff composition.** The composition of the program staff shall be determined by the facility, based on an assessment of the needs of the children being served, the facility's goals, the programs provided, and all applicable federal, state and local laws and regulations.

**105.5(3) Staff development.** Staff development shall be appropriate to the size and nature of the facility. There shall be a written plan for staff training that includes:

*a.* Orientation for all new employees, to acquaint them with the philosophy, organization, program practices, and goals of the facility.

*b.* Training of new employees in areas related to their job assignments.

*c.* Provisions in writing for all staff members to improve their competency through such means as:

- (1) Attending staff meetings;
- (2) Attending seminars, conferences, workshops, and institutes;
- (3) Visiting other facilities;
- (4) Access to consultants;
- (5) Access to current literature, including books, monographs, and journals relevant to the facility's services.

*d.* There shall be an individual designated responsible for staff development and training, who will complete a written staff development plan which shall be updated annually.

**105.5(4) Organization and administration.** Whenever there is a change in the name of the facility, the address of the facility, the executive, or the capacity, the information shall be reported to the licensing manager. A table of organization including the identification of lines of responsibility and authority from policymaking to service to clients shall be available to the licensing staff. An executive director shall have full administrative responsibility for carrying out the policies, procedures and programs.

**105.5(5) Record checks.** The facility shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child. The facility shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone

if that person has a record of a criminal conviction or founded child abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of volunteering or employment.

*a.* If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation.

*b.* In its evaluation, the department shall consider:

(1) The nature and seriousness of the crime or founded abuse in relation to the employment or volunteer position sought;

(2) The time elapsed since the commission of the crime or founded abuse;

(3) The circumstances under which the crime or founded abuse was committed;

(4) The degree of rehabilitation; and

(5) The number of crimes or founded abuses committed by the person involved.

[ARC 9829B, IAB 11/2/11, effective 1/1/12]

#### **441—105.6(232) Intake procedures.**

**105.6(1) Admissions.** Admission to shelter care or detention shall be in accordance with Iowa Code sections 232.20, 232.21 and 232.22. In no case shall a youth be admitted to detention or shelter care when the resulting admission would exceed the facility's approved client capacity. The facility and referring agency shall agree upon service responsibilities at the time of admission.

**105.6(2) Agency or court order placement.** Each agency or court placing a child in a facility shall make available to the facility the following:

*a.* A placement agreement should accompany the child.

When this is not possible, a copy of the placement agreement shall be provided the facility within 24 hours.

*b.* For court-ordered placements, a copy of the court order authorizing placement shall be provided to the facility within 48 hours.

*c.* When the child is in the facility more than four days, the following information shall be made available to the facility.

(1) All available psychological and psychiatric tests and reports concerning the child.

(2) Any available family social history.

(3) Any available school information.

**105.6(3) Self-referrals.** Any child admitting self to a facility shall be provided appropriate services. The facility shall notify the child's parents, guardian or the juvenile court as soon as possible concerning the child's admission to the facility but in any event the notification shall take place within 48 hours after the child's admission. Self-referrals shall not be accepted for placement in detention.

**105.6(4) Person responsible.** Each agency shall designate who has the authority to do intake. This may include anyone trained in intake procedures and who is designated to do intake.

**105.6(5) Intake sheet.** An intake sheet shall be completed on each child containing at least the information specified in 105.17(2).

#### **441—105.7(232) Assessments.**

**105.7(1) Personal.** At the time of intake and throughout a child's stay, individual needs will be identified by staff. The initial and ongoing determination of each child's needs will be based on written and verbal information from referral sources, observable behavior at intake, initial interview with the youth or family, school contacts, physical examination, and other relevant materials. The individual assessment shall provide the basis for development of a care plan for each youth.

**105.7(2) Educational.** An educational assessment shall be developed by the staff and referring worker for each child. When appropriate, other agencies such as the public schools and the area education agency shall be involved.

**441—105.8(232) Program services.**

**105.8(1) Care plan.** There shall be a written care plan developed for each resident remaining in the facility over four days. The care plan will be based on individual needs determined through the assessment of each youth. The care plan shall be developed in consultation with child care services, probation services, social services and educational, medical, psychiatric and psychological personnel as appropriate. The plan shall include:

- a. Identification of specific needs;
- b. Description of planned service;
- c. Which staff person(s) will be responsible for each element of the plan;
- d. Where services are to occur;
- e. Frequency of activities or services.

**105.8(2) Educational programs.** All children currently enrolled in a school shall continue in that school when possible, or in an appropriate alternative. Where educational assessments indicate an educational need for a child not currently enrolled in public schools, an alternative shall be developed in cooperation with public schools, area education agency, and the referring worker. When an educational program is established within the facility it shall meet the educational and teaching standards established by the state department of public instruction. A child should be compelled to participate in an educational program only in compliance with the compulsory education law, Iowa Code chapter 299.

**105.8(3) Daily program.** The daily program shall be planned to provide a consistent, well structured, yet flexible framework for daily living, and shall be periodically reviewed and revised as the needs of the individual child or the living group change.

Attention shall be given to the special nature of the facility population and its resulting stresses, for example, rapid turnover in population and minimal screening at intake.

**105.8(4) Optional services.** When a facility provides services in addition to those required by these rules, they shall be clearly defined in writing.

**105.8(5) Recreation program.** The facility shall provide adequately designed and maintained indoor and outdoor activity areas, equipment, and equipment storage facilities appropriate for the age group which it serves. There shall be a variety of activity areas and equipment so that all children can be active participants in different types of individual and group sports and other motor activity.

a. Games, toys, equipment, and arts and crafts materials shall be selected according to age, number of children, and with consideration of the needs of children to engage in both active and quiet play. All materials shall be of a quality to ensure safety and shall be of a type which allows imaginative play and creativeness.

b. The facility shall plan and carry out efforts to establish and maintain workable relationships with the community recreational resources. The facility staff shall enlist the support of these resources to provide opportunities for children to participate in community recreational activities.

**105.8(6) Health care.**

a. *Health assessment at intake.* Facility staff shall review each child's health status at intake. The purpose of this preliminary review is to identify medication needs and problems that need immediate medical attention. Within seven days of intake, all reasonable efforts shall be made to perform a more comprehensive health assessment on each child who has not had a comprehensive health assessment within the past year. If the assessment cannot be performed within seven days, it shall be arranged for the earliest possible time, and the reasons for the delay shall be documented. A registered nurse, an advanced registered nurse practitioner, a physician assistant, or a physician shall perform the comprehensive health assessment.

b. *Existing health needs.* Facilities shall provide or secure medical treatment for a child's illnesses and injuries that come to the facility's attention during the child's stay.

c. *Monitoring side effects of medications.* Facilities shall monitor each child's use of medications and shall inform the authorized prescriber if adverse reactions are noted.

d. *Sharing medical information.* Facilities shall share information about significant changes in medical status with the child's caseworker and parents or guardian. Discharge information shall include information about significant medical changes that occurred while the child was at the facility.

**105.8(7) *Counseling program.*** Counseling services shall be related to the immediate problem, daily living skills, peer relationships, educational opportunities, vocational opportunities, future planning and preparation for placement, family counseling, and any other factors identified in the individual care plan. Counseling shall be done by appropriate staff personnel.

**105.8(8) *Dietary program.*** The facility shall provide properly planned, nutritious and inviting food and take into consideration the special food needs and tastes of children.

**441—105.9(232) Medication management and administration.**

**105.9(1) *Obtaining prescription medications.*** Facilities shall permit prescription medications to be brought into the facility for a child.

*a.* Prescription medication in its original container, clearly labeled and prescribed for the child, may be accepted as legitimate prescription medication for the child. The label serves as verification that the medication was ordered by an authorized prescriber.

*b.* Facilities shall review size, shape, color, and dosages and contact the identified pharmacy or authorized prescriber to confirm legitimacy if contraband is suspected.

**105.9(2) *Obtaining nonprescription medications.*** Shelter and detention facilities shall maintain a supply of standard nonprescription medications for use for children residing at the facility. Examples of standard nonprescription medications include cough drops and cough syrups, aspirin substitutes and other pain control medication, poison antidote, and diarrhea control medication.

*a.* All nonprescription medications kept on the premises for the use of residents shall be preapproved annually by a licensed pharmacist or an authorized prescriber.

*b.* Facilities shall maintain a list of all preapproved nonprescription medications. The list shall indicate standard uses, standard dosages, contraindications, side effects, and common drug interaction warnings. The facility administrator or the administrator's designee shall be responsible for determining the scope of the list and brands and types of medications included.

*c.* Only nonprescription medications on the preapproved list shall be available for use. However, the facility administrator or the administrator's designee, in consultation with an authorized prescriber or licensed pharmacist, may approve use of a nonprescription medication that is not on the preapproved list for a specific child.

**105.9(3) *Storing medications.*** Prescription and nonprescription medications shall be stored in a locked cabinet, a locked refrigerator, or a locked box within an unlocked refrigerator.

*a.* Controlled substances shall be stored in a locked box within a locked cabinet. Nothing other than controlled substances shall be stored in the locked box. Controlled substances requiring refrigeration also shall be maintained within a double-locked container separate from food and other items.

*b.* The facility administrator shall determine distribution and maintenance of keys to the medication storage cabinets and boxes.

*c.* A shelter facility administrator or the administrator's designee may preapprove shelter staff to carry prescription or nonprescription medications with them temporarily for use while on day trips or at sites away from the facility.

**105.9(4) *Labeling medications.*** Controlled substances and prescription medications shall be maintained in their original containers, clearly labeled by an authorized prescriber and prescribed for the child. Sample prescription medications shall be accompanied by a written prescription. Nonprescription medications shall be maintained as purchased in their original containers.

**105.9(5) *Administering controlled medications.*** Only staff who have completed a medication administration course shall be allowed to administer controlled substances.

**105.9(6) *Administering prescription and nonprescription medications.*** The facility administrator shall determine and provide written authority as to which staff may administer prescription and nonprescription medications.

*a.* Prescription medications shall be administered only in accordance with the orders of the authorized prescriber. Nonprescription medications shall be administered following the directions on the label.

b. The facility administrator or the administrator's designee may allow a child to self-administer prescription and nonprescription medication in appropriate situations. The facility shall require documentation if the child self-administers a medication.

**105.9(7) Documenting errors in administering medications.** All errors in administering prescription and nonprescription medications shall be documented. Facilities shall review and take appropriate action to ensure that similar errors do not recur.

**105.9(8) Medication for discharged residents.** When a child is discharged or leaves the facility, the facility shall turn over to a responsible agent controlled substances and prescription medications currently being administered. The facility may send nonprescription medications with the child as needed. The facility shall document in the child's file:

- a. The name, strength, dosage form, and quantity of each medication.
- b. The signature of the facility staff person turning over the medications to the responsible agent.
- c. The signature of the responsible agent receiving the medications.

**105.9(9) Destroying outdated and unused medications.** Unused controlled and prescription medications kept at the facility for more than six months after the child has left the facility shall be destroyed by the administrator or the administrator's designee in the presence of at least one witness. Outdated, discontinued, or unusable nonprescription medications shall also be destroyed in a similar manner. The person destroying the medication shall document:

- a. The child's name.
- b. The name, strength, dosage form, and quantity of each medication.
- c. The date the medication was destroyed.
- d. The names and signatures of the witness and staff person who destroyed the medication.

**441—105.10(232) Control room—juvenile detention home only.**

**105.10(1) Written policies.** When a juvenile detention facility uses a control room as part of its service, the facility shall have written policies regarding its use and the facility director shall complete Form 470-0700, Evaluation and Recommendation to Operate a Control Room. The policy shall:

- a. Specify the behaviors resulting in control room placement.
- b. Delineate the staff members who may authorize its use as well as procedures for notification of supervisory personnel.
- c. Document in writing behaviors leading to control room placement and the nature of the agreement reached with the child that will allow the child to return to the living unit.

**105.10(2) Physical requirements.** The control room shall be designed to ensure a physically safe environment that:

- a. Has all switches controlling lights and ventilation outside of the room.
- b. Allows for total observation of the child at all times.
- c. Has protected recessed ceiling light.
- d. Has no electrical outlets in the room.
- e. Is properly heated, cooled and ventilated.
- f. Has all doors, ceilings and walls constructed of strength and materials as to prevent damage to the extent that no harm could come to the child.
- g. When a window is present, it is secured and protected in such a manner as to prevent harm to the child.
- h. Is a minimum of 6 feet by 9 feet in size with at least a 7½ foot ceiling.

**105.10(3) Use.** A control room shall be used only when a less restrictive alternative to quiet or allow the child to gain control has failed. Utilization of the control room shall be in accordance with the following policies:

- a. No more than one child shall be in the control room at any time.
- b. There shall be provision for visual observation of the child at all times, regardless of the child's position in the room.
- c. The control room should be checked thoroughly for safety and the absence of contraband prior to placing a child in the room.

*d.* The child shall be thoroughly checked before placement in the control room and all potentially injurious objects removed from such child including shoes, belts, pocket items, and similar items. The staff member placing the child in the control room shall document such check.

*e.* In no case shall all clothing or underwear be removed and the child shall be provided sufficient clothing to meet seasonal needs.

*f.* A staff member shall always be within hearing distance of the control room and the child shall be visually checked by the staff at least every 15 minutes and each check shall be recorded.

*g.* The child shall not remain in the control room longer than 1 hour except in consultation with and approval from the supervisor. Documentation in the child's case record shall include the time in the control room, the reasons for the control, and the reasons for the extension of time. Use of the control room for a total of more than 12 hours in any 24-hour period shall occur only in consultation with the referring agency or court. In no case shall a child be in a control room for a period longer than 24 hours.

*h.* The child's parents, referring worker, and the child's attorney shall be notified when the control room is used for more than a total of 30 minutes in any 24-hour period.

**441—105.11(232) Clothing.** All children shall have clothing that is suited to existing climate and seasonal conditions and is clean, dry and in good repair.

**441—105.12(232) Staffings.** The staff shall be available to participate in staffings or upon request to provide a written summary of the child's progress and behavior while in the facility program. Written recommendations regarding future planning and placement shall be provided to the referring agency or court upon request. Staff shall be available to discuss recommendations with the child's parent or guardian.

**441—105.13(232) Child abuse.** Written policies shall prohibit mistreatment, neglect or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel. Any employee for whom there is a substantiated instance of child abuse or failure to report child abuse shall be subject to the agency's policies concerning dismissal.

**441—105.14(232) Daily log.** The facility shall maintain a daily log. The log shall be used to note general progress in regard to the care plan and any problem areas or unusual behavior for each child.

**441—105.15(232) Children's rights.**

**105.15(1) Policies in writing.** All policies and procedures covered in this rule shall be in writing and provided to the child upon admission and made available to the child's parent or guardian upon request. If the child remains in care over four days, the policies and procedures shall be provided to the parent or guardian. The rationale and circumstances of any deviation from these policies shall be discussed with the child's parents or guardian and the referring worker, documented, and placed in the child's case record.

**105.15(2) Confidentiality.** Information regarding children and their families shall be kept confidential and released only with proper written authorization.

**105.15(3) Communication.**

*a.* Unless specifically regulated by the court, visitation shall be allowed with members of the child's immediate family.

*b.* Family visits shall be monitored only to the extent necessary to ensure the child's safety and facility security. Rationale for monitoring shall be documented in the child's record.

*c.* The child shall be permitted to communicate privately with legal counsel and the referring worker.

*d.* The child shall be allowed to conduct telephone conversations with family members. Telephone calls shall be monitored only to the extent necessary to ensure the child's well-being and facility security. Rationale for monitoring a child's conversation shall be documented in the child's record. Incoming calls may be screened by staff to verify the identity of the caller before approval is given.

*e.* The staff shall not open or read residents' mail. The child shall be allowed to send and receive mail. The facility may require the child to open incoming mail in the presence of a staff member when the mail is suspected to contain contraband articles, or to contain money that should be receipted and deposited.

*f.* When limitations on visitation or other communications are indicated, they shall be determined with the participation or knowledge of the child, family or guardian, and the referring worker. All restrictions shall have specific bases which shall be made explicit to the child and family and documented in the child's case record.

**105.15(4) Privacy.** Reasonable provisions shall be made for the privacy of residents.

#### **441—105.16(232) Discipline.**

**105.16(1) Generally.** A facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Discipline shall not include withholding of basic necessities such as food, clothing, or sleep. Agency staff shall be in control of and responsible for discipline at all times.

**105.16(2) Corporal punishment prohibited.** The facility shall have a policy that clearly prohibits staff or the children from utilizing corporal punishment as a method of disciplining or correcting children. This policy shall be communicated in writing to all staff of the facility.

**105.16(3) Physical restraint.** The use of physical restraint shall be employed only to prevent the child from injury to self, to others, or to property. Physical restraint must be conducted with the child in a standing position whenever possible.

*a.* No staff person shall use any restraint that obstructs the airway of a child.

*b.* Prone restraint is prohibited. Staff persons who find themselves involved in the use of a prone restraint when responding to an emergency must take immediate steps to end the prone restraint.

*c.* If a staff person physically restrains a child who uses sign language or an augmentative mode of communication as the child's primary mode of communication, the child shall be permitted to have the child's hands free of restraint for brief periods unless the staff person determines that such freedom appears likely to result in harm to the child, others, or property.

*d.* The rationale and authorization for the use of physical restraint and staff action and procedures carried out to protect the child's rights and to ensure safety shall be clearly set forth in the child's record by the responsible staff persons.

**105.16(4) Room confinement.** Facilities shall provide sufficient programming and staff coverage to enable children to be involved in group activities during the day and evening hours. A child shall only be confined to the child's room for illness, at the child's own request, or for disciplinary reasons. A juvenile detention home may confine a child to the child's room during normal sleeping hours if the facility has written policies and procedures which are approved by the department regarding this confinement.

**105.16(5) Written policies.** The facility shall provide to the child written policies specifying inappropriate behaviors, reasonable consequences for misconduct, and due process procedures available to the child. Upon request, the above information shall be provided to the child's parent or guardian and referring worker.

[ARC 9488B, IAB 5/4/11, effective 7/1/11]

#### **441—105.17(232) Case files.**

**105.17(1) Generally.** For the purpose of promoting a uniformity of program for all facilities and as an aid to the department of human services in determining its approval of a facility all facilities shall establish and maintain for inspection case files on each child.

**105.17(2) Face sheet.** For all children, a face sheet containing the following information shall be completed.

*a.* Full name, current address, and date of birth.

*b.* Parent's(s') full name(s).

*c.* Parent's(s') address and telephone number.

*d.* Religious preference of the child and also parent, if available.

- e. Statement of who has legal custody and guardianship.
- f. Name of referring worker and agency making the referral.
- g. Telephone number and address of referring agency or court.
- h. Name, address, and telephone number of the child's attorney.

**105.17(3) *Written summary.*** When a written summary has been requested under 441—105.12(232), a copy shall be placed in the child's record.

**105.17(4) *Documentation.*** The following information shall be documented in each child's record:

- a. Appropriate notes on all significant contacts by staff with parents, referral person and other collateral contacts.
- b. A summary related to discharge including name, address, and relationship of person to whom discharged.

**105.17(5) *Other information.*** The following information shall be requested when the child remains in the facility more than four days and, when available, placed in the child's record.

- a. Current family history or social history.
- b. Case plans submitted by the referring agency or orders of the court.
- c. Psychological and psychiatric records; copies of all available testing performed plus notes and records of contact with the child.
- d. Medical.
  - (1) A record of all illnesses, immunizations, communicable diseases and follow-up treatment.
  - (2) Medical and surgical authorization signed by the parent, guardian, custodian or court.
  - (3) A record of all medical and dental examinations including findings.
  - (4) Date of last physical examination prior to placement.
- e. School.
  - (1) Name and address of school attended.
  - (2) Grade placement.
  - (3) Current school in which child is enrolled.
  - (4) Specific educational problems.
  - (5) Remedial action.
- f. Placement agreement, court order, releases.
  - (1) Agreement shall authorize the facility to accept the child.
  - (2) The agreement shall set forth the terms of payment for care.
  - (3) Medical release authorizing emergency medical and surgical treatment, including the administration of anesthesia.
  - (4) All releases and authorizations shall be signed by the parent or legal guardian.
  - (5) All court orders affecting the custody or guardianship of the child.

**441—105.18(232) Discharge.**

**105.18(1)** Children in shelter care shall be discharged to a permanent placement at the earliest possible time, and in any event within 30 days from the date of admission. Extension requests shall be made, substantiated, and approved by both the referral agency and the shelter care agency by the twenty-fifth day of care. Maximum length of stay should not exceed 45 days. Maximum length of stay in detention should not exceed 21 days.

**105.18(2)** Rescinded IAB 3/31/04, effective 5/5/04.

**441—105.19(232) Approval.** The department will issue a Certificate of Approval, Form 470-0620, annually without cost to any juvenile detention home or juvenile shelter care home which meets the standards. The department may offer consultation to assist homes in meeting the standards.

**105.19(1) *Applications.*** An application shall be submitted on Form 470-0723, Application for License or Certificate of Approval. The application shall be signed by the operator of the home, chairman of the county board of supervisors, or chairman of the multicounty board of directors and shall indicate the type of home for which the application is made.

- a. The withdrawal of an application shall be reported promptly to the department.

- b. Each application will be evaluated by the department to ensure that all standards are met.
- c. Reports and information shall be furnished to the department as requested.

**105.19(2) Rejection.**

a. Applications will be rejected when the minimum standards set forth in the rules in this chapter are not met.

b. Fraudulent applications will be rejected. A fraudulent application is one which contains false statements knowingly made by the applicant or one in which the applicant knowingly conceals information.

c. Applications will be rejected when the director of the facility has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. Applications will be rejected for just cause.

**105.19(3) Approval.** Approvals will be given for one year.

**105.19(4) Notification.** Homes should be notified of approval or rejection within 120 days of application unless the applicant requests and is granted an extension by the department. Form 470-0728, Notice of Action, will be used to inform applicants of approval, and a restricted certified letter will be used to inform applicants of rejection.

**105.19(5) Renewals.**

a. Applications for renewal shall be made on forms provided by the department and shall be made at least 30 days, but no more than 90 days, prior to expiration of the approval.

b. Each application for renewal will be evaluated by the department to ensure that standards continue to be met.

c. The application for renewal will be rejected or approved in the same manner as an application.

d. Decisions on renewals should be made within 60 days from the application for renewal.

Notification of renewal decisions shall be the same as for new applications.

**105.19(6) Revocations.**

a. Approval shall be revoked by the state director for the following reasons:

(1) When the facility violates laws governing the provision of services or rules contained in this chapter.

(2) When the facility is misusing funds furnished by the department.

(3) When the facility is operating without due regard to the health, sanitation, hygiene, comfort, or well-being of the children in the facility.

(4) When the director has been convicted of a crime indicating an inability to operate a children's facility or care for children.

b. The following may be causes for revocation:

(1) Substantiated child abuse.

(2) When the facility staff has been convicted of a crime indicating an inability to operate a children's facility or care for children.

**105.19(7) Certificate of approval.** Upon approval, the home will be issued a certificate of approval containing the name of the home, address, capacity, and the date of expiration. Renewals will be shown by a seal bearing the new date of expiration, unless a change requires a new certificate to be issued.

**441—105.20(232) Provisional approval.**

**105.20(1) Required conditions.** A provisional approval may be issued at the time of application or reapplication for approval or as a result of a complaint investigation when all of the following conditions exist:

a. The shelter care or detention facility fails to meet the approval requirements.

b. A provisional approval has not previously been issued to the facility for the same deficiencies during the past year.

c. The deficiencies do not present an immediate danger to the child's physical or mental health.

d. The director of the facility, chairman of the county board of supervisors, or chairman of the multicounty board of directors provides the department with the following:

(1) A plan for correcting the deficiencies.

(2) The date by which the standards will be met.

If conditions “b,” “c,” or “d” are not met, then the application for approval shall be rejected or the approval revoked.

**105.20(2) Time limited.** Provisional approvals shall not be issued for longer than one year.

**105.20(3) Completed corrective action.** When the corrective action is completed on or before the date specified on the provisional approval, a full approval shall be issued for the remainder of the year.

**105.20(4) Uncompleted corrective action.** When the corrective action is not completed by the date specified on a provisional approval, the department shall not grant a full approval and has the option of rejecting or extending the provisional approval. An extension of a provisional approval shall not cause the effective period of a provisional approval to exceed 18 months. If the corrective action plan is not completed within 18 months, the approval shall be rejected.

**441—105.21(232) Mechanical restraint—juvenile detention only.** When a juvenile detention facility uses mechanical restraints as part of its program, the facility shall have written policies regarding their use. These policies shall be approved by the department before use of mechanical restraints. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff. The executive director of the detention home shall sign the commitment contained in Form 470-0703, Evaluation and Recommendation for Approval to Use Mechanical Restraint, before the facility shall be approved to use a mechanical restraint.

**105.21(1) Restrictions on mechanical restraints.**

a. Mechanical restraints shall not inflict physical injury.

b. Each use of mechanical restraint shall be authorized by the executive director of the facility, as discussed in 105.5(4), or other staff designated by the executive director if those staff meet one of the following requirements:

(1) Have a bachelor’s degree in social work, psychology or a related behavioral science and one year of supervised experience in a juvenile shelter care, detention or foster group care facility.

(2) Have five years of supervised experience in a juvenile shelter care, detention or foster group care facility.

(3) Have some combination of advanced education in related behavioral sciences and supervised experience in a juvenile shelter care, detention or foster group care facility equal to five years. The facility shall have a written listing of all staff designated and qualified to authorize the use of mechanical restraint.

c. When immediate restraint is necessary to protect the safety of the child, other residents of the facility, staff or others, mechanical restraint may be utilized without prior authorization but in each case a person designated to provide authorization shall be contacted as soon as the child is restrained. The designated person shall visit the resident before determining if continued use of the mechanical restraint is necessary. If not viewed as necessary, the child shall be immediately released from restraint.

d. Each authorization of mechanical restraint shall not exceed one hour in duration without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

e. No child shall be kept in mechanical restraint for more than 1 hour in a 12-hour period without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

f. Anytime that a child is placed in mechanical restraint, a staff person shall be assigned to monitor the child with no duties other than to ensure that the child’s physical needs are properly met. The staff person shall remain in continuous auditory and visual contact with the child.

g. Each child shall be released from mechanical restraint as soon as the restraints are no longer needed.

**105.21(2) Documentation.**

a. Each use of mechanical restraints shall be documented in the client’s record and shall include at least the following:

(1) The date and time the child was placed in mechanical restraint.

- (2) The type of mechanical restraint utilized.
- (3) The reason for the restraint.
- (4) The signature of the person authorizing the restraint and the time of authorization.
- (5) The signature of the person placing the child in restraint.
- (6) The signature of the person providing the continuous auditory and visual contact with the child.
- (7) The signature of the person releasing the child and the time of release.

*b.* Each use of mechanical restraint shall be documented in a separate file which is used only for the recording of uses of mechanical restraints and shall contain the name of the child restrained and the information discussed in 105.21(2)“*a.*”

*c.* Each facility authorized to use mechanical restraint shall submit a quarterly report to the bureau of adult, children and family services of the department which shall include all the information required in 105.21(2)“*b.*”

**105.21(3)** *Continued use of mechanical restraints.* When a child requires mechanical restraint on more than four occasions during any 30-day period, the facility shall hold an immediate emergency meeting within 3 days of the fifth incident and shall have a licensed psychologist or psychiatrist or psychologist employed by a local mental health center present at the staffing to discuss the appropriateness of the child’s continued placement at the facility.

**105.21(4)** *In transporting children.* Notwithstanding 105.21(1)“*d,*” mechanical restraint of a child by the staff of a juvenile detention facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child’s case record and the mechanical restraint file. This report shall document the necessity for the use of restraint.

Seat belts are not considered mechanical restraints. Agency policies should encourage the use of seat belts while transporting children.

**441—105.22(232) Chemical restraint.** Chemical restraint shall not be utilized in juvenile shelter care or detention facilities. Each juvenile shelter care or detention facility shall have written policies which clearly prohibit the use of chemical restraints.

These rules are intended to implement Iowa Code section 232.142 as amended by 2011 Iowa Acts, Senate File 482, section 7.

[Filed December 19, 1962; amended December 20, 1962]

[Filed 6/25/76, Notice 5/17/76—published 7/12/76, effective 8/16/76]

[Filed 1/23/80, Notice 5/30/79—published 2/20/80, effective 3/26/80]

[Filed 6/4/80, Notice 4/2/80—published 6/25/80, effective 7/30/80]

[Filed 10/23/80, Notice 7/23/80—published 11/12/80, effective 12/17/80]

[Filed 12/19/80, Notice 10/15/80—published 1/7/81, effective 2/11/81]

[Filed 2/26/82, Notice 10/28/81—published 3/17/82, effective 5/1/82]

[Filed 7/29/83, Notice 5/25/83—published 8/17/83, effective 10/1/83]

[Filed 1/22/86, Notice 12/4/85—published 2/12/86, effective 4/1/86]

[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

[Filed 3/11/04, Notice 1/21/04—published 3/31/04, effective 5/5/04]

[Filed ARC 9488B (Notice ARC 9368B, IAB 2/9/11), IAB 5/4/11, effective 7/1/11]

[Filed ARC 9829B (Notice ARC 9687B, IAB 8/24/11), IAB 11/2/11, effective 1/1/12]

CHAPTER 201  
GENERAL FIRE SAFETY REQUIREMENTS

**661—201.1(100) Scope.** The provisions of this chapter apply to all buildings, structures and facilities that are subject to the jurisdiction of the state fire marshal unless the building, structure, or facility is subject to the provisions of 661—Chapter 202, 661—Chapter 205, 661—Chapter 221, or 661—Chapter 231.

[ARC 8307B, IAB 11/18/09, effective 1/1/10]

**661—201.2(100) General provisions.** The following publications or indicated portions thereof are hereby adopted by reference as general fire safety requirements and shall apply to all occupancies other than those to which provisions specific to an occupancy explicitly exclude these provisions or any individual provision contained therein.

**201.2(1)** International Fire Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, with the following amendments:

*a.* Delete section 103 and sections contained therein, section 104 and sections contained therein, section 105 and sections contained therein, section 106 and sections contained therein, section 107 and sections contained therein, section 108 and sections contained therein, section 109 and sections contained therein, section 110 and sections contained therein, section 111 and sections contained therein, section 112, and section 113 and sections contained therein.

*b.* Delete section 301.2.

*c.* Delete section 307.2.

*d.* Delete section 307.3 and insert in lieu thereof the following new section:

**307.3 Extinguishment Authority.** The state fire marshal or an employee of the fire marshal division authorized to do so by the fire marshal, or local fire chief or member of the local fire department authorized to do so by the fire chief, is authorized to order the extinguishment by the permit holder, another person responsible or the fire department of open burning that creates or adds to a hazardous or objectionable situation.

*e.* Delete section 308.1.4 and insert in lieu thereof the following new section:

**308.1.4 Open Flame Cooking Devices.** Charcoal burners and ash- or coal-producing devices shall not be operated on combustible balconies or within 10 feet of combustible construction.

Exceptions:

1. One- and two-family dwellings.

2. LP-gas burners connected to one (1) 20-pound LP-gas container.

3. Where buildings, balconies and decks are protected by an automatic sprinkler system.

*f.* Delete section 315.2.3 and insert in lieu thereof the following new section:

**315.2.3 Equipment Rooms.** Combustible material shall not be stored in boiler rooms, mechanical rooms, or electrical equipment rooms.

Exception: In sprinklered equipment rooms that have sufficient space to allow a minimum of 10 feet between all combustible storage and the heating, mechanical or electrical equipment in the room.

*g.* Delete section 405.2 and table 405.2 and insert in lieu thereof the following new section and new table:

**405.2 Frequency.** Required emergency evacuation drills shall be held at the intervals specified in Table 405.2 or more frequently where necessary to familiarize all occupants with the drill procedure.

**TABLE 405.2**  
**FIRE AND EVACUATION DRILL FREQUENCY AND PARTICIPATION**

| GROUP OR OCCUPANCY  | FREQUENCY                | PARTICIPATION |
|---|--------------------------|---------------|
| Group A   | Quarterly                | Employees     |
| Group B <sup>(c)</sup>  | Annually                 | Employees     |
| Group E   | See <sup>(a)</sup> below | All occupants |
| Group I   | Quarterly on each shift  | Employees     |
| Group I <sup>(b)</sup> and Group R-4 (assisted living facilities) | Quarterly                | All occupants |
| Group R-1   | Quarterly on each shift  | Employees     |
| Group R-2 <sup>(d)</sup>  | Four annually            | All occupants |
| High-rise   | Annually                 | Employees     |

Footnotes:

(a) The frequency shall be allowed to be modified in accordance with Section 408.3.2. Fire and severe weather drills shall be conducted in accordance with Iowa Code chapter 100.

(b) Fire and evacuation drills in assisted living facilities shall include complete evacuation of the premises in accordance with Section 408.10.5. Drills shall be conducted not less than six times per year on a bimonthly basis, with not less than two drills conducted during the night when residents could reasonably be expected to be sleeping. The drills shall be permitted to be announced in advance to the residents. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.

(c) Group B buildings that have an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.

(d) Applicable to Group R-2 college and university buildings in accordance with Section 408.3.

*h.* Delete section 609.1 and insert in lieu thereof the following new section:

**609.1 General.** Commercial kitchen exhaust hoods shall comply with the requirements of National Fire Protection Association (NFPA) 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

*i.* Delete section 807.4.3.1 and insert in lieu thereof the following new section:

**807.4.3.1 Storage in corridors and lobbies.** Clothing and personal effects shall not be stored in corridors and lobbies.

Exceptions:

1. Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

2. Storage in metal lockers, provided the minimum required egress width is maintained.

*j.* Delete section 906.1 and insert in lieu thereof the following new section:

**906.1 Where Required.** Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

2. Within 30 feet (9144 mm) of commercial cooking equipment.

3. In areas where flammable or combustible liquids are stored, used or dispensed.

4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.

5. Where required by the sections indicated in Table 906.1.

6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms.

*k.* Add the following new paragraph to section 907.2.2:

4. The Group B fire area that contains an educational occupancy for students above the twelfth grade with an occupant load of greater than 50 persons.

*l.* Delete section 907.2.3 and insert in lieu thereof the following new section:

**907.2.3 Group E.** In the absence of a complete automatic sprinkler system, a complete automatic detection system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 2.1. Interior corridors are protected by smoke detectors with alarm verification.
  - 2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
  - 2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
  - 2.4. Off-premises monitoring is provided.
  - 2.5. The capability to activate the evacuation signal from a central point is provided.
  - 2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.
3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow, and manual activation is provided from a normally occupied location.

*m.* Add the following new section 1003.8:

**1003.8 Location of Preschool through Second Grade Students.** In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.

*n.* Delete section 1028.1.1 and insert in lieu thereof the following new section:

**1028.1.1** Bleachers, grandstands, and folding and telescopic seating that are not building elements shall comply with ICC-300, Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, 2007 edition, with the following amendments to ICC-300:

(1) Delete section 105.2 and insert in lieu thereof the following new section:

**105.2 Yearly inspection required.** The owner shall cause all bleachers and folding and telescopic seating installed on or after December 1, 2011, to be inspected at least once a year in order to verify that the structure is maintained in compliance with the provisions of this standard. All folding and telescopic seating shall also be inspected to evaluate compliance with the manufacturer's installation and operational instructions during the opening and closing of such seating. Any inspection conducted in compliance with this section may be conducted by any knowledgeable person including, but not limited to, a person who has been instructed by the manufacturer or installer as to procedures and standards for inspections of the structure being inspected and including, but not limited to, the owner of the structure or an employee of the owner of the structure. There are no further restrictions on the identity or employment of the person conducting the inspection unless otherwise provided by law. The owner shall maintain documentation of the required annual inspections, which shall show the date and name of the person conducting the inspection and shall be initialed by the person conducting the inspection.

(2) Delete section 501.2 and insert in lieu thereof the following new section:

**501.2 Inspections.** All tiered seating that was installed prior to December 1, 2011, shall be inspected at least once a year. The required inspection may be conducted by any knowledgeable person including, but not limited to, a person who has been instructed by the manufacturer or installer as to procedures and standards for inspections of the structure being inspected and including, but not limited to, the owner of the structure or an employee of the owner of the structure. There are no further restrictions on the identity or employment of the person conducting the inspection unless otherwise provided by law. All folding

and telescopic seating shall be inspected to evaluate compliance with the manufacturer's installation and operational instructions and shall be inspected during the opening and closing of such seating. The owner shall maintain documentation of the required annual inspections, which shall show the date and name of the person conducting the inspection and shall be initialed by the person conducting the inspection.

- o.* Amend any reference to any section within chapter 22 to read as a reference to "Chapter 22."
- p.* Delete chapter 22 and insert in lieu thereof the following new chapter:

CHAPTER 22  
MOTOR FUEL-DISPENSING FACILITIES AND REPAIR GARAGES

**SECTION 2201**

**GENERAL**

**2201.1** Motor fuel-dispensing facilities and repair garages shall comply with the applicable provisions of 661—Chapter 221.

- q.* Amend any reference to any section within chapter 34 to read as a reference to "Chapter 34."
- r.* Delete chapter 34 and insert in lieu thereof the following new chapter:

CHAPTER 34  
FLAMMABLE AND COMBUSTIBLE LIQUIDS

**SECTION 3401**

**GENERAL**

**3401.1** Transportation, storage, handling, and use of flammable and combustible liquids shall comply with the applicable provisions of 661—Chapter 221.

- s.* Amend any reference to any section within chapter 38 to read as a reference to "Chapter 38."
- t.* Delete chapter 38 and insert in lieu thereof the following new chapter:

CHAPTER 38  
LIQUEFIED PETROLEUM GASES

**SECTION 3801**

**GENERAL**

**3801.1** Transportation, storage, handling, and use of liquefied petroleum gases shall comply with the applicable provisions of 661—Chapter 226.

- u.* Delete section 4603.6.1 and insert in lieu thereof the following new section:

**4603.6.1** Existing Group E occupancies shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. Where smoke or heat detectors are installed, such detectors shall be connected to the building fire alarm system.

Exceptions:

1. A building with a maximum area of 1,000 square feet that contains a single classroom and is located no closer than 50 feet from another building.

2. Group E occupancy with an occupant load of less than 50.

- v.* Any reference to NFPA 10 is amended to read as follows:

NFPA 10 with the following amendment:

Delete sections 7.1.2.1, 7.1.2.2, and 7.1.2.3 and insert in lieu thereof the following new sections:

7.1.2.1 A trained person who has undergone the instructions necessary to reliably perform maintenance and has the manufacturer's service manual shall service the fire extinguishers not more than one year apart, as outlined in Section 7.3.

7.1.2.2\* Maintenance, servicing, and recharging shall be performed by trained persons who have available the appropriate servicing manual(s), the proper types of tools, recharge materials, lubricants, and manufacturer's recommended replacement parts or parts specifically listed for use in the fire extinguisher.

NOTE: Requirements in NFPA 10 for certification of personnel who maintain portable fire extinguishers are removed. These personnel must still be trained and have available service manuals.

- w.* Adopt Appendices B, C, and D.

**201.2(2)** The following Chapters and Sections of the International Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

- a. Chapter 2.
- b. Chapter 3.
- c. Chapter 4.
- d. Chapter 5.
- e. Chapter 6.
- f. Chapter 7.
- g. Sections 804 and 805.

[ARC 8307B, IAB 11/18/09, effective 1/1/10; ARC 9769B, IAB 10/5/11, effective 12/1/11]

**661—201.3(100) Electrical installations.** Electrical installations shall comply with the provisions of NFPA 70, National Electrical Code, 2011 edition, with the following amendments:

**201.3(1)** Add the following exceptions to section 210.8, paragraph (A), subparagraph (2):

- a. Exception No. 1 to (2): Receptacles that are not readily accessible.
- b. Exception No. 2 to (2): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).
- c. Receptacles installed under the exceptions to 210.8(A)(2) shall not be considered as meeting the requirements of 210.52(G).

**201.3(2)** Add the following exceptions to section 210.8, paragraph (A), subparagraph (5):

- a. Exception No. 2 to (5): Receptacles that are not readily accessible.
- b. Exception No. 3 to (5): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).
- c. Receptacles installed under the exceptions to 210.8(A)(5) shall not be considered as meeting the requirements of 210.52(G).

This rule is intended to implement Iowa Code chapter 100.

[ARC 9827B, IAB 11/2/11, effective 1/1/12]

**661—201.4(100) Existing buildings or structures.** Additions or alterations to any building or structure shall comply with the requirements of this chapter for new construction. Additions or alterations shall not be made to an existing building or structure that will cause the existing building or structure to be in violation of any provisions of 661—Chapter 201. An existing building plus additions shall comply with the height and area provisions of Chapter 5 of the International Building Code, 2009 edition. Portions of the structure not altered and not affected by the alteration are not required to comply with the requirements established in 661—Chapter 201 for a new structure.

[ARC 8307B, IAB 11/18/09, effective 1/1/10]

**661—201.5(100) Recognition of local fire ordinances and enforcement.** With the exception of a health care facility subject to the requirements of 661—Chapter 205, a building, structure, or facility shall be deemed to be in compliance with the requirements established in rules of the fire marshal if all of the following conditions are met:

1. The building, structure, or facility is in a local jurisdiction which has adopted a local fire ordinance which adopts by reference any edition of the International Fire Code, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041; any edition of NFPA 1, Uniform Fire Code, published by the National Fire Protection Association; or the Uniform Fire Code, 1997 edition, published by the Western Fire Chiefs Association.

2. The local fire ordinance is enforced through a process of review and approval of construction plans for compliance with the local fire ordinance and a process of regular inspections for compliance with the local fire ordinance.

3. The building, structure, or facility is subject to regular fire safety inspections.

4. The local jurisdiction has verified, during its most recent inspection, including any follow-up inspections, that the building, structure, or facility is in compliance with the local fire ordinance.

Notwithstanding any conflicting provisions contained in any code adopted by reference in this chapter or by any local fire ordinance, compliance with the provisions of 661—Chapter 221 is required at any location or facility in which flammable or combustible liquids are stored, handled, or used, other than incidental use.

[ARC 8307B, IAB 11/18/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 100.

[Filed 11/2/06, Notice 9/13/06—published 11/22/06, effective 1/1/07]

[Filed 10/29/08, Notice 9/24/08—published 11/19/08, effective 1/1/09]

[Filed ARC 8307B (Notice ARC 8156B, IAB 9/23/09), IAB 11/18/09, effective 1/1/10]

[Filed ARC 9769B (Notice ARC 9561B, IAB 6/15/11), IAB 10/5/11, effective 12/1/11]

[Filed ARC 9827B (Notice ARC 9628B, IAB 7/27/11), IAB 11/2/11, effective 1/1/12]

CHAPTER 301  
STATE BUILDING CODE—GENERAL PROVISIONS  
[Prior to 12/21/05, see rules 661—16.1(103A) to 661—16.500(103A)]

**661—301.1(103A) Scope and applicability.** The provisions of this chapter apply generally to:

1. Buildings and facilities owned by the state of Iowa;
2. The initial construction of any building or facility not wholly owned by the state of Iowa or any department or agency of the state of Iowa which is financed in whole or in part with funds appropriated by the state, if there is no local building code in effect in the jurisdiction in which the construction is located or if there is a local building code in effect in the jurisdiction, and the local building code is not enforced through a system of plan reviews and inspections;
3. Buildings and facilities subject to the state building code, pursuant to a provision of state or federal law other than Iowa Code chapter 103A; and
4. Buildings and facilities in local jurisdictions which have adopted the state building code by local ordinance in accordance with the provisions of Iowa Code section 103A.12.

**661—301.2(103A) Definitions.** The following definitions apply to 661—Chapters 300, 301, 302, and 303.

*“Appropriated by the state of Iowa”* means funds which are included in a bill enacted by the Iowa general assembly and signed by the governor or which are appropriated in a provision of the Iowa Code.

*“Board of appeals”* means the local board of appeals as created by local ordinance.

*“Board of review”* or *“board”* means the state building code board of review created by Iowa Code section 103A.15. The three members of the board of review are appointed by the building code commissioner from among the membership of the building code advisory council.

*“Building”* means a combination of materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals or property. The word “building” includes any part of a building unless the context clearly requires a different meaning. This definition does not apply to 661—Chapter 302.

*“Building code advisory council”* or *“council”* means the seven-member council appointed by the governor, pursuant to Iowa Code section 103A.14, to advise and confer with the commissioner on matters relating to the state building code and to approve provisions of the state building code adopted by the commissioner.

*“Building component”* means any part, subsystem, subassembly, or other system designed for use in, or as a part of, a structure, including but not limited to: structural, electrical, mechanical, fire protection, or plumbing systems, and including such variations thereof as are specifically permitted by regulation, and which variations are submitted as part of the building system or amendment thereof.

*“Building department”* means an agency of any governmental subdivision charged with the administration, supervision, or enforcement of building regulations, prescribed or required by state or local building regulations.

*“Building system”* means plans, specifications and documentation for a system of manufactured factory-built structures or buildings or for a type or a system of building components, including but not limited to: structural, electrical, mechanical, fire protection, or plumbing systems, and including such variations thereof as are specifically permitted by regulation, and which variations are submitted as part of the building system or amendment thereof.

*“Bureau”* means the building code bureau of the fire marshal division of the department of public safety.

*“Commissioner”* means the state building code commissioner appointed by the commissioner of public safety pursuant to Iowa Code section 103A.4.

*“Construction”* means the construction, erection, reconstruction, alteration, conversion, repair, equipping of buildings, structures or facilities, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

“*Construction cost*” means the total cost of the work to the owner of all elements of the project designed or specified by the design professional including the cost at current market rates of labor and materials furnished by the owner and equipment designed, specified or specifically provided by the design professional. Construction costs shall include the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for each construction manager’s or contractor’s overhead and profit.

“*Division*” means the fire marshal division of the department of public safety.

“*Enforcement authority*” means any state agency or political subdivision of the state that has the authority to enforce the state building code.

“*Equipment*” means plumbing, heating, electrical, ventilating, conditioning, refrigeration equipment, and other mechanical facilities or installations.

“*Governmental subdivision*” means any state, city, town, county or combination thereof.

“*Label*” means an approved device affixed to a factory- built structure or building, or building component, by an approved agency, evidencing code compliance.

“*Listing agency*” means an agency approved by the commissioner which is in the business of listing or labeling and which maintains a periodic inspection program on current production of listed models, and which makes available timely reports of such listing including specific information verifying that the product has been tested to approved standards and found acceptable for use in a specified manner.

“*Responsible design professional*” means a registered architect or licensed professional engineer who stamps and signs the documents submitted, pursuant to Iowa Code chapters 542B and 544A.

“*State fire code*” means administrative rules adopted by the state fire marshal, pursuant to Iowa Code section 100.1, subsection 5.

“*State plumbing code*” means the state plumbing code adopted by the state plumbing and mechanical systems board, pursuant to Iowa Code chapter 105.

NOTE: As of January 1, 2007, the state plumbing code is found in 641—Chapter 25.

“*Structure*” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner except transmission and distribution equipment of public utilities. “Structure” includes any part of a structure unless the context clearly requires a different meaning.

[ARC 8305B, IAB 11/18/09, effective 1/1/10]

**661—301.3(103A) General provisions.** The provisions of the International Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the general requirements for building construction, with the following amendments:

**301.3(1)** Delete section 101.1.

**301.3(2)** Delete section 101.2 and insert in lieu thereof the following new section:

101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code, as amended by rule 661—301.8(103A).

**301.3(3)** Delete section 101.4 and sections therein.

**301.3(4)** Delete section 102.6 and insert in lieu thereof the following new section:

102.6 Existing Structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

**301.3(5)** Delete sections 103, 104, 105 and sections therein.

**301.3(6)** Delete section 106.2.

**301.3(7)** Delete section 107.1 and insert in lieu thereof the following new section:

107.1 General. Submittal documents consisting of construction documents, statement of special inspections, a geotechnical report and other data shall be submitted in one or more sets with each plan review application. The construction documents shall be prepared by a responsible design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the commissioner is authorized to require additional construction documents to be prepared by a responsible design professional.

Exception: The commissioner is authorized to waive the submission of construction documents and other data not required to be prepared by a responsible design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

**301.3(8)** Delete sections 107.3, 107.4, and 107.5 and sections therein.

**301.3(9)** Delete sections 109, 110, 111, 112, 113, 114, 115, and 116 and sections therein.

**301.3(10)** Delete section 906.1 and insert in lieu thereof the following new section:

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1 of the International Fire Code.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.

**301.3(11)** Delete section 907.2.2 and insert in lieu thereof the following new section:

907.2.2 Group B. A manual fire alarm system shall be installed in Group B occupancies where one of the following conditions exists:

1. The combined Group B occupant load of all floors is 500 or more.
2. The Group B occupant load is more than 100 persons above or below the lowest level of exit discharge.
3. The Group B fire area contains a Group B ambulatory health care facility.
4. The Group B fire area contains an educational occupancy for students above the twelfth grade with an occupant load of 50 or more persons.

Exception: Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.

**301.3(12)** Delete section 907.2.3 and insert in lieu thereof the following new section:

907.2.3 Group E. In the absence of a complete automatic sprinkler system, a complete automatic detection system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 2.1. Interior corridors are protected by smoke detectors with alarm verification.
  - 2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
  - 2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
  - 2.4. Off-premises monitoring is provided.

2.5. The capability to activate the evacuation signal from a central point is provided.

2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow and manual activation is provided from a normally occupied location.

**301.3(13)** Add the following new section 1003.8:

1003.8 Location of Preschool through Second Grade Students. In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.

**301.3(14)** Delete section 1028.1.1 and insert in lieu thereof the following new section:

1028.1.1 Bleachers, grandstands, and folding and telescopic seating that are not building elements shall comply with ICC-300, Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, 2007 edition, with the following amendments to ICC-300:

*a.* Delete section 105.2 and insert in lieu thereof the following new section:

105.2 Yearly inspection required. The owner shall cause all bleachers and folding and telescopic seating installed on or after December 1, 2011, to be inspected at least once a year in order to verify that the structure is maintained in compliance with the provisions of this standard. All folding and telescopic seating shall also be inspected to evaluate compliance with the manufacturer's installation and operational instructions during the opening and closing of such seating. Any inspection conducted in compliance with this section may be conducted by any knowledgeable person including, but not limited to, a person who has been instructed by the manufacturer or installer as to procedures and standards for inspections of the structure being inspected and including, but not limited to, the owner of the structure or an employee of the owner of the structure. There are no further restrictions on the identity or employment of the person conducting the inspection unless otherwise provided by law. The owner shall maintain documentation of the required annual inspections, which shall show the date and name of the person conducting the inspection and shall be initialed by the person conducting the inspection.

*b.* Delete section 501.2 and insert in lieu thereof the following new section:

501.2 Inspections. All tiered seating that was installed prior to December 1, 2011, shall be inspected at least once a year. The required inspection may be conducted by any knowledgeable person including, but not limited to, a person who has been instructed by the manufacturer or installer as to procedures and standards for inspections of the structure being inspected and including, but not limited to, the owner of the structure or an employee of the owner of the structure. There are no further restrictions on the identity or employment of the person conducting the inspection unless otherwise provided by law. All folding and telescopic seating shall be inspected to evaluate compliance with the manufacturer's installation and operational instructions and shall be inspected during the opening and closing of such seating. The owner shall maintain documentation of the required annual inspections, which shall show the date and name of the person conducting the inspection and shall be initialed by the person conducting the inspection.

**301.3(15)** Add the following new section 1100:

1100. Any building or facility which is in compliance with the applicable requirements of 661—Chapter 302 shall be deemed to be in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.

**301.3(16)** Delete chapter 29.

**301.3(17)** Amend section 3001.2 by adding the following new unnumbered paragraph after the introductory paragraph:

Notwithstanding the references in Chapter 35 to editions of national standards adopted in this section, any editions of these standards adopted by the elevator safety board in 875—Chapter 72 are hereby adopted by reference. If a standard is adopted by reference in this section and there is no adoption by reference of the same standard in 875—Chapter 72, the adoption by reference in this section is of the edition identified in Chapter 35.

**301.3(18)** Amend section 3401.3 by deleting “International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

**301.3(19)** Delete appendices A through K.

**301.3(20)** Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

**301.3(21)** Delete all references to the “ICC Electrical Code” and insert in lieu thereof “rule 661—301.5(103A).”

**301.3(22)** Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

**301.3(23)** *Hospitals and health care facilities.*

*a.* A hospital, as defined in rule 661—205.1(100), that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the hospital is in compliance with the provisions of rule 661—205.5(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the hospital shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

*b.* A nursing facility or hospice, as defined in rule 661—205.1(100), that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the nursing facility or hospice is in compliance with the provisions of rule 661—205.10(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the nursing facility or hospice shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

*c.* An intermediate care facility for the mentally retarded, as defined in rule 661—205.1(100), or intermediate care facility for persons with mental illness that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the intermediate care facility is in compliance with the provisions of rule 661—205.15(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the intermediate care facility shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

*d.* An ambulatory health care facility, as defined in rule 661—205.1(100), that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the ambulatory health care facility is in compliance with the provisions of rule 661—205.20(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the ambulatory health care facility shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

*e.* A religious nonmedical health care institution that is required to meet the provisions of the state building code shall be deemed to be in compliance with the provisions of the state building code if the institution is in compliance with the provisions of rule 661—205.25(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the religious nonmedical health care institution shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

[ARC 8305B, IAB 11/18/09, effective 1/1/10; ARC 9770B, IAB 10/5/11, effective 12/1/11]

**661—301.4(103A) Mechanical requirements.** The provisions of the International Mechanical Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings, with the following amendments:

Delete section 101.1.

Delete sections 103, 104, 105, 106, 107, 108, 109, and 110 and sections therein.

Delete section 403 and insert in lieu thereof the following new section:

#### SECTION 403

#### MECHANICAL VENTILATION

Mechanical ventilation systems shall be designed in accordance with the provisions of ASHRAE Standard 62.1-2007, "Ventilation for Acceptable Indoor Air Quality," published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329.

Delete appendices A and B.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A)."

Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

[ARC 8305B, IAB 11/18/09, effective 1/1/10]

**661—301.5(103A) Electrical requirements.** The provisions of the National Electrical Code, 2011 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, are hereby adopted by reference as the requirements for electrical installations, with the following amendments:

**301.5(1)** Add the following exceptions to section 210.8, paragraph (A), subparagraph (2):

- a. Exception No. 1 to (2): Receptacles that are not readily accessible.
- b. Exception No. 2 to (2): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).
- c. Receptacles installed under the exceptions to 210.8(A)(2) shall not be considered as meeting the requirements of 210.52(G).

**301.5(2)** Add the following exceptions to section 210.8, paragraph (A), subparagraph (5):

- a. Exception No. 2 to (5): Receptacles that are not readily accessible.
- b. Exception No. 3 to (5): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).
- c. Receptacles installed under the exceptions to 210.8(A)(5) shall not be considered as meeting the requirements of 210.52(G).

This rule is intended to implement Iowa Code chapter 103A.

[ARC 9826B, IAB 11/2/11, effective 1/1/12]

**661—301.6(103A) Plumbing requirements.** Provisions of the state plumbing code, 641—Chapter 25, adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105, apply to plumbing installations in this state.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer's data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15) "e."

Private sewage disposal systems shall comply with 567—Chapter 69.

**301.6(1)** Rescinded IAB 7/27/11, effective 7/8/11.

**301.6(2)** Fuel gas piping shall comply with the requirements established in rule 661—301.9(103A).

[ARC 8305B, IAB 11/18/09, effective 1/1/10; ARC 9627B, IAB 7/27/11, effective 7/8/11]

**661—301.7(103A) Existing buildings.**

**301.7(1) Definition.** "Existing building" means a building erected prior to January 1, 2010.

**301.7(2) Adoption.** The provisions of the International Existing Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for repair, alteration, change of occupancy, addition, and relocation of existing buildings, with the following amendments:

Delete section 101.1.

Delete section 101.4.2 and insert in lieu thereof the following new section:

101.4.2 Buildings Previously Occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

Delete section 101.5.4.

Delete section 101.5.4.1.

Delete section 101.5.4.2.

Delete section 101.7.

Delete sections 103, 104, and 105 and sections therein.

Delete sections 106.1, 106.3.1, 106.3.3, 106.5, and 106.6.

Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117 and sections therein.

Delete section 605.

Delete section 706.

Delete section 806.

Delete section 912.8.

Delete chapters A1 through A5.

Delete appendix B and insert in lieu thereof the following new section:

Any building or facility subject to this rule shall comply with the provisions of 661—Chapter 302.

Delete resource A.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A).”

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

[ARC 8305B, IAB 11/18/09, effective 1/1/10]

**661—301.8(103A) Residential construction requirements.** The provisions of the International Residential Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

Delete section R101.1.

Delete sections R103 to R114 and sections therein.

NOTE: The values for table R301.2(1) shall be determined by the location of the project and referenced footnotes from table R301.2(1).

Delete chapter 11.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete section R310.1 and insert in lieu thereof the following new section:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of

the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above an adjacent permanent interior standing surface. The adjacent permanent interior standing surface shall be no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

EXCEPTION: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m<sup>2</sup>).

Delete section R313.1.

NOTE: Deletion of section R313.1, which would have required the installation of sprinklers in newly constructed townhouses, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

Delete section R313.2.

NOTE: Deletion of section R313.2, which would have required the installation of sprinklers in newly constructed one- and two-family residences, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

Amend section R322.1.7 by striking the words “Chapter 3 of the International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete section R907.3 and insert in lieu thereof the following new section:

R907.3 Recovering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings where any of the following conditions exist:

1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.
2. Where the existing roof covering is wood shake, slate, clay, cement or asbestos cement tile.
3. Where the existing roof has two or more applications of any type of roof covering.

Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661—301.9(103A).

Delete chapters 25 to 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer’s data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15) “e.”

Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

All electrical installations shall comply with National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A).

Delete appendices A through Q.

[ARC 8305B, IAB 11/18/09, effective 1/1/10 (See Delay note at end of chapter); ARC 8771B, IAB 5/19/10, effective 5/1/10]

**661—301.9(103A) Fuel gas piping requirements.** Fuel gas piping shall comply with the requirements of 661—Chapter 221. Liquefied petroleum gas facilities and appliances shall comply with rule 661—226.1(101).

[ARC 8305B, IAB 11/18/09, effective 1/1/10]

**661—301.10(103A) Transition period.** A construction project that is subject to the provisions of any rule in 661—Chapter 301 or 661—Chapter 303 which requires compliance with provisions of the 2009 edition of any code published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls

Church, VA 22041, may comply with the requirements established either in the edition of the code adopted herein or the requirements established in the edition of the same code previously in effect if the project is commenced no later than March 31, 2010. “Commenced” shall mean that the submitter has obtained preliminary approval from the commissioner or a local building department pursuant to rule 661—300.6(103A) prior to April 1, 2010. If final approval for the project design has not been obtained prior to October 1, 2010, the project is subject to the provisions of 661—Chapters 301 and 303 in effect as of January 1, 2010.

[ARC 8305B, IAB 11/18/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 103A.

[Filed 12/2/05, Notice 9/14/05—published 12/21/05, effective 4/1/06]

[Filed 11/2/06, Notice 9/27/06—published 11/22/06, effective 1/1/07]

[Filed 10/31/07, Notice 9/12/07—published 11/21/07, effective 1/1/08]

[Filed 10/29/08, Notice 9/24/08—published 11/19/08, effective 1/1/09]

[Filed ARC 8305B (Notice ARC 8179B, IAB 9/23/09), IAB 11/18/09, effective 1/1/10]<sup>1</sup>

[Editorial change: IAC Supplement 12/30/09]

[Filed Emergency ARC 8771B, IAB 5/19/10, effective 5/1/10]

[Filed Emergency ARC 9627B, IAB 7/27/11, effective 7/8/11]

[Filed ARC 9770B (Notice ARC 9562B, IAB 6/15/11), IAB 10/5/11, effective 12/1/11]

[Filed ARC 9826B (Notice ARC 9629B, IAB 7/27/11), IAB 11/2/11, effective 1/1/12]

<sup>1</sup> January 1, 2010, effective date of the portions of 661—301.8(103A) pertaining to Sections R313.1 and R313.2 delayed until the adjournment of the 2010 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 2009.



CHAPTER 504  
STANDARDS FOR ELECTRICAL WORK

**661—504.1(103) Installation requirements.** The provisions of the National Electrical Code, 2011 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, are adopted as the requirements for electrical installations performed by persons licensed pursuant to 661—Chapters 500 through 503 and to installations subject to inspection pursuant to Iowa Code chapter 103 with the following amendments:

**504.1(1)** Add the following exceptions to section 210.8, paragraph (A), subparagraph (2):

- a.* Exception No. 1 to (2): Receptacles that are not readily accessible.
- b.* Exception No. 2 to (2): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).
- c.* Receptacles installed under the exceptions to 210.8(A)(2) shall not be considered as meeting the requirements of 210.52(G).

**504.1(2)** Add the following exceptions to section 210.8, paragraph (A), subparagraph (5):

- a.* Exception No. 2 to (5): Receptacles that are not readily accessible.
- b.* Exception No. 3 to (5): A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8).
- c.* Receptacles installed under the exceptions to 210.8(A)(5) shall not be considered as meeting the requirements of 210.52(G).

This rule is intended to implement Iowa Code chapter 103.

[ARC 9825B, IAB 11/2/11, effective 1/1/12]

[Filed emergency 12/17/07—published 1/16/08, effective 1/1/08]

[Filed 10/29/08, Notice 9/24/08—published 11/19/08, effective 1/1/09]

[Filed ARC 9825B (Notice ARC 9630B, IAB 7/27/11), IAB 11/2/11, effective 1/1/12]



## REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

### CHAPTER 1

#### STATE BOARD OF TAX REVIEW—ADMINISTRATION

- 1.1(17A,421) Establishment, membership and location of the state board of tax review
- 1.2(421,17A) Powers and duties of the state board
- 1.3(421,17A) Powers and duties not subject to the jurisdiction of the state board

### CHAPTER 2

#### STATE BOARD OF TAX REVIEW—CONDUCT OF APPEALS AND RULES OF PRACTICE AND PROCEDURE

##### DIVISION I APPELLATE CASES

##### GENERAL RULES OF PRACTICE AND PROCEDURE FOR FINAL CONTESTED CASE DECISIONS OF OR ATTRIBUTABLE TO THE DIRECTOR OF REVENUE

- 2.1(421,17A) Definitions
- 2.2(421,17A) Appeal and jurisdiction
- 2.3(421,17A) Form of appeal
- 2.4(421,17A) Certification by director
- 2.5(421,17A) Motions
- 2.6(421,17A) Answer
- 2.7(421,17A) Docketing
- 2.8(421,17A) Filing of papers
- 2.9(421,17A) Hearing an appeal
- 2.10(17A,421) Appearances by appellant
- 2.11(421,17A) Authority of state board to issue procedural orders
- 2.12(421,17A) Continuances
- 2.13(17A,421) Place of hearing
- 2.14(17A,421) Members participating
- 2.15(17A,421) Presiding officer
- 2.16(17A,421) Appeals of state board decisions

##### DIVISION II ORIGINAL JURISDICTION

##### RULES GOVERNING CONTESTED CASE PROCEEDINGS IN WHICH THE STATE BOARD HAS ORIGINAL JURISDICTION TO COMMENCE A CONTESTED CASE PROCEEDING

- 2.17(421,17A) Applicability and scope
- 2.18(17A) Definitions
- 2.19(421,17A) Time requirements
- 2.20(421,17A) Notice of appeal
- 2.21(421,17A) Form of appeal
- 2.22(421,17A) Certification by director
- 2.23(421,17A) Answer
- 2.24(421,17A) Docketing
- 2.25(421,17A) Appearances by appellant
- 2.26(421,17A) Place of hearing
- 2.27(421,17A) Transcript of hearing
- 2.28(421,17A) Requests for contested case proceeding
- 2.29(421,17A) Notice of hearing
- 2.30(17A) Presiding officer

|               |  |
|---------------|--|
| 2.31(421,17A) | Transfer of case for hearing or appeal           |
| 2.32(421,17A) | Waiver of procedures                             |
| 2.33(421,17A) | Telephone proceedings                            |
| 2.34(17A,421) | Disqualifications of a presiding officer         |
| 2.35(421,17A) | Consolidation and severance                      |
| 2.36(17A)     | Service and filing of pleadings and other papers |
| 2.37(421,17A) | Discovery  |
| 2.38(421,17A) | Subpoenas  |
| 2.39(421,17A) | Motions  |
| 2.40(421,17A) | Prehearing conference                            |
| 2.41(421,17A) | Continuances                                     |
| 2.42(17A)     | Withdrawals                                      |
| 2.43(421,17A) | Intervention                                     |
| 2.44(421,17A) | Hearing procedures                               |
| 2.45(421,17A) | Evidence   |
| 2.46(421,17A) | Default or dismissal                             |
| 2.47(421,17A) | Ex parte communication                           |
| 2.48(421,17A) | Recording costs                                  |
| 2.49(421,17A) | Interlocutory appeals                            |
| 2.50(421,17A) | Final decision                                   |
| 2.51(421,17A) | Applications for rehearing                       |
| 2.52(421,17A) | Stays of agency and board actions                |
| 2.53(421,17A) | No factual dispute contested case                |
| 2.54(421,17A) | Appeal and review of a state board decision      |

### CHAPTER 3

#### VOLUNTARY DISCLOSURE PROGRAM

|                  |   |
|------------------|---|
| 3.1(421,422,423) | Scope of the voluntary disclosure program |
|------------------|---|

### CHAPTER 4

#### MULTILEVEL MARKETER AGREEMENTS

|          |                                 |
|----------|---------------------------------|
| 4.1(421) | Multilevel marketers—in general |
|----------|---------------------------------|

### CHAPTER 5

#### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

|              |   |
|--------------|---|
| 5.1(17A,22)  | Definitions   |
| 5.3(17A,22)  | Requests for access to records  |
| 5.6(17A,22)  | Procedure by which additions, dissents, or objections may be entered into certain records |
| 5.9(17A,22)  | Disclosures without the consent of the subject  |
| 5.10(17A,22) | Routine use   |
| 5.11(17A,22) | Consensual disclosure of confidential records   |
| 5.12(17A,22) | Release to subject  |
| 5.13(17A,22) | Availability of records   |
| 5.14(17A,22) | Personally identifiable information   |
| 5.15(17A,22) | Other groups of records   |
| 5.16(17A,22) | Applicability   |

TITLE I  
ADMINISTRATION

CHAPTER 6  
ORGANIZATION, PUBLIC INSPECTION

- 6.1(17A) Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests
- 6.2(17A) Public inspection
- 6.3(17A) Examination of records
- 6.4(17A) Copies of proposed rules
- 6.5(17A) Regulatory analysis procedures
- 6.6(422) Retention of records and returns by the department
- 6.7(68B) Consent to sell
- 6.8(421) Tax return extension in disaster areas

CHAPTER 7  
PRACTICE AND PROCEDURE BEFORE THE  
DEPARTMENT OF REVENUE

DIVISION I  
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES  
APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS  
COMMENCED PRIOR TO JULY 1, 1999

- 7.1(17A) Definitions
- 7.2(17A) Scope of rules
- 7.3(17A) Business hours
- 7.4(17A) Computation of time, filing of documents
- 7.5(17A) Form and style of papers
- 7.6(17A) Persons authorized to practice before the department
- 7.7(17A) Resolution of tax liability
- 7.8(17A) Protests
- 7.9(17A) Identifying details
- 7.10(17A) Docket
- 7.11(17A) Informal procedures and dismissals of protests
- 7.12(17A) Answer
- 7.13(17A) Subpoenas
- 7.14(17A) Commencement of contested case proceedings
- 7.15(17A) Discovery
- 7.16(17A) Prehearing conference
- 7.17(17A) Contested case proceedings
- 7.18(17A) Interventions
- 7.19(17A) Record and transcript
- 7.20(17A) Rehearing
- 7.21(17A) Service
- 7.22 Reserved
- 7.23(17A) Ex parte communications
- 7.24(17A) Licenses
- 7.25(17A) Declaratory rulings—in general
- 7.26(17A) Department procedure for rule making—in general
- 7.27(9C,91C) Procedure for nonlocal business entity bond forfeitures
- 7.28 and 7.29 Reserved
- 7.30(421) Definitions which apply to rules 701—7.31(421) to 701—7.35(421)
- 7.31(421) Abatement of unpaid tax

- 7.32(421) Time and place of taxpayer interviews
- 7.33(421) Mailing to the last-known address
- 7.34(421) Power of attorney
- 7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied

DIVISION II  
 INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES  
 APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS  
 COMMENCED ON OR AFTER JULY 1, 1999

- 7.36(421,17A) Applicability and scope of rules
- 7.37(421,17A) Definitions
- 7.38(421,17A) Applicability of rules set forth in Division I of Chapter 7
- 7.39(17A) Business hours
- 7.40(17A) Persons authorized to represent themselves or others
- 7.41(17A) Protest
- 7.42(17A) Identifying details
- 7.43(17A) Docket
- 7.44(17A) Informal procedures and dismissals of protests
- 7.45(17A) Answer
- 7.46(17A) Subpoenas
- 7.47(17A) Commencement of contested case proceedings
- 7.48(17A) Discovery
- 7.49(17A) Prehearing conference
- 7.50(17A) Contested case proceedings
- 7.51(17A) Record and transcript
- 7.52(17A) Rehearing
- 7.53(17A) Service
- 7.54(17A) Ex parte communications and disqualification
- 7.55(17A) Licenses
- 7.56(17A) Declaratory order—in general
- 7.57(17A) Department procedure for rule making
- 7.58(17A) Public inquiries on rule making and the rule-making records
- 7.59(17A) Criticism of rules

DIVISION III  
 WAIVER OR VARIANCE

- 7.60(78GA, HF2206) Waiver or variance of certain department rules

DIVISION IV  
 PETITION FOR RULE MAKING

- 7.61(17A) Petition for rule making

CHAPTER 8  
 FORMS AND COMMUNICATIONS

- 8.1(17A) Definitions
- 8.2(17A) Official forms
- 8.3(17A) Substitution of official forms
- 8.4(17A) Description of forms
- 8.5(422) Electronic filing of Iowa income tax returns

CHAPTER 9  
 FILING AND EXTENSION OF TAX LIENS  
 AND CHARGING OFF UNCOLLECTIBLE TAX ACCOUNTS

- 9.1(422,423) Definitions
- 9.2(422,423) Lien attaches

|              |                   |
|--------------|-------------------|
| 9.3(422,423) | Purpose of filing |
| 9.4(422,423) | Place of filing   |
| 9.5(422,423) | Time of filing    |
| 9.6(422,423) | Period of lien    |
| 9.7(422,423) | Fees              |

## CHAPTER 10

## INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

|                        |  |
|------------------------|--|
| 10.1(421)              | Definitions  |
| 10.2(421)              | Interest   |
| 10.3(422,423,450,452A) | Interest on refunds and unpaid tax                                     |
| 10.4(421)              | Frivolous return penalty   |
| 10.5(421)              | Improper receipt of credit or refund                                   |
|                        | PENALTY FOR TAX PERIOD BEGINNING AFTER JANUARY 1, 1991                 |
| 10.6(421)              | Penalties  |
| 10.7(421)              | Waiver of penalty—definitions  |
| 10.8(421)              | Penalty exceptions   |
| 10.9(421)              | Notice of penalty exception for one late return in a three-year period |
| 10.10 to 10.19         | Reserved   |
|                        | RETAIL SALES   |
| 10.20 to 10.29         | Reserved   |
|                        | USE  |
| 10.30 to 10.39         | Reserved   |
|                        | INDIVIDUAL INCOME  |
| 10.40 to 10.49         | Reserved   |
|                        | WITHHOLDING  |
| 10.50 to 10.55         | Reserved   |
|                        | CORPORATE  |
| 10.56 to 10.65         | Reserved   |
|                        | FINANCIAL INSTITUTIONS   |
| 10.66 to 10.70         | Reserved   |
|                        | MOTOR FUEL   |
| 10.71(452A)            | Penalty and enforcement provisions                                     |
| 10.72(452A)            | Interest   |
| 10.73 to 10.75         | Reserved   |
|                        | CIGARETTES AND TOBACCO   |
| 10.76(453A)            | Penalties  |
| 10.77(453A)            | Interest   |
| 10.78                  | Reserved   |
| 10.79(453A)            | Request for statutory exception to penalty                             |
| 10.80 to 10.84         | Reserved   |
|                        | INHERITANCE  |
| 10.85 to 10.89         | Reserved   |
|                        | IOWA ESTATE  |
| 10.90 to 10.95         | Reserved   |
|                        | GENERATION SKIPPING  |
| 10.96 to 10.100        | Reserved   |

## FIDUCIARY INCOME

10.101 to 10.109 Reserved

## HOTEL AND MOTEL

10.110 to 10.114 Reserved

## ALL TAXES

10.115(421) Application of payments to penalty, interest, and then tax due for payments made on or after January 1, 1995, unless otherwise designated by the taxpayer

## JEOPARDY ASSESSMENTS

10.116(422,453B) Jeopardy assessments  
 10.117(422,453B) Procedure for posting bond  
 10.118(422,453B) Time limits  
 10.119(422,453B) Amount of bond  
 10.120(422,453B) Posting of bond  
 10.121(422,453B) Order  
 10.122(422,453B) Director's order  
 10.123(422,453B) Type of bond  
 10.124(422,453B) Form of surety bond  
 10.125(422,453B) Duration of the bond  
 10.126(422,453B) Exoneration of the bond

TITLE II  
EXCISECHAPTER 11  
ADMINISTRATION

11.1(422,423) Definitions  
 11.2(422,423) Statute of limitations  
 11.3(422,423) Credentials and receipts  
 11.4(422,423) Retailers required to keep records  
 11.5(422,423) Audit of records  
 11.6(422,423) Billings  
 11.7(422,423) Collections  
 11.8(422,423) No property exempt from distress and sale  
 11.9(422,423) Information confidential  
 11.10(423) Bonding procedure

## CHAPTER 12

## FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

12.1(422) Returns and payment of tax  
 12.2(422,423) Remittances  
 12.3(422) Permits and negotiated rate agreements  
 12.4(422) Nonpermit holders  
 12.5(422,423) Regular permit holders responsible for collection of tax  
 12.6(422,423) Sale of business  
 12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors  
 12.8(422) Vending machines and other coin-operated devices  
 12.9(422) Claim for refund of tax  
 12.10(423) Audit limitation for certain services  
 12.11 Reserved  
 12.12(422) Extension of time for filing  
 12.13(422) Determination of filing status  
 12.14(422,423) Immediate successor liability for unpaid tax

- 12.15(422,423) Officers and partners—personal liability for unpaid tax
- 12.16(422) Show sponsor liability
- 12.17(422) Purchaser liability for unpaid sales tax
- 12.18(423) Biodiesel production refund

## CHAPTER 13

## PERMITS

- 13.1(422) Retail sales tax permit required
- 13.2(422) Application for permit
- 13.3(422) Permit not transferable—sale of business
- 13.4(422) Permit—consolidated return optional
- 13.5(422) Retailers operating a temporary business
- 13.6(422) Reinstatement of canceled permit
- 13.7(422) Reinstatement of revoked permit
- 13.8(422) Withdrawal of permit
- 13.9(422) Loss or destruction of permit
- 13.10(422) Change of location
- 13.11(422) Change of ownership
- 13.12(422) Permit posting
- 13.13(422) Trustees, receivers, executors and administrators
- 13.14(422) Vending machines and other coin-operated devices
- 13.15(422) Other amusements
- 13.16(422) Substantially delinquent tax—denial of permit
- 13.17(422) Substantially delinquent tax—revocation of permit

## CHAPTER 14

## COMPUTATION OF TAX

- 14.1(422) Tax not to be included in price
- 14.2(422,423,77GA, ch1130) Retail bracket system for state sales and local option sales and service tax
- 14.3(422,423) Taxation of transactions due to rate change

## CHAPTER 15

## DETERMINATION OF A SALE AND SALE PRICE

- 15.1(422) Conditional sales to be included in gross sales
- 15.2(422,423) Repossessed goods
- 15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers
- 15.4(422,423) Bad debts
- 15.5(422,423) Recovery of bad debts by collection agency or attorney
- 15.6(422,423) Discounts, rebates and coupons
- 15.7 Reserved
- 15.8(422,423) Returned merchandise
- 15.9(422) Goods damaged in transit
- 15.10(422) Consignment sales
- 15.11(422,423) Leased departments
- 15.12(422,423) Excise tax included in and excluded from gross receipts
- 15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services
- 15.14(422,423) Installation charges when tangible personal property is sold at retail
- 15.15(422) Premiums and gifts
- 15.16(422) Gift certificates
- 15.17(422,423) Finance charge
- 15.18(422,423) Coins and other currency exchanged at greater than face value

- 15.19(422,423) Trade-ins
- 15.20(422,423) Corporate mergers which do not involve taxable sales of tangible personal property or services

CHAPTER 16  
TAXABLE SALES

- 16.1(422) Tax imposed
- 16.2(422) Used or secondhand tangible personal property
- 16.3(422,423) Tangible personal property used or consumed by the manufacturer thereof
- 16.4(422,423) Patterns, dies, jigs, tools, and manufacturing or printing aids
- 16.5(422,423) Explosives used in mines, quarries and elsewhere
- 16.6(422,423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates and wood mounts
- 16.7 Reserved
- 16.8(422,423) Wholesalers and jobbers selling at retail
- 16.9(422,423) Materials and supplies sold to retail stores
- 16.10(422,423) Sales to certain corporations organized under federal statutes
- 16.11(422,423) Paper plates, paper cups, paper dishes, paper napkins, paper, wooden or plastic spoons and forks and straws
- 16.12(422) Tangible personal property purchased for resale but incidentally consumed by the purchaser
- 16.13(422) Property furnished without charge by employers to employees
- 16.14(422) Sales in interstate commerce—goods delivered into this state
- 16.15(422) Owners or operators of buildings
- 16.16(422,423) Tangible personal property made to order
- 16.17(422,423) Blacksmith and machine shops
- 16.18(422,423) Sales of signs at retail
- 16.19(422,423) Products sold by cooperatives to members or patrons
- 16.20(422,423) Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations
- 16.21(422,423) Sale of pets
- 16.22(422,423) Sales on layaway
- 16.23(422) Meal tickets, coupon books, and merchandise cards
- 16.24(422,423) Truckers engaged in retail business
- 16.25(422,423) Foreign truckers selling at retail in Iowa
- 16.26(422) Admissions to amusements, athletic events, commercial amusement enterprises, fairs, and games
- 16.27 and 16.28 Reserved
- 16.29(422) Rental of personal property in connection with the operation of amusements
- 16.30(422) Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee
- 16.31 Reserved
- 16.32(422) River steamboats
- 16.33(422) Pawnbrokers
- 16.34(422,423) Druggists and pharmacists
- 16.35(422,423) Memorial stones
- 16.36(422) Communication services furnished by hotel to its guests
- 16.37(422) Private clubs
- 16.38 Reserved
- 16.39(422) Athletic events
- 16.40(422,423) Iowa dental laboratories
- 16.41(422,423) Dental supply houses

|                |  |
|----------------|--|
| 16.42(422)     | News distributors and magazine distributors                      |
| 16.43(422,423) | Magazine subscriptions by independent dealers                    |
| 16.44(422,423) | Sales by finance companies                                       |
| 16.45(422,423) | Sale of baling wire and baling twine                             |
| 16.46(422,423) | Snowmobiles and motorboats                                       |
| 16.47(422)     | Conditional sales contracts                                      |
| 16.48(422,423) | Carpeting and other floor coverings                              |
| 16.49(422,423) | Bowling  |
| 16.50(422,423) | Various special problems relating to public utilities            |
| 16.51(422,423) | Sales of services treated as sales of tangible personal property |
| 16.52(422,423) | Sales of prepaid merchandise cards                               |

#### CHAPTER 17 EXEMPT SALES

|                |   |
|----------------|---|
| 17.1(422,423)  | Gross receipts expended for educational, religious, and charitable purposes   |
| 17.2(422)      | Fuel used in processing—when exempt   |
| 17.3(422,423)  | Processing exemptions   |
| 17.4(422,423)  | Commercial fertilizer and agricultural limestone  |
| 17.5(422,423)  | Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O   |
| 17.6(422,423)  | Sales of vehicles subject to registration—new and used—by dealers   |
| 17.7(422,423)  | Sales to certain federal corporations   |
| 17.8(422)      | Sales in interstate commerce—goods transported or shipped from this state   |
| 17.9(422,423)  | Sales of breeding livestock, fowl and certain other property used in agricultural production  |
| 17.10(422,423) | Materials used for seed inoculations  |
| 17.11(422,423) | Educational institution   |
| 17.12(422)     | Coat or hat checkrooms  |
| 17.13(422,423) | Railroad rolling stock  |
| 17.14(422,423) | Chemicals, solvents, sorbents, or reagents used in processing   |
| 17.15(422,423) | Demurrage charges   |
| 17.16(422,423) | Sale of a draft horse   |
| 17.17(422,423) | Beverage container deposits   |
| 17.18(422,423) | Films, video tapes and other media, exempt rental and sale  |
| 17.19(422,423) | Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax |
| 17.20(422)     | Raffles   |
| 17.21(422)     | Exempt sales of prizes  |
| 17.22(422,423) | Modular homes   |
| 17.23(422,423) | Sales to other states and their political subdivisions  |
| 17.24(422)     | Nonprofit private museums   |
| 17.25(422,423) | Exempt sales by excursion boat licensees  |
| 17.26(422,423) | Bedding for agricultural livestock or fowl  |
| 17.27(422,423) | Statewide notification center service exemption   |
| 17.28(422,423) | State fair and fair societies   |
| 17.29(422,423) | Reciprocal shipment of wines  |
| 17.30(422,423) | Nonprofit organ procurement organizations   |
| 17.31(422,423) | Sale of electricity to water companies  |
| 17.32(422)     | Food and beverages sold by certain organizations are exempt   |
| 17.33(422,423) | Sales of building materials, supplies and equipment to not-for-profit rural water districts   |

|                |   |
|----------------|---|
| 17.34(422,423) | Sales to hospices                                       |
| 17.35(422,423) | Sales of livestock ear tags                             |
| 17.36(422,423) | Sale or rental of information services                  |
| 17.37(422,423) | Temporary exemption from sales tax on certain utilities |
| 17.38(422,423) | State sales tax phase-out on energies                   |
| 17.39(422,423) | Art centers   |
| 17.40(422,423) | Community action agencies                               |
| 17.41(422,423) | Legislative service bureau                              |

## CHAPTER 18

TAXABLE AND EXEMPT SALES DETERMINED BY METHOD  
OF TRANSACTION OR USAGE

|                |   |
|----------------|---|
| 18.1(422,423)  | Tangible personal property purchased from the United States government  |
| 18.2(422,423)  | Sales of butane, propane and other like gases in cylinder drums, etc.   |
| 18.3(422,423)  | Chemical compounds used to treat water  |
| 18.4(422)      | Mortgages and trustees  |
| 18.5(422,423)  | Sales to agencies or instrumentalities of federal, state, county and municipal government                               |
| 18.6(422,423)  | Relief agencies   |
| 18.7(422,423)  | Containers, including packing cases, shipping cases, wrapping material and similar items                                |
| 18.8(422)      | Auctioneers   |
| 18.9(422)      | Sales by farmers  |
| 18.10(422,423) | Florists  |
| 18.11(422,423) | Landscaping materials   |
| 18.12(422,423) | Hatcheries  |
| 18.13(422,423) | Sales by the state of Iowa, its agencies and instrumentalities  |
| 18.14(422,423) | Sales of livestock and poultry feeds  |
| 18.15(422,423) | Student fraternities and sororities   |
| 18.16(422,423) | Photographers and photostaters  |
| 18.17(422,423) | Gravel and stone  |
| 18.18(422,423) | Sale of ice   |
| 18.19(422,423) | Antiques, curios, old coins or collector's postage stamps   |
| 18.20(422,423) | Communication services  |
| 18.21(422,423) | Morticians or funeral directors   |
| 18.22(422,423) | Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians                                 |
| 18.23(422)     | Veterinarians   |
| 18.24(422,423) | Hospitals, infirmaries and sanitariums  |
| 18.25(422,423) | Warranties and maintenance contracts  |
| 18.26(422)     | Service charge and gratuity   |
| 18.27(422)     | Advertising agencies, commercial artists, and designers   |
| 18.28(422,423) | Casual sales  |
| 18.29(422,423) | Processing, a definition of the word, its beginning and completion characterized with specific examples of processing   |
| 18.30(422)     | Taxation of American Indians  |
| 18.31(422,423) | Tangible personal property purchased by one who is engaged in the performance of a service                              |
| 18.32(422,423) | Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations |
| 18.33(422,423) | Printers' and publishers' supplies exemption with retroactive effective date  |
| 18.34(422,423) | Automatic data processing   |

|                |  |
|----------------|--|
| 18.35(422,423) | Drainage tile  |
| 18.36(422,423) | True leases and purchases of tangible personal property by lessors   |
| 18.37(422,423) | Motor fuel, special fuel, aviation fuels and gasoline  |
| 18.38(422,423) | Urban transit systems  |
| 18.39(422,423) | Sales or services rendered, furnished, or performed by a county or city  |
| 18.40(422,423) | Renting of rooms   |
| 18.41(422,423) | Envelopes for advertising  |
| 18.42(422,423) | Newspapers, free newspapers and shoppers' guides   |
| 18.43(422,423) | Written contract   |
| 18.44(422,423) | Sale or rental of farm machinery and equipment   |
| 18.45(422,423) | Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997     |
| 18.46(422,423) | Automotive fluids  |
| 18.47(422,423) | Maintenance or repair of fabric or clothing  |
| 18.48(422,423) | Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production                    |
| 18.49(422,423) | Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999  |
| 18.50(422,423) | Property used by a lending organization  |
| 18.51(422,423) | Sales to nonprofit legal aid organizations   |
| 18.52(422,423) | Irrigation equipment used in farming operations  |
| 18.53(422,423) | Sales to persons engaged in the consumer rental purchase business  |
| 18.54(422,423) | Sales of advertising material  |
| 18.55(422,423) | Drop shipment sales  |
| 18.56(422,423) | Wind energy conversion property  |
| 18.57(422,423) | Exemptions applicable to the production of flowering, ornamental, and vegetable plants   |
| 18.58(422,423) | Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997 |
| 18.59(422,423) | Exempt sales to nonprofit hospitals  |
| 18.60(422,423) | Exempt sales of gases used in the manufacturing process  |
| 18.61(422,423) | Exclusion from tax for property delivered by certain media   |

## CHAPTER 19

### SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

|                |   |
|----------------|---|
| 19.1(422,423)  | General information   |
| 19.2(422,423)  | Contractors are consumers of building materials, supplies, and equipment by statute                                   |
| 19.3(422,423)  | Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners               |
| 19.4(422,423)  | Contractors, subcontractors or builders who are retailers   |
| 19.5(422,423)  | Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa |
| 19.6(422,423)  | Prefabricated structures  |
| 19.7(422,423)  | Types of construction contracts   |
| 19.8(422,423)  | Machinery and equipment sales contracts with installation   |
| 19.9(422,423)  | Construction contracts with equipment sales (mixed contracts)   |
| 19.10(422,423) | Distinguishing machinery and equipment from real property   |
| 19.11(422,423) | Tangible personal property which becomes structures   |
| 19.12(422,423) | Construction contracts with tax exempt entities   |
| 19.13(422,423) | Tax on enumerated services  |
| 19.14(422,423) | Transportation cost   |
| 19.15(422,423) | Start-up charges  |

|                |                             |
|----------------|-----------------------------|
| 19.16(422,423) | Liability of subcontractors |
| 19.17(422,423) | Liability of sponsors       |
| 19.18(422,423) | Withholding                 |
| 19.19(422,423) | Resale certificates         |
| 19.20(423)     | Reporting for use tax       |

## CHAPTER 20

FOODS FOR HUMAN CONSUMPTION, PRESCRIPTION DRUGS, INSULIN,  
HYPODERMIC SYRINGES, DIABETIC TESTING MATERIALS, PROSTHETIC,  
ORTHOTIC OR ORTHOPEDIC DEVICES

|                |  |
|----------------|--|
| 20.1(422,423)  | Foods for human consumption  |
| 20.2(422,423)  | Food coupon rules  |
| 20.3(422,423)  | Nonparticipating retailer in the food coupon program                           |
| 20.4(422,423)  | Determination of eligible foods  |
| 20.5(422,423)  | Meals and prepared food  |
| 20.6(422,423)  | Vending machines   |
| 20.7(422,423)  | Prescription drugs and devices   |
| 20.8(422,423)  | Exempt sales of nonprescription medical devices, other than prosthetic devices |
| 20.9(422,423)  | Prosthetic, orthotic and orthopedic devices                                    |
| 20.10(422,423) | Sales and rentals covered by Medicaid and Medicare                             |
| 20.11(422,423) | Reporting  |
| 20.12(422,423) | Exempt sales of clothing and footwear during two-day period in August          |

## CHAPTERS 21 to 25

Reserved

## TITLE III

## SALES TAX ON SERVICES

## CHAPTER 26

## SALES AND USE TAX ON SERVICES

|                |   |
|----------------|---|
| 26.1(422)      | Definition and scope                              |
| 26.2(422)      | Enumerated services exempt                        |
| 26.3(422)      | Alteration and garment repair                     |
| 26.4(422)      | Armored car                                       |
| 26.5(422)      | Vehicle repair                                    |
| 26.6(422)      | Battery, tire and allied                          |
| 26.7(422)      | Investment counseling                             |
| 26.8(422)      | Bank and financial institution service charges    |
| 26.9(422)      | Barber and beauty                                 |
| 26.10(422)     | Boat repair                                       |
| 26.11(422)     | Car and vehicle wash and wax                      |
| 26.12(422)     | Carpentry   |
| 26.13(422)     | Roof, shingle and glass repair                    |
| 26.14(422)     | Dance schools and dance studios                   |
| 26.15(422)     | Dry cleaning, pressing, dyeing and laundering     |
| 26.16(422)     | Electrical and electronic repair and installation |
| 26.17(422)     | Engraving, photography and retouching             |
| 26.18(422,423) | Equipment and tangible personal property rental   |
| 26.19(422)     | Excavating and grading                            |
| 26.20(422)     | Farm implement repair of all kinds                |
| 26.21(422)     | Flying service                                    |
| 26.22(422)     | Furniture, rug, upholstery, repair and cleaning   |
| 26.23(422)     | Fur storage and repair                            |

|                |   |
|----------------|---|
| 26.24(422)     | Golf and country clubs and all commercial recreation  |
| 26.25(422)     | House and building moving   |
| 26.26(422)     | Household appliance, television and radio repair  |
| 26.27(422)     | Jewelry and watch repair  |
| 26.28(422)     | Machine operators   |
| 26.29(422)     | Machine repair of all kinds   |
| 26.30(422)     | Motor repair  |
| 26.31(422)     | Motorcycle, scooter and bicycle repair  |
| 26.32(422)     | Oilers and lubricators  |
| 26.33(422)     | Office and business machine repair  |
| 26.34(422)     | Painting, papering and interior decorating  |
| 26.35(422)     | Parking facilities  |
| 26.36(422)     | Pipe fitting and plumbing   |
| 26.37(422)     | Wood preparation  |
| 26.38(422)     | Private employment agency, executive search agency  |
| 26.39(422)     | Printing and binding  |
| 26.40(422)     | Sewing and stitching  |
| 26.41(422)     | Shoe repair and shoeshine   |
| 26.42(422)     | Storage warehousing, storage locker, and storage warehousing of raw agricultural products and household goods |
| 26.43(422,423) | Telephone answering service   |
| 26.44(422)     | Test laboratories   |
| 26.45(422)     | Termite, bug, roach, and pest eradicators   |
| 26.46(422)     | Tin and sheet metal repair  |
| 26.47(422)     | Turkish baths, massage, and reducing salons   |
| 26.48(422)     | Vulcanizing, recapping or retreading  |
| 26.49          | Reserved  |
| 26.50(422)     | Weighing  |
| 26.51(422)     | Welding   |
| 26.52(422)     | Well drilling   |
| 26.53(422)     | Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables           |
| 26.54(422)     | Wrecking service  |
| 26.55(422)     | Wrecker and towing  |
| 26.56(422)     | Cable and pay television  |
| 26.57(422)     | Camera repair   |
| 26.58(422)     | Campgrounds   |
| 26.59(422)     | Gun repair  |
| 26.60(422)     | Janitorial and building maintenance or cleaning   |
| 26.61(422)     | Lawn care   |
| 26.62(422)     | Landscaping   |
| 26.63(422)     | Pet grooming  |
| 26.64(422)     | Reflexology   |
| 26.65(422)     | Tanning beds and tanning salons   |
| 26.66(422)     | Tree trimming and removal   |
| 26.67(422)     | Water conditioning and softening  |
| 26.68(422)     | Motor vehicle, recreational vehicle and recreational boat rental  |
| 26.69(422)     | Security and detective services   |
| 26.70          | Reserved  |
| 26.71(422,423) | Solid waste collection and disposal services  |
| 26.72(422,423) | Sewage services   |
| 26.73          | Reserved  |

|                |  |
|----------------|--|
| 26.74(422,423) | Aircraft rental                        |
| 26.75(422,423) | Sign construction and installation     |
| 26.76(422,423) | Swimming pool cleaning and maintenance |
| 26.77(422,423) | Taxidermy                              |
| 26.78(422,423) | Mini-storage                           |
| 26.79(422,423) | Dating services                        |
| 26.80(422,423) | Limousine service                      |
| 26.81(422)     | Sales of bundled services contracts    |

## CHAPTER 27

## AUTOMOBILE RENTAL EXCISE TAX

|                    |  |
|--------------------|--|
| 27.1(422,422C,423) | Definitions and characterizations      |
| 27.2(422,422C,423) | Tax imposed upon rental of automobiles |
| 27.3(422,422C,423) | Lessor's obligation to collect tax     |
| 27.4(422,422C,423) | Administration of tax                  |

TITLE IV  
USECHAPTER 28  
DEFINITIONS

|           |  |
|-----------|--|
| 28.1(423) | Taxable use defined  |
| 28.2(423) | Processing of property defined                                 |
| 28.3(423) | Purchase price defined   |
| 28.4(423) | Retailer maintaining a place of business in this state defined |

CHAPTER 29  
CERTIFICATES

|           |   |
|-----------|---|
| 29.1(423) | Certificate of registration                               |
| 29.2(423) | Cancellation of certificate of registration               |
| 29.3(423) | Certificates of resale, direct pay permits, or processing |

CHAPTER 30  
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

|               |  |
|---------------|--|
| 30.1(423)     | Liability for use tax and denial and revocation of permit                                    |
| 30.2(423)     | Measure of use tax   |
| 30.3(421,423) | Consumer's use tax return  |
| 30.4(423)     | Retailer's use tax return  |
| 30.5(423)     | Collection requirements of registered retailers  |
| 30.6(423)     | Bracket system to be used by registered vendors  |
| 30.7(423)     | Sales tax or use tax paid to another state   |
| 30.8(423)     | Registered retailers selling tangible personal property on a conditional sale contract basis |
| 30.9(423)     | Registered vendors repossessing goods sold on a conditional sale contract basis              |
| 30.10(423)    | Penalties for late filing of a monthly tax deposit or use tax returns                        |
| 30.11(423)    | Claim for refund of use tax  |
| 30.12(423)    | Extension of time for filing   |

CHAPTER 31  
RECEIPTS SUBJECT TO USE TAX

|           |   |
|-----------|---|
| 31.1(423) | Transactions consummated outside this state                                 |
| 31.2(423) | Goods coming into this state  |
| 31.3(423) | Sales by federal government or agencies to consumers                        |
| 31.4(423) | Sales for lease of vehicles subject to registration—taxation and exemptions |

- 31.5(423) Motor vehicle use tax on long-term leases
- 31.6(423) Sales of aircraft subject to registration
- 31.7(423) Communication services

#### CHAPTER 32

##### RECEIPTS EXEMPT FROM USE TAX

- 32.1(423) Tangible personal property and taxable services subject to sales tax
- 32.2(423) Sales tax exemptions applicable to use tax
- 32.3(423) Mobile homes and manufactured housing
- 32.4(423) Exemption for vehicles used in interstate commerce
- 32.5(423) Exemption for transactions if sales tax paid
- 32.6(423) Exemption for ships, barges, and other waterborne vessels
- 32.7(423) Exemption for containers
- 32.8(423) Exemption for building materials used outside this state
- 32.9(423) Exemption for vehicles subject to registration
- 32.10(423) Exemption for vehicles operated under Iowa Code chapter 326
- 32.11(423) Exemption for vehicles purchased for rental or lease
- 32.12(423) Exemption for vehicles previously purchased for rental
- 32.13(423) Exempt use of aircraft on and after July 1, 1999

#### CHAPTER 33

##### RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

- 33.1 Reserved
- 33.2(423) Federal manufacturer's or retailer's excise tax
- 33.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current
- 33.4(423) Repair of tangible personal property outside the state of Iowa
- 33.5(423) Taxation of American Indians
- 33.6(422,423) Exemption for property used in Iowa only in interstate commerce
- 33.7(423) Property used to manufacture certain vehicles to be leased
- 33.8(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa
- 33.9(423) Sales of mobile homes, manufactured housing, and related property and services
- 33.10(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate

#### CHAPTER 34

##### VEHICLES SUBJECT TO REGISTRATION

- 34.1(422,423) Definitions
- 34.2(423) County treasurer shall collect tax
- 34.3(423) Returned vehicles and tax refunded by manufacturers
- 34.4(423) Use tax collections required
- 34.5(423) Exemptions
- 34.6(423) Vehicles subject to registration received as gifts or prizes
- 34.7(423) Titling of used foreign vehicles by dealers
- 34.8(423) Dealer's retail sales tax returns
- 34.9(423) Affidavit forms
- 34.10(423) Exempt and taxable purchases of vehicles for taxable rental
- 34.11(423) Manufacturer's refund of use tax to a consumer, lessor, or lessee of a defective motor vehicle
- 34.12(423) Government payments for a motor vehicle which do not involve government purchases of the same

- 34.13(423) Transfers of vehicles resulting from corporate mergers and other types of corporate transfers
- 34.14(423) Refund of use tax paid on the purchase of a motor vehicle
- 34.15(423) Registration by manufacturers
- 34.16(423) Rebates
- 34.17(321,423) Repossession of a vehicle
- 34.18(423) Federal excise tax
- 34.19(423) Claiming an exemption from Iowa tax
- 34.20(423) Affidavit forms
- 34.21(423) Insurance companies

#### CHAPTERS 35 and 36

Reserved

#### CHAPTER 37

#### UNDERGROUND STORAGE TANK RULES

#### INCORPORATED BY REFERENCE

- 37.1(424) Rules incorporated

#### TITLE V *INDIVIDUAL*

#### CHAPTER 38 ADMINISTRATION

- 38.1(422) Definitions
- 38.2(422) Statute of limitations
- 38.3(422) Retention of records
- 38.4(422) Authority for deductions
- 38.5(422) Jeopardy assessments
- 38.6(422) Information deemed confidential
- 38.7(422) Power of attorney
- 38.8(422) Delegations to audit and examine
- 38.9(422) Bonding procedure
- 38.10(422) Indexation
- 38.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims
- 38.12(422) Indexation of the optional standard deduction for inflation
- 38.13(422) Reciprocal tax agreements
- 38.14(422) Information returns for reporting income payments to the department of revenue
- 38.15(422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse
- 38.16(422) Preparation of taxpayers' returns by department employees
- 38.17(422) Resident determination
- 38.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return
- 38.19(422) Indication of dependent child health care coverage on tax return

#### CHAPTER 39

#### FILING RETURN AND PAYMENT OF TAX

- 39.1(422) Who must file
- 39.2(422) Time and place for filing
- 39.3(422) Form for filing
- 39.4(422) Filing status
- 39.5(422) Payment of tax
- 39.6(422) Minimum tax

|            |  |
|------------|--|
| 39.7(422)  | Tax on lump-sum distributions  |
| 39.8(422)  | State income tax limited to taxpayer's net worth immediately before the distressed sale  |
| 39.9(422)  | Special tax computation for all low-income taxpayers except single taxpayers   |
| 39.10(422) | Election to report excess income from sale or exchange of livestock due to drought in the next tax year  |
| 39.11(422) | Forgiveness of tax for an individual whose federal income tax was forgiven because the individual was killed outside the United States due to military or terroristic action |
| 39.12(422) | Tax benefits for persons in the armed forces deployed outside the United States  |
| 39.13      | Reserved   |
| 39.14(422) | Tax benefits for persons serving in support of the Bosnia-Herzegovina hazardous duty area  |
| 39.15(422) | Special tax computation for taxpayers who are 65 years of age or older   |

## CHAPTER 40

## DETERMINATION OF NET INCOME

|                 |   |
|-----------------|---|
| 40.1(422)       | Net income defined  |
| 40.2(422)       | Interest and dividends from federal securities  |
| 40.3(422)       | Interest and dividends from foreign securities, and securities of state and their political subdivisions                            |
| 40.4            | Reserved  |
| 40.5(422)       | Military pay  |
| 40.6(422)       | Interest and dividend income  |
| 40.7(422)       | Current year capital gains and losses   |
| 40.8(422)       | Gains and losses on property acquired before January 1, 1934  |
| 40.9(422)       | Work opportunity tax credit and alcohol fuel credit   |
| 40.10 and 40.11 | Reserved  |
| 40.12(422)      | Income from partnerships or limited liability companies   |
| 40.13(422)      | Subchapter "S" income   |
| 40.14(422)      | Contract sales  |
| 40.15(422)      | Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes |
| 40.16(422)      | Income of nonresidents  |
| 40.17(422)      | Income of part-year residents   |
| 40.18(422)      | Net operating loss carrybacks and carryovers  |
| 40.19(422)      | Casualty losses   |
| 40.20(422)      | Adjustments to prior years  |
| 40.21(422)      | Additional deduction for wages paid or accrued for work done in Iowa by certain individuals   |
| 40.22(422)      | Disability income exclusion   |
| 40.23(422)      | Social security benefits  |
| 40.24(99E)      | Lottery prizes  |
| 40.25 and 40.26 | Reserved  |
| 40.27(422)      | Incomes from distressed sales of qualifying taxpayers   |
| 40.28           | Reserved  |
| 40.29(422)      | Intangible drilling costs   |
| 40.30(422)      | Percentage depletion  |
| 40.31(422)      | Away-from-home expenses of state legislators  |
| 40.32(422)      | Interest and dividends from regulated investment companies which are exempt from federal income tax                                 |
| 40.33           | Reserved  |

|                 |  |
|-----------------|--|
| 40.34(422)      | Exemption of restitution payments for persons of Japanese ancestry   |
| 40.35(422)      | Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans  |
| 40.36(422)      | Exemption of interest earned on bonds issued to finance beginning farmer loan program  |
| 40.37(422)      | Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board  |
| 40.38(422)      | Capital gains deduction or exclusion for certain types of net capital gains  |
| 40.39(422)      | Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system   |
| 40.40(422)      | Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield  |
| 40.41           | Reserved   |
| 40.42(422)      | Depreciation of speculative shell buildings  |
| 40.43(422)      | Retroactive exemption for payments received for providing unskilled in-home health care services to a relative   |
| 40.44(422,541A) | Individual development accounts  |
| 40.45(422)      | Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa  |
| 40.46(422)      | Taxation of compensation of nonresident members of professional athletic teams   |
| 40.47(422)      | Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors   |
| 40.48(422)      | Health insurance premiums deduction  |
| 40.49(422)      | Employer social security credit for tips   |
| 40.50(422)      | Computing state taxable amounts of pension benefits from state pension plans   |
| 40.51(422)      | Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area                |
| 40.52(422)      | Mutual funds   |
| 40.53(422)      | Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted  |
| 40.54(422)      | Roth individual retirement accounts  |
| 40.55(422)      | Exemption of income payments for victims of the Holocaust and heirs of victims   |
| 40.56(422)      | Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions  |
| 40.57(422)      | Installment sales by taxpayers using the accrual method of accounting  |
| 40.58(422)      | Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States   |
| 40.59(422)      | Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate                                   |
| 40.60(422)      | Additional first-year depreciation allowance   |
| 40.61(422)      | Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn |
| 40.62(422)      | Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve                                 |
| 40.63(422)      | Exclusion of income from military student loan repayments  |
| 40.64(422)      | Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty                                   |

|            |  |
|------------|--|
| 40.65(422) | Section 179 expensing  |
| 40.66(422) | Deduction for certain unreimbursed expenses relating to a human organ transplant   |
| 40.67(422) | Deduction for alternative motor vehicles   |
| 40.68(422) | Injured veterans grant program   |
| 40.69(422) | Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain                                      |
| 40.70(422) | Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects |
| 40.71(422) | Exclusion for certain victim compensation payments   |
| 40.72(422) | Exclusion of Vietnam Conflict veterans bonus   |
| 40.73(422) | Exclusion for health care benefits of nonqualified tax dependents  |
| 40.74(422) | Exclusion for AmeriCorps Segal Education Award   |
| 40.75(422) | Exclusion of certain amounts received from Iowa veterans trust fund  |
| 40.76(422) | Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard  |
| 40.77(422) | Exclusion of biodiesel production refund   |
| 40.78(422) | Allowance of certain deductions for 2008 tax year  |
| 40.79(422) | Special filing provisions related to 2010 tax changes  |

## CHAPTER 41

## DETERMINATION OF TAXABLE INCOME

|            |  |
|------------|--|
| 41.1(422)  | Verification of deductions required  |
| 41.2(422)  | Federal rulings and regulations  |
| 41.3(422)  | Federal income tax deduction and federal refund                                  |
| 41.4(422)  | Optional standard deduction  |
| 41.5(422)  | Itemized deductions  |
| 41.6(422)  | Itemized deductions—separate returns by spouses                                  |
| 41.7(422)  | Itemized deductions—part-year residents  |
| 41.8(422)  | Itemized deductions—nonresidents   |
| 41.9(422)  | Annualizing income   |
| 41.10(422) | Income tax averaging   |
| 41.11(422) | Reduction in state itemized deductions for certain high-income taxpayers         |
| 41.12(422) | Deduction for home mortgage interest for taxpayers with mortgage interest credit |
| 41.13(422) | Iowa income taxes and Iowa tax refund  |

## CHAPTER 42

## ADJUSTMENTS TO COMPUTED TAX AND TAX CREDITS

|               |   |
|---------------|---|
| 42.1(257,422) | School district surtax  |
| 42.2(422D)    | Emergency medical services income surtax  |
| 42.3(422)     | Exemption credits   |
| 42.4(422)     | Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa |
| 42.5(422)     | Nonresident and part-year resident credit   |
| 42.6(422)     | Out-of-state tax credits  |
| 42.7(422)     | Out-of-state tax credit for minimum tax   |
| 42.8(422)     | Withholding and estimated tax credits   |
| 42.9(422)     | Motor fuel credit   |
| 42.10(422)    | Alternative minimum tax credit for minimum tax paid in a prior tax year   |
| 42.11(15,422) | Research activities credit  |
| 42.12(422)    | New jobs credit   |
| 42.13(422)    | Earned income credit  |
| 42.14(15)     | Investment tax credit—new jobs and income program and enterprise zone program                                     |

|                 |  |
|-----------------|--|
| 42.15(422)      | Child and dependent care credit  |
| 42.16(422)      | Franchise tax credit   |
| 42.17(15E)      | Eligible housing business tax credit                                     |
| 42.18(422)      | Assistive device tax credit  |
| 42.19(404A,422) | Historic preservation and cultural and entertainment district tax credit |
| 42.20(422)      | Ethanol blended gasoline tax credit                                      |
| 42.21(15E)      | Eligible development business investment tax credit                      |
| 42.22(15E,422)  | Venture capital credits  |
| 42.23(15)       | New capital investment program tax credits                               |
| 42.24(15E,422)  | Endow Iowa tax credit  |
| 42.25(422)      | Soy-based cutting tool oil tax credit                                    |
| 42.26(15I,422)  | Wage-benefits tax credit   |
| 42.27(422,476B) | Wind energy production tax credit  |
| 42.28(422,476C) | Renewable energy tax credit  |
| 42.29(15)       | High quality job creation program  |
| 42.30(15E,422)  | Economic development region revolving fund tax credit                    |
| 42.31(422)      | Early childhood development tax credit                                   |
| 42.32(422)      | School tuition organization tax credit                                   |
| 42.33(422)      | E-85 gasoline promotion tax credit                                       |
| 42.34(422)      | Biodiesel blended fuel tax credit  |
| 42.35(422)      | Soy-based transformer fluid tax credit                                   |
| 42.36(175,422)  | Agricultural assets transfer tax credit                                  |
| 42.37(15,422)   | Film qualified expenditure tax credit                                    |
| 42.38(15,422)   | Film investment tax credit   |
| 42.39(422)      | Ethanol promotion tax credit   |
| 42.40(422)      | Charitable conservation contribution tax credit                          |
| 42.41(15,422)   | Redevelopment tax credit   |
| 42.42(15)       | High quality jobs program  |
| 42.43(16,422)   | Disaster recovery housing project tax credit                             |
| 42.44(422)      | Deduction of credits   |
| 42.45(15)       | Aggregate tax credit limit for certain economic development programs     |
| 42.46(422)      | E-15 plus gasoline promotion tax credit                                  |

## CHAPTER 43

## ASSESSMENTS AND REFUNDS

|                    |  |
|--------------------|--|
| 43.1(422)          | Notice of discrepancies  |
| 43.2(422)          | Notice of assessment, supplemental assessments and refund adjustments                |
| 43.3(422)          | Overpayments of tax  |
| 43.4(68A,422,456A) | Optional designations of funds by taxpayer   |
| 43.5(422)          | Abatement of tax   |
| 43.6 and 43.7      | Reserved   |
| 43.8(422)          | Livestock production credit refunds for corporate taxpayers and individual taxpayers |

## CHAPTER 44

## PENALTY AND INTEREST

|           |  |
|-----------|--|
| 44.1(422) | Penalty  |
| 44.2(422) | Computation of interest on unpaid tax                                  |
| 44.3(422) | Computation of interest on refunds resulting from net operating losses |
| 44.4(422) | Computation of interest on overpayments                                |

CHAPTER 45  
PARTNERSHIPS

- 45.1(422) General rule
- 45.2(422) Partnership returns
- 45.3(422) Contents of partnership return
- 45.4(422) Distribution and taxation of partnership income

CHAPTER 46  
WITHHOLDING

- 46.1(422) Who must withhold
- 46.2(422) Computation of amount withheld
- 46.3(422) Forms, returns and reports
- 46.4(422) Withholding on nonresidents
- 46.5(422) Penalty and interest
- 46.6(422) Withholding tax credit to workforce development fund
- 46.7(422) ACE training program credits from withholding
- 46.8(260E) New job tax credit from withholding
- 46.9(15) Supplemental new jobs credit from withholding and alternative credit for housing assistance programs
- 46.10(403) Targeted jobs withholding tax credit

CHAPTER 47  
Reserved

CHAPTER 48  
COMPOSITE RETURNS

- 48.1(422) Composite returns
- 48.2(422) Definitions
- 48.3(422) Filing requirements
- 48.4 Reserved
- 48.5(422) Composite return required by director
- 48.6(422) Determination of composite Iowa income
- 48.7(422) Determination of composite Iowa tax
- 48.8(422) Estimated tax
- 48.9(422) Time and place for filing

CHAPTER 49  
ESTIMATED INCOME TAX FOR INDIVIDUALS

- 49.1(422) Who must pay estimated income tax
- 49.2(422) Time for filing and payment of tax
- 49.3(422) Estimated tax for nonresidents
- 49.4(422) Special estimated tax periods
- 49.5(422) Reporting forms
- 49.6(422) Penalty—underpayment of estimated tax
- 49.7(422) Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances

CHAPTER 50  
APPORTIONMENT OF INCOME FOR RESIDENT  
SHAREHOLDERS OF S CORPORATIONS

- 50.1(422) Apportionment of income for resident shareholders of S corporations
- 50.2(422) Definitions
- 50.3(422) Distributions

|            |   |
|------------|---|
| 50.4(422)  | Computation of net S corporation income                       |
| 50.5(422)  | Computation of federal tax on S corporation income            |
| 50.6(422)  | Income allocable to Iowa                                      |
| 50.7(422)  | Credit for taxes paid to another state                        |
| 50.8       | Reserved  |
| 50.9(422)  | Examples for tax periods beginning prior to January 1, 2002   |
| 50.10(422) | Example for tax periods beginning on or after January 1, 2002 |

TITLE VI  
*CORPORATION*

CHAPTER 51  
ADMINISTRATION

|           |  |
|-----------|--|
| 51.1(422) | Definitions                                  |
| 51.2(422) | Statutes of limitation                       |
| 51.3(422) | Retention of records                         |
| 51.4(422) | Cancellation of authority to do business     |
| 51.5(422) | Authority for deductions                     |
| 51.6(422) | Jeopardy assessments                         |
| 51.7(422) | Information confidential                     |
| 51.8(422) | Power of attorney                            |
| 51.9(422) | Delegation of authority to audit and examine |

CHAPTER 52  
FILING RETURNS, PAYMENT OF TAX,  
PENALTY AND INTEREST, AND TAX CREDITS

|                 |  |
|-----------------|--|
| 52.1(422)       | Who must file  |
| 52.2(422)       | Time and place for filing return   |
| 52.3(422)       | Form for filing  |
| 52.4(422)       | Payment of tax   |
| 52.5(422)       | Minimum tax  |
| 52.6(422)       | Motor fuel credit  |
| 52.7(422)       | Research activities credit   |
| 52.8(422)       | New jobs credit  |
| 52.9            | Reserved   |
| 52.10(15)       | New jobs and income program tax credits                                  |
| 52.11(422)      | Refunds and overpayments   |
| 52.12(422)      | Deduction of credits   |
| 52.13(422)      | Livestock production credits   |
| 52.14(15E)      | Enterprise zone tax credits  |
| 52.15(15E)      | Eligible housing business tax credit                                     |
| 52.16(422)      | Franchise tax credit   |
| 52.17(422)      | Assistive device tax credit  |
| 52.18(422)      | Historic preservation and cultural and entertainment district tax credit |
| 52.19(422)      | Ethanol blended gasoline tax credit                                      |
| 52.20(15E)      | Eligible development business investment tax credit                      |
| 52.21(15E,422)  | Venture capital credits  |
| 52.22(15)       | New capital investment program tax credits                               |
| 52.23(15E)      | Endow Iowa tax credit  |
| 52.24(422)      | Soy-based cutting tool oil tax credit                                    |
| 52.25(15I,422)  | Wage-benefits tax credit   |
| 52.26(422,476B) | Wind energy production tax credit  |
| 52.27(422,476C) | Renewable energy tax credit  |

|                |  |
|----------------|--|
| 52.28(15)      | High quality job creation program                                    |
| 52.29(15E,422) | Economic development region revolving fund tax credit                |
| 52.30(422)     | E-85 gasoline promotion tax credit                                   |
| 52.31(422)     | Biodiesel blended fuel tax credit                                    |
| 52.32(422)     | Soy-based transformer fluid tax credit                               |
| 52.33(175,422) | Agricultural assets transfer tax credit                              |
| 52.34(15,422)  | Film qualified expenditure tax credit                                |
| 52.35(15,422)  | Film investment tax credit   |
| 52.36(422)     | Ethanol promotion tax credit   |
| 52.37(422)     | Charitable conservation contribution tax credit                      |
| 52.38(422)     | School tuition organization tax credit                               |
| 52.39(15,422)  | Redevelopment tax credit   |
| 52.40(15)      | High quality jobs program  |
| 52.41(15)      | Aggregate tax credit limit for certain economic development programs |
| 52.42(16,422)  | Disaster recovery housing project tax credit                         |
| 52.43(422)     | E-15 plus gasoline promotion tax credit                              |

## CHAPTER 53

## DETERMINATION OF NET INCOME

|            |   |
|------------|---|
| 53.1(422)  | Computation of net income for corporations  |
| 53.2(422)  | Net operating loss carrybacks and carryovers  |
| 53.3(422)  | Capital loss carryback  |
| 53.4(422)  | Net operating and capital loss carrybacks and carryovers  |
| 53.5(422)  | Interest and dividends from federal securities  |
| 53.6(422)  | Interest and dividends from foreign securities, and securities of state and their political subdivisions  |
| 53.7(422)  | Safe harbor leases  |
| 53.8(422)  | Additions to federal taxable income   |
| 53.9(422)  | Gains and losses on property acquired before January 1, 1934  |
| 53.10(422) | Work opportunity tax and alcohol fuel credit  |
| 53.11(422) | Additional deduction for wages paid or accrued for work done in Iowa by certain individuals   |
| 53.12(422) | Federal income tax deduction  |
| 53.13(422) | Iowa income taxes and Iowa tax refund   |
| 53.14(422) | Method of accounting, accounting period   |
| 53.15(422) | Consolidated returns  |
| 53.16(422) | Federal rulings and regulations   |
| 53.17(422) | Depreciation of speculative shell buildings   |
| 53.18(422) | Deduction of multipurpose vehicle registration fee  |
| 53.19(422) | Deduction of foreign dividends  |
| 53.20(422) | Employer social security credit for tips  |
| 53.21(422) | Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust   |
| 53.22(422) | Additional first-year depreciation allowance  |
| 53.23(422) | Section 179 expensing   |
| 53.24(422) | Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain                                       |
| 53.25(422) | Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television, or video projects |
| 53.26(422) | Exclusion of biodiesel production refund  |

CHAPTER 54  
ALLOCATION AND APPORTIONMENT

- 54.1(422) Basis of corporate tax
- 54.2(422) Allocation or apportionment of investment income
- 54.3(422) Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978
- 54.4(422) Net gains and losses from the sale of assets
- 54.5(422) Where income is derived from the manufacture or sale of tangible personal property
- 54.6(422) Apportionment of income derived from business other than the manufacture or sale of tangible personal property
- 54.7(422) Apportionment of income of transportation, communications, and certain public utilities corporations
- 54.8(422) Apportionment of income derived from more than one business activity carried on within a single corporate structure
- 54.9(422) Allocation and apportionment of income in special cases

CHAPTER 55  
ASSESSMENTS, REFUNDS, APPEALS

- 55.1(422) Notice of discrepancies
- 55.2(422) Notice of assessment
- 55.3(422) Refund of overpaid tax
- 55.4(421) Abatement of tax
- 55.5(422) Protests

CHAPTER 56  
ESTIMATED TAX FOR CORPORATIONS

- 56.1(422) Who must pay estimated tax
- 56.2(422) Time for filing and payment of tax
- 56.3(422) Special estimate periods
- 56.4(422) Reporting forms
- 56.5(422) Penalties
- 56.6(422) Overpayment of estimated tax

TITLE VII  
*FRANCHISE*

CHAPTER 57  
ADMINISTRATION

- 57.1(422) Definitions
- 57.2(422) Statutes of limitation
- 57.3(422) Retention of records
- 57.4(422) Authority for deductions
- 57.5(422) Jeopardy assessments
- 57.6(422) Information deemed confidential
- 57.7(422) Power of attorney
- 57.8(422) Delegation to audit and examine

CHAPTER 58  
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST,  
AND TAX CREDITS

- 58.1(422) Who must file
- 58.2(422) Time and place for filing return
- 58.3(422) Form for filing
- 58.4(422) Payment of tax

|                 |  |
|-----------------|--|
| 58.5(422)       | Minimum tax  |
| 58.6(422)       | Refunds and overpayments   |
| 58.7(422)       | Allocation of franchise tax revenues                                     |
| 58.8(15E)       | Eligible housing business tax credit                                     |
| 58.9(15E)       | Eligible development business investment tax credit                      |
| 58.10(422)      | Historic preservation and cultural and entertainment district tax credit |
| 58.11(15E,422)  | Venture capital credits  |
| 58.12(15)       | New capital investment program tax credits                               |
| 58.13(15E)      | Endow Iowa tax credit  |
| 58.14(15I,422)  | Wage-benefits tax credit   |
| 58.15(422,476B) | Wind energy production tax credit  |
| 58.16(422,476C) | Renewable energy tax credit  |
| 58.17(15)       | High quality job creation program  |
| 58.18(15E,422)  | Economic development region revolving fund tax credit                    |
| 58.19(15,422)   | Film qualified expenditure tax credit                                    |
| 58.20(15,422)   | Film investment tax credit   |
| 58.21(15)       | High quality jobs program  |

## CHAPTER 59

## DETERMINATION OF NET INCOME

|            |  |
|------------|--|
| 59.1(422)  | Computation of net income for financial institutions   |
| 59.2(422)  | Net operating loss carrybacks and carryovers   |
| 59.3(422)  | Capital loss carryback   |
| 59.4(422)  | Net operating and capital loss carrybacks and carryovers   |
| 59.5(422)  | Interest and dividends from federal securities   |
| 59.6(422)  | Interest and dividends from foreign securities and securities of states and other political subdivisions         |
| 59.7(422)  | Safe harbor leases   |
| 59.8(422)  | Additional deduction for wages paid or accrued for work done in Iowa by certain individuals                      |
| 59.9(422)  | Work opportunity tax credit  |
| 59.10      | Reserved   |
| 59.11(422) | Gains and losses on property acquired before January 1, 1934   |
| 59.12(422) | Federal income tax deduction   |
| 59.13(422) | Iowa franchise taxes   |
| 59.14(422) | Method of accounting, accounting period  |
| 59.15(422) | Consolidated returns   |
| 59.16(422) | Federal rulings and regulations  |
| 59.17      | Reserved   |
| 59.18(422) | Depreciation of speculative shell buildings  |
| 59.19(422) | Deduction of multipurpose vehicle registration fee   |
| 59.20(422) | Disallowance of expenses to carry an investment subsidiary for tax years which begin on or after January 1, 1995 |
| 59.21(422) | S corporation and limited liability company financial institutions   |
| 59.22(422) | Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust                |
| 59.23(422) | Additional first-year depreciation allowance   |
| 59.24(422) | Section 179 expensing  |

## ALLOCATION AND APPORTIONMENT

|            |  |
|------------|--|
| 59.25(422) | Basis of franchise tax                       |
| 59.26(422) | Allocation and apportionment                 |
| 59.27(422) | Net gains and losses from the sale of assets |

- 59.28(422) Apportionment factor  
 59.29(422) Allocation and apportionment of income in special cases

## CHAPTER 60

## ASSESSMENTS, REFUNDS, APPEALS

- 60.1(422) Notice of discrepancies  
 60.2(422) Notice of assessment  
 60.3(422) Refund of overpaid tax  
 60.4(421) Abatement of tax  
 60.5(422) Protests

## CHAPTER 61

## ESTIMATED TAX FOR FINANCIAL INSTITUTIONS

- 61.1(422) Who must pay estimated tax  
 61.2(422) Time for filing and payment of tax  
 61.3(422) Special estimate periods  
 61.4(422) Reporting forms  
 61.5(422) Penalties  
 61.6(422) Overpayment of estimated tax

## CHAPTERS 62 to 66

Reserved

TITLE VIII  
*MOTOR FUEL*

## CHAPTER 67

## ADMINISTRATION

- 67.1(452A) Definitions  
 67.2(452A) Statute of limitations, supplemental assessments and refund adjustments  
 67.3(452A) Taxpayers required to keep records  
 67.4(452A) Audit—costs  
 67.5(452A) Estimate gallonage  
 67.6(452A) Timely filing of returns, reports, remittances, applications, or requests  
 67.7(452A) Extension of time to file  
 67.8(452A) Penalty and interest  
 67.9(452A) Penalty and enforcement provisions  
 67.10(452A) Application of remittance  
 67.11(452A) Reports, returns, records—variations  
 67.12(452A) Form of invoice  
 67.13(452A) Credit card invoices  
 67.14(452A) Original invoice retained by purchaser—certified copy if lost  
 67.15(452A) Taxes erroneously or illegally collected  
 67.16(452A) Credentials and receipts  
 67.17(452A) Information confidential  
 67.18(452A) Delegation to audit and examine  
 67.19(452A) Practice and procedure before the department of revenue  
 67.20(452A) Time for filing protest  
 67.21(452A) Bonding procedure  
 67.22(452A) Tax refund offset  
 67.23(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses  
 67.24(452A) Reinstatement of license canceled for cause  
 67.25(452A) Fuel used in implements of husbandry

- 67.26(452A) Excess tax collected
- 67.27(452A) Retailer gallons report

## CHAPTER 68

## MOTOR FUEL AND UNDYED SPECIAL FUEL

- 68.1(452A) Definitions
- 68.2(452A) Tax rates—time tax attaches—responsible party
- 68.3(452A) Exemption
- 68.4(452A) Ethanol blended gasoline taxation—nonterminal location
- 68.5(452A) Tax returns—computations
- 68.6(452A) Distribution allowance
- 68.7(452A) Supplier credit—uncollectible account
- 68.8(452A) Refunds
- 68.9(452A) Claim for refund—payment of claim
- 68.10(452A) Refund permit
- 68.11(452A) Revocation of refund permit
- 68.12(452A) Income tax credit in lieu of refund
- 68.13(452A) Reduction of refund—sales tax
- 68.14(452A) Terminal withdrawals—meters
- 68.15(452A) Terminal and nonterminal storage facility reports and records
- 68.16(452A) Method of reporting taxable gallonage
- 68.17(452A) Transportation reports
- 68.18(452A) Bill of lading or manifest requirements

## CHAPTER 69

LIQUEFIED PETROLEUM GAS—  
COMPRESSED NATURAL GAS

- 69.1(452A) Definitions
- 69.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax
- 69.3(452A) Penalty and interest
- 69.4(452A) Bonding procedure
- 69.5(452A) Persons authorized to place L.P.G. or C.N.G. in the fuel supply tank of a motor vehicle
- 69.6(452A) Requirements to be licensed
- 69.7(452A) Licensed metered pumps
- 69.8(452A) Single license for each location
- 69.9(452A) Dealer's and user's license nonassignable
- 69.10(452A) Separate storage—bulk sales—highway use
- 69.11(452A) Combined storage—bulk sales—highway sales or use
- 69.12(452A) Exemption certificates
- 69.13(452A) L.P.G. sold to the state of Iowa, its political subdivisions, contract carriers under contract with public schools to transport pupils or regional transit systems
- 69.14(452A) Refunds
- 69.15(452A) Notice of meter seal breakage
- 69.16(452A) Location of records—L.P.G. or C.N.G. users and dealers

TITLE IX  
*PROPERTY*CHAPTER 70  
REPLACEMENT TAX AND STATEWIDE PROPERTY TAXDIVISION I  
REPLACEMENT TAX

|             |                                    |
|-------------|------------------------------------|
| 70.1(437A)  | Who must file return               |
| 70.2(437A)  | Time and place for filing return   |
| 70.3(437A)  | Form for filing                    |
| 70.4(437A)  | Payment of tax                     |
| 70.5(437A)  | Statute of limitations             |
| 70.6(437A)  | Billings                           |
| 70.7(437A)  | Refunds                            |
| 70.8(437A)  | Abatement of tax                   |
| 70.9(437A)  | Taxpayers required to keep records |
| 70.10(437A) | Credentials                        |
| 70.11(437A) | Audit of records                   |
| 70.12(437A) | Collections/reimbursements         |
| 70.13(437A) | Information confidential           |

DIVISION II  
STATEWIDE PROPERTY TAX

|             |                                    |
|-------------|------------------------------------|
| 70.14(437A) | Who must file return               |
| 70.15(437A) | Time and place for filing return   |
| 70.16(437A) | Form for filing                    |
| 70.17(437A) | Payment of tax                     |
| 70.18(437A) | Statute of limitations             |
| 70.19(437A) | Billings                           |
| 70.20(437A) | Refunds                            |
| 70.21(437A) | Abatement of tax                   |
| 70.22(437A) | Taxpayers required to keep records |
| 70.23(437A) | Credentials                        |
| 70.24(437A) | Audit of records                   |

CHAPTER 71  
ASSESSMENT PRACTICES AND EQUALIZATION

|                             |  |
|-----------------------------|--|
| 71.1(405,427A,428,441,499B) | Classification of real estate                          |
| 71.2(421,428,441)           | Assessment and valuation of real estate                |
| 71.3(421,428,441)           | Valuation of agricultural real estate                  |
| 71.4(421,428,441)           | Valuation of residential real estate                   |
| 71.5(421,428,441)           | Valuation of commercial real estate                    |
| 71.6(421,428,441)           | Valuation of industrial land and buildings             |
| 71.7(421,427A,428,441)      | Valuation of industrial machinery                      |
| 71.8(428,441)               | Abstract of assessment                                 |
| 71.9(428,441)               | Reconciliation report                                  |
| 71.10(421)                  | Assessment/sales ratio study                           |
| 71.11(441)                  | Equalization of assessments by class of property       |
| 71.12(441)                  | Determination of aggregate actual values               |
| 71.13(441)                  | Tentative equalization notices                         |
| 71.14(441)                  | Hearings before the director                           |
| 71.15(441)                  | Final equalization order                               |
| 71.16(441)                  | Alternative method of implementing equalization orders |

|                 |  |
|-----------------|--|
| 71.17(441)      | Special session of boards of review              |
| 71.18(441)      | Judgment of assessors and local boards of review |
| 71.19(441)      | Conference boards                                |
| 71.20(441)      | Board of review                                  |
| 71.21(421,17A)  | Property assessment appeal board                 |
| 71.22(428,441)  | Assessors  |
| 71.23 and 71.24 | Reserved   |
| 71.25(441,443)  | Omitted assessments                              |
| 71.26(441)      | Assessor compliance                              |

## CHAPTER 72

### EXAMINATION AND CERTIFICATION OF ASSESSORS AND DEPUTY ASSESSORS

|                |  |
|----------------|--|
| 72.1(441)      | Application for examination                  |
| 72.2(441)      | Examinations                                 |
| 72.3(441)      | Equivalent of high school diploma            |
| 72.4(441)      | Appraisal-related experience                 |
| 72.5(441)      | Regular certification                        |
| 72.6(441)      | Temporary certification                      |
| 72.7           | Reserved                                     |
| 72.8(441)      | Deputy assessors—regular certification       |
| 72.9           | Reserved                                     |
| 72.10(441)     | Appointment of deputy assessors              |
| 72.11(441)     | Special examinations                         |
| 72.12(441)     | Register of eligible candidates              |
| 72.13(441)     | Course of study for provisional appointees   |
| 72.14(441)     | Examining board                              |
| 72.15(441)     | Appointment of assessor                      |
| 72.16(441)     | Reappointment of assessor                    |
| 72.17(441)     | Removal of assessor                          |
| 72.18(421,441) | Courses offered by the department of revenue |

## CHAPTER 73

### PROPERTY TAX CREDIT AND RENT REIMBURSEMENT

|            |  |
|------------|--|
| 73.1(425)  | Eligible claimants                                       |
| 73.2(425)  | Separate homesteads—husband and wife property tax credit |
| 73.3(425)  | Dual claims  |
| 73.4(425)  | Multipurpose building                                    |
| 73.5(425)  | Multidwelling  |
| 73.6(425)  | Income   |
| 73.7(425)  | Joint tenancy  |
| 73.8(425)  | Amended claim  |
| 73.9(425)  | Simultaneous homesteads                                  |
| 73.10(425) | Confidential information                                 |
| 73.11(425) | Mobile, modular, and manufactured homes                  |
| 73.12(425) | Totally disabled   |
| 73.13(425) | Nursing homes  |
| 73.14(425) | Household  |
| 73.15(425) | Homestead  |
| 73.16(425) | Household income   |
| 73.17(425) | Timely filing of claims                                  |
| 73.18(425) | Separate homestead—husband and wife rent reimbursements  |
| 73.19(425) | Gross rent/rent constituting property taxes paid         |

|            |  |
|------------|--|
| 73.20(425) | Leased land                              |
| 73.21(425) | Property: taxable status                 |
| 73.22(425) | Special assessments                      |
| 73.23(425) | Suspended, delinquent, or canceled taxes |
| 73.24(425) | Income: spouse                           |
| 73.25(425) | Common law marriage                      |
| 73.26      | Reserved                                 |
| 73.27(425) | Special assessment credit                |
| 73.28(425) | Credit applied                           |
| 73.29(425) | Deceased claimant                        |
| 73.30(425) | Audit of claim                           |
| 73.31(425) | Extension of time for filing a claim     |
| 73.32(425) | Annual adjustment factor                 |
| 73.33(425) | Proration of claims                      |
| 73.34(425) | Unreasonable hardship                    |

## CHAPTER 74

## MOBILE, MODULAR, AND MANUFACTURED HOME TAX

|           |                                    |
|-----------|------------------------------------|
| 74.1(435) | Definitions                        |
| 74.2(435) | Movement of home to another county |
| 74.3(435) | Sale of home                       |
| 74.4(435) | Reduced tax rate                   |
| 74.5(435) | Taxation—real estate               |
| 74.6(435) | Taxation—square footage            |
| 74.7(435) | Audit by department of revenue     |
| 74.8(435) | Collection of tax                  |

## CHAPTER 75

## PROPERTY TAX ADMINISTRATION

|                                |   |
|--------------------------------|---|
| 75.1(441)                      | Tax year                                      |
| 75.2(445)                      | Partial payment of tax                        |
| 75.3(445)                      | When delinquent                               |
| 75.4(446)                      | Payment of subsequent year taxes by purchaser |
| 75.5(428,433,434,437,437A,438) | Central assessment confidentiality            |
| 75.6(446)                      | Tax sale                                      |
| 75.7(445)                      | Refund of tax                                 |
| 75.8(614)                      | Delinquent property taxes                     |

## CHAPTER 76

## DETERMINATION OF VALUE OF RAILROAD COMPANIES

|           |  |
|-----------|--|
| 76.1(434) | Definitions of terms                         |
| 76.2(434) | Filing of annual reports                     |
| 76.3(434) | Comparable sales                             |
| 76.4(434) | Stock and debt approach to unit value        |
| 76.5(434) | Income capitalization approach to unit value |
| 76.6(434) | Cost approach to unit value                  |
| 76.7(434) | Correlation                                  |
| 76.8(434) | Allocation of unit value to state            |
| 76.9(434) | Exclusions                                   |

## CHAPTER 77

## DETERMINATION OF VALUE OF UTILITY COMPANIES

- 77.1(428,433,437,438) Definition of terms
- 77.2(428,433,437,438) Filing of annual reports
- 77.3(428,433,437,438) Comparable sales
- 77.4(428,433,437,438) Stock and debt approach to unit value
- 77.5(428,433,437,438) Income capitalization approach to unit value
- 77.6(428,433,437,438) Cost approach to unit value
- 77.7(428,433,437,438) Correlation
- 77.8(428,433,437,438) Allocation of unit value to state

## CHAPTER 78

Reserved

## CHAPTER 79

## REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE

- 79.1(428A) Real estate transfer tax: Responsibility of county recorders
- 79.2(428A) Taxable status of real estate transfers
- 79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors
- 79.4(428A) Certain transfers of agricultural realty
- 79.5(428A) Form completion and filing requirements
- 79.6(428A) Public access to declarations of value

## CHAPTER 80

## PROPERTY TAX CREDITS AND EXEMPTIONS

- 80.1(425) Homestead tax credit
- 80.2(22,35,426A) Military service tax exemption
- 80.3(427) Pollution control and recycling property tax exemption
- 80.4(427) Low-rent housing for the elderly and persons with disabilities
- 80.5(427) Speculative shell buildings
- 80.6(427B) Industrial property tax exemption
- 80.7(427B) Assessment of computers and industrial machinery and equipment
- 80.8(404) Urban revitalization partial exemption
- 80.9(427C,441) Forest and fruit-tree reservations
- 80.10(427B) Underground storage tanks
- 80.11(425A) Family farm tax credit
- 80.12(427) Methane gas conversion property
- 80.13(427B,476B) Wind energy conversion property
- 80.14(427) Mobile home park storm shelter
- 80.15(427) Barn and one-room schoolhouse preservation
- 80.16(426) Agricultural land tax credit
- 80.17(427) Indian housing property
- 80.18(427) Property used in value-added agricultural product operations
- 80.19(427) Dwelling unit property within certain cities
- 80.20(427) Nursing facilities
- 80.21(368) Annexation of property by a city
- 80.22(427) Port authority
- 80.23(427A) Concrete batch plants and hot mix asphalt facilities
- 80.24(427) Airport property
- 80.25(427A) Car wash equipment
- 80.26(427) Web search portal and data center business property
- 80.27(427) Privately owned libraries and art galleries

|                |  |
|----------------|--|
| 80.28(404B)    | Disaster revitalization area             |
| 80.29 to 80.49 | Reserved                                 |
| 80.50(427,441) | Responsibility of local assessors        |
| 80.51(441)     | Responsibility of local boards of review |
| 80.52(427)     | Responsibility of director of revenue    |
| 80.53(427)     | Application for exemption                |
| 80.54(427)     | Partial exemptions                       |
| 80.55(427,441) | Taxable status of property               |
| 80.56(427)     | Abatement of taxes                       |

TITLE X  
*CIGARETTES AND TOBACCO*

CHAPTER 81  
ADMINISTRATION

|             |  |
|-------------|--|
| 81.1(453A)  | Definitions  |
| 81.2(453A)  | Credentials and receipts   |
| 81.3(453A)  | Examination of records   |
| 81.4(453A)  | Records  |
| 81.5(453A)  | Form of invoice  |
| 81.6(453A)  | Audit of records—cost, supplemental assessments and refund adjustments |
| 81.7(453A)  | Bonds  |
| 81.8(98)    | Penalties  |
| 81.9(98)    | Interest   |
| 81.10(98)   | Waiver of penalty or interest  |
| 81.11(453A) | Appeal—practice and procedure before the department                    |
| 81.12(453A) | Permit—license revocation  |
| 81.13(453A) | Permit applications and denials  |
| 81.14(453A) | Confidential information   |
| 81.15(98)   | Request for waiver of penalty  |
| 81.16(453A) | Inventory tax  |

CHAPTER 82  
CIGARETTE TAX

|             |   |
|-------------|---|
| 82.1(453A)  | Permits required  |
| 82.2(453A)  | Partial year permits—payment—refund—exchange              |
| 82.3(453A)  | Bond requirements   |
| 82.4(453A)  | Cigarette tax—attachment—exemption—exclusivity of tax     |
| 82.5(453A)  | Cigarette tax stamps                                      |
| 82.6(453A)  | Banks authorized to sell stamps—requirements—restrictions |
| 82.7(453A)  | Purchase of cigarette tax stamps—discount                 |
| 82.8(453A)  | Affixing stamps   |
| 82.9(453A)  | Reports   |
| 82.10(453A) | Manufacturer's samples                                    |
| 82.11(453A) | Refund of tax—unused and destroyed stamps                 |

CHAPTER 83  
TOBACCO TAX

|            |                         |
|------------|-------------------------|
| 83.1(453A) | Licenses                |
| 83.2(453A) | Distributor bond        |
| 83.3(453A) | Tax on tobacco products |
| 83.4(453A) | Tax on little cigars    |
| 83.5(453A) | Distributor discount    |
| 83.6(453A) | Distributor returns     |

|                   |                              |
|-------------------|------------------------------|
| 83.7(453A)        | Consumer's return            |
| 83.8(453A)        | Transporter's report         |
| 83.9(453A)        | Free samples                 |
| 83.10(453A)       | Credits and refunds of taxes |
| 83.11(453A)       | Sales exempt from tax        |
| 83.12(81GA,HF339) | Retail permits required      |
| 83.13(81GA,HF339) | Permit issuance fee          |
| 83.14(81GA,HF339) | Refunds of permit fee        |
| 83.15(81GA,HF339) | Application for permit       |
| 83.16(81GA,HF339) | Records and reports          |
| 83.17(81GA,HF339) | Penalties                    |

CHAPTER 84  
UNFAIR CIGARETTE SALES

|            |   |
|------------|---|
| 84.1(421B) | Definitions                                   |
| 84.2(421B) | Minimum price                                 |
| 84.3(421B) | Combination sales                             |
| 84.4(421B) | Retail redemption of coupons                  |
| 84.5(421B) | Exempt sales                                  |
| 84.6(421B) | Notification of manufacturer's price increase |
| 84.7(421B) | Permit revocation                             |

CHAPTER 85  
TOBACCO MASTER SETTLEMENT AGREEMENT

DIVISION I  
TOBACCO MASTER SETTLEMENT AGREEMENT

|               |                                     |
|---------------|-------------------------------------|
| 85.1(453C)    | National uniform tobacco settlement |
| 85.2(453C)    | Definitions                         |
| 85.3(453C)    | Report required                     |
| 85.4(453C)    | Report information                  |
| 85.5(453C)    | Record-keeping requirement          |
| 85.6(453C)    | Confidentiality                     |
| 85.7 to 85.20 | Reserved                            |

DIVISION II  
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

|                   |  |
|-------------------|--|
| 85.21(80GA,SF375) | Definitions                                |
| 85.22(80GA,SF375) | Directory of tobacco product manufacturers |

TITLE XI  
*INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX*

CHAPTER 86  
INHERITANCE TAX

|            |  |
|------------|--|
| 86.1(450)  | Administration                                       |
| 86.2(450)  | Inheritance tax returns and payment of tax           |
| 86.3(450)  | Audits, assessments and refunds                      |
| 86.4(450)  | Appeals  |
| 86.5(450)  | Gross estate   |
| 86.6(450)  | The net estate                                       |
| 86.7(450)  | Life estate, remainder and annuity tables—in general |
| 86.8(450B) | Special use valuation                                |
| 86.9(450)  | Market value in the ordinary course of trade         |
| 86.10(450) | Alternate valuation date                             |

|            |   |
|------------|---|
| 86.11(450) | Valuation—special problem areas                       |
| 86.12(450) | The inheritance tax clearance                         |
| 86.13(450) | No lien on the surviving spouse's share of the estate |
| 86.14(450) | Computation of shares                                 |
| 86.15(450) | Applicability   |

CHAPTER 87  
IOWA ESTATE TAX

|           |  |
|-----------|--|
| 87.1(451) | Administration                               |
| 87.2(451) | Confidential and nonconfidential information |
| 87.3(451) | Tax imposed, tax returns, and tax due        |
| 87.4(451) | Audits, assessments and refunds              |
| 87.5(451) | Appeals                                      |
| 87.6(451) | Applicable rules                             |

CHAPTER 88  
GENERATION SKIPPING TRANSFER TAX

|            |  |
|------------|--|
| 88.1(450A) | Administration   |
| 88.2(450A) | Confidential and nonconfidential information             |
| 88.3(450A) | Tax imposed, tax due and tax returns                     |
| 88.4(450A) | Audits, assessments and refunds                          |
| 88.5(450A) | Appeals  |
| 88.6(450A) | Generation skipping transfers prior to Public Law 99-514 |

CHAPTER 89  
FIDUCIARY INCOME TAX

|            |  |
|------------|--|
| 89.1(422)  | Administration                                       |
| 89.2(422)  | Confidentiality                                      |
| 89.3(422)  | Situs of trusts                                      |
| 89.4(422)  | Fiduciary returns and payment of the tax             |
| 89.5(422)  | Extension of time to file and pay the tax            |
| 89.6(422)  | Penalties  |
| 89.7(422)  | Interest or refunds on net operating loss carrybacks |
| 89.8(422)  | Reportable income and deductions                     |
| 89.9(422)  | Audits, assessments and refunds                      |
| 89.10(422) | The income tax certificate of acquittance            |
| 89.11(422) | Appeals to the director                              |

CHAPTER 90  
Reserved

TITLE XII  
*MARIJUANA AND CONTROLLED  
SUBSTANCES STAMP TAX*

CHAPTER 91  
ADMINISTRATION OF MARIJUANA AND  
CONTROLLED SUBSTANCES STAMP TAX

|            |   |
|------------|---|
| 91.1(453B) | Marijuana and controlled substances stamp tax |
| 91.2(453B) | Sales of stamps                               |
| 91.3(453B) | Refunds pertaining to unused stamps           |

CHAPTERS 92 to 96  
Reserved

## TITLE XIII

## CHAPTERS 97 to 101

Reserved

## TITLE XIV

*HOTEL AND MOTEL TAX*

## CHAPTER 102

Reserved

## CHAPTER 103

STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND  
MOTEL TAXES—ADMINISTRATION

|              |   |
|--------------|---|
| 103.1(423A)  | Definitions, administration, and imposition                             |
| 103.2(423A)  | Statute of limitations, supplemental assessments and refund adjustments |
| 103.3(423A)  | Credentials and receipts  |
| 103.4(423A)  | Retailers required to keep records                                      |
| 103.5(423A)  | Audit of records  |
| 103.6(423A)  | Billings  |
| 103.7(423A)  | Collections   |
| 103.8(423A)  | No property exempt from distress and sale                               |
| 103.9(423A)  | Information confidential  |
| 103.10(423A) | Bonding procedure   |
| 103.11(423A) | Sales tax   |
| 103.12(423A) | Judicial review   |
| 103.13(423A) | Registration  |
| 103.14(423A) | Notification  |
| 103.15(423A) | Certification of funds  |

## CHAPTER 104

## HOTEL AND MOTEL—

## FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST

|                  |  |
|------------------|--|
| 104.1(423A)      | Returns, time for filing   |
| 104.2(423A)      | Remittances  |
| 104.3(423A)      | Permits  |
| 104.4(423A)      | Sale of business   |
| 104.5(423A)      | Bankruptcy, insolvency or assignment for benefit of creditors        |
| 104.6(423A)      | Claim for refund of tax  |
| 104.7(423A)      | Application of payments  |
| 104.8(423A)      | Interest and penalty   |
| 104.9(423A)      | Request for waiver of penalty  |
| 104.10(423A)     | Extension of time for filing   |
| 104.11(421,423A) | Personal liability of corporate officers and partners for unpaid tax |
| 104.12(421,423A) | Good faith exception for successor liability                         |

## CHAPTER 105

## LOCALLY IMPOSED HOTEL AND MOTEL TAX

|             |                         |
|-------------|-------------------------|
| 105.1(423A) | Local option            |
| 105.2(423A) | Tax rate                |
| 105.3(423A) | Tax base                |
| 105.4(423A) | Imposition dates        |
| 105.5(423A) | Adding or absorbing tax |
| 105.6(423A) | Termination dates       |

## CHAPTER 106

## Reserved

TITLE XV  
*LOCAL OPTION SALES AND  
SERVICE TAX*

## CHAPTER 107

## LOCAL OPTION SALES AND SERVICE TAX

- 107.1(422B) Definitions
- 107.2(422B) Local option sales and service tax
- 107.3(422B) Transactions subject to and excluded from local option sales tax
- 107.4(422B) Transactions subject to and excluded from local option service tax
- 107.5(422B) Single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax
- 107.6(422B) Motor vehicle, recreational vehicle, and recreational boat rental subject to local option service tax
- 107.7(422B) Special rules regarding utility payments
- 107.8(423B) Contacts with county necessary to impose collection obligation upon a retailer
- 107.9(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax
- 107.10(422B) Local option sales and service tax payments to local governments
- 107.11(422B) Procedure if county of receipt's origins is unknown
- 107.12(422B) Computation of local option tax due from mixed sales on excursion boats
- 107.13(421,422B) Officers and partners, personal liability for unpaid tax
- 107.14(422B) Local option sales and service tax imposed by a city
- 107.15(422B) Application of payments
- 107.16(422B) Construction contractor refunds
- 107.17(422B,422E) Discretionary application of local option tax revenues

## CHAPTER 108

LOCAL OPTION SCHOOL INFRASTRUCTURE  
SALES AND SERVICE TAX

- 108.1(422E) Definitions
- 108.2(422E) Authorization, rate of tax, imposition, use of revenues, and administration
- 108.3(422E) Collection of the tax
- 108.4(422E) Similarities to the local option sales and service tax imposed in Iowa Code chapter 422B and 701—Chapter 107
- 108.5(422E) Sales not subject to local option tax, including transactions subject to Iowa use tax
- 108.6(422E) Deposits of receipts
- 108.7(422E) Local option school infrastructure sales and service tax payments to school districts
- 108.8(422E) Construction contract refunds
- 108.9(422E) 28E agreements

## CHAPTER 109

NEW SCHOOL INFRASTRUCTURE LOCAL OPTION SALES AND SERVICES TAX—  
EFFECTIVE ON OR AFTER APRIL 1, 2003, THROUGH FISCAL YEARS  
ENDING DECEMBER 31, 2022

- 109.1(422E) Use of revenues and definitions
- 109.2(422E) Imposition of tax
- 109.3(422E) Application of law
- 109.4(422E) Collection of tax and distribution
- 109.5(422E) Insufficient funds
- 109.6(422E) Use of revenues by the school district

109.7(422E) Bonds  
 109.8(422E) 28E agreements

CHAPTERS 110 to 119  
 Reserved

TITLE XVI  
*REASSESSMENT EXPENSE FUND*

CHAPTER 120  
 REASSESSMENT EXPENSE FUND

120.1(421) Reassessment expense fund  
 120.2(421) Application for loan  
 120.3(421) Criteria for granting loan

CHAPTER 121  
 Reserved

TITLE XVII  
*ASSESSOR CONTINUING EDUCATION*

CHAPTER 122  
 ADMINISTRATION

122.1(441) Establishment  
 122.2(441) General operation  
 122.3(441) Location  
 122.4(441) Purpose

CHAPTER 123  
 CERTIFICATION

123.1(441) General  
 123.2(441) Confidentiality  
 123.3(441) Certification of assessors  
 123.4(441) Certification of deputy assessors  
 123.5(441) Type of credit  
 123.6(441) Retaking examination  
 123.7(441) Instructor credit  
 123.8(441) Conference board and assessor notification  
 123.9(441) Director of revenue notification

CHAPTER 124  
 COURSES

124.1(441) Course selection  
 124.2(441) Scheduling of courses  
 124.3(441) Petitioning to add, delete or modify courses  
 124.4(441) Course participation  
 124.5(441) Retaking a course  
 124.6(441) Continuing education program for assessors

CHAPTER 125  
 REVIEW OF AGENCY ACTION

125.1(441) Decisions final  
 125.2(441) Grievance and appeal procedures

CHAPTERS 126 to 149  
 Reserved

TITLE XVIII  
DEBT COLLECTION

CHAPTER 150

FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

- 150.1(421,26USC6402) Purpose and general application of offset of a federal tax overpayment to collect an Iowa income tax obligation
- 150.2(421,26USC6402) Definitions
- 150.3(421,26USC6402) Prerequisites for requesting a federal offset
- 150.4(421,26USC6402) Procedure after submission of evidence
- 150.5(421,26USC6402) Notice by Iowa to the Secretary to request federal offset
- 150.6(421,26USC6402) Erroneous payments to Iowa
- 150.7(421,26USC6402) Correcting and updating notice to the Secretary

CHAPTER 151

COLLECTION OF DEBTS OWED THE STATE  
OF IOWA OR A STATE AGENCY

- 151.1(421) Definitions
- 151.2(421) Scope and purpose
- 151.3(421) Participation guidelines
- 151.4(421) Duties of the agency
- 151.5(421) Duties of the department—performance of collection
- 151.6(421) Payment of collected amounts
- 151.7(421) Reimbursement for collection of liabilities
- 151.8(421) Confidentiality of information

CHAPTER 152

DEBT COLLECTION AND SELLING OF PROPERTY  
TO COLLECT DELINQUENT DEBTS

- 152.1(421,422,626,642) Definitions
- 152.2(421,422,626,642) Sale of property
- 152.3(421,422,626,642) Means of sale

CHAPTER 153

LICENSE SANCTIONS FOR COLLECTION OF DEBTS OWED THE STATE OF IOWA OR  
A STATE AGENCY

- 153.1(272D) Definitions
- 153.2(272D) Purpose and use
- 153.3(272D) Challenge to issuance of certificate of noncompliance
- 153.4(272D) Use of information
- 153.5(272D) Notice to person of potential sanction of license
- 153.6(272D) Conference
- 153.7(272D) Issuance of certificate of noncompliance
- 153.8(272D) Stay of certificate of noncompliance
- 153.9(272D) Written agreements
- 153.10(272D) Decision of the unit
- 153.11(272D) Withdrawal of certificate of noncompliance
- 153.12(272D) Certificate of noncompliance to licensing authority
- 153.13(272D) Requirements of the licensing authority
- 153.14(272D) District court hearing

CHAPTER 154  
CHALLENGES TO ADMINISTRATIVE LEVIES AND  
PUBLICATION OF NAMES OF DEBTORS

|                 |  |
|-----------------|--|
| 154.1(421)      | Definitions                              |
| 154.2(421)      | Administrative levies                    |
| 154.3(421)      | Challenges to administrative levies      |
| 154.4(421)      | Form and time of challenge               |
| 154.5(421)      | Issues that may be raised                |
| 154.6(421)      | Review of challenge                      |
| 154.7(421)      | Actions where there is a mistake of fact |
| 154.8(421)      | Action if there is not a mistake of fact |
| 154.9 to 154.15 | Reserved                                 |
| 154.16(421)     | List for publication                     |
| 154.17(421)     | Names to be published                    |
| 154.18(421)     | Release of information                   |

CHAPTERS 155 to 210  
Reserved

TITLE XIX  
*STREAMLINED SALES AND USE TAX RULES*

CHAPTER 211  
DEFINITIONS

|            |             |
|------------|-------------|
| 211.1(423) | Definitions |
|------------|-------------|

CHAPTER 212  
ELEMENTS INCLUDED IN AND EXCLUDED  
FROM A TAXABLE SALE AND SALES PRICE

|            |  |
|------------|--|
| 212.1(423) | Tax not to be included in price  |
| 212.2(423) | Finance charge   |
| 212.3(423) | Retailers' discounts, trade discounts, rebates and coupons             |
| 212.4(423) | Excise tax included in and excluded from sales price                   |
| 212.5(423) | Trade-ins  |
| 212.6(423) | Installation charges when tangible personal property is sold at retail |
| 212.7(423) | Service charge and gratuity  |
| 212.8(423) | Payment from a third party   |

CHAPTER 213  
MISCELLANEOUS TAXABLE SALES

|             |   |
|-------------|---|
| 213.1(423)  | Tax imposed   |
| 213.2(423)  | Athletic events   |
| 213.3(423)  | Conditional sales contracts   |
| 213.4(423)  | The sales price of sales of butane, propane and other like gases in cylinder drums, etc.                          |
| 213.5(423)  | Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value       |
| 213.6(423)  | Communication services furnished by hotel to its guests   |
| 213.7(423)  | Consignment sales   |
| 213.8(423)  | Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions |
| 213.9(423)  | Explosives used in mines, quarries and elsewhere  |
| 213.10(423) | Sales on layaway  |
| 213.11(423) | Memorial stones   |

|             |   |
|-------------|---|
| 213.12(423) | Creditors and trustees  |
| 213.13(423) | Sale of pets  |
| 213.14(423) | Redemption of meal tickets, coupon books and merchandise cards as a taxable sale  |
| 213.15(423) | Rental of personal property in connection with the operation of amusements  |
| 213.16(423) | Repossessed goods   |
| 213.17(423) | Sales of signs at retail  |
| 213.18(423) | Tangible personal property made to order  |
| 213.19(423) | Used or secondhand tangible personal property   |
| 213.20(423) | Carpeting and other floor coverings   |
| 213.21(423) | Goods damaged in transit  |
| 213.22(423) | Snowmobiles, motorboats, and certain other vehicles   |
| 213.23(423) | Photographers and photostaters  |
| 213.24(423) | Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations |
| 213.25(423) | Urban transit systems   |

#### CHAPTER 214

##### MISCELLANEOUS NONTAXABLE TRANSACTIONS

|            |   |
|------------|---|
| 214.1(423) | Corporate mergers which do not involve taxable sales of tangible personal property or services  |
| 214.2(423) | Sales of prepaid merchandise cards  |
| 214.3(423) | Demurrage charges   |
| 214.4(423) | Beverage container deposits   |
| 214.5(423) | Exempt sales by excursion boat licensees  |
| 214.6(423) | Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client |

#### CHAPTERS 215 to 218

Reserved

#### CHAPTER 219

##### SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

|             |   |
|-------------|---|
| 219.1(423)  | General information   |
| 219.2(423)  | Contractors—consumers of building materials, supplies, and equipment by statute                                       |
| 219.3(423)  | Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners               |
| 219.4(423)  | Contractors, subcontractors or builders who are retailers   |
| 219.5(423)  | Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa |
| 219.6(423)  | Tangible personal property used or consumed by the manufacturer thereof   |
| 219.7(423)  | Prefabricated structures  |
| 219.8(423)  | Types of construction contracts   |
| 219.9(423)  | Machinery and equipment sales contracts with installation   |
| 219.10(423) | Construction contracts with equipment sales (mixed contracts)   |
| 219.11(423) | Distinguishing machinery and equipment from real property   |
| 219.12(423) | Tangible personal property which becomes structures   |
| 219.13(423) | Tax on enumerated services  |
| 219.14(423) | Transportation cost   |
| 219.15(423) | Start-up charges  |
| 219.16(423) | Liability of subcontractors   |
| 219.17(423) | Liability of sponsors   |
| 219.18(423) | Withholding   |
| 219.19(423) | Resale certificates   |

- 219.20(423) Reporting for use tax
- 219.21(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders

## CHAPTERS 220 to 223

Reserved

## CHAPTER 224

## TELECOMMUNICATION SERVICES

- 224.1(423) Taxable telecommunication service and ancillary service
- 224.2(423) Definitions
- 224.3(423) Imposition of tax
- 224.4(423) Exempt from the tax
- 224.5(423) Bundled transactions in telecommunication service
- 224.6(423) Sourcing telecommunication service
- 224.7(423) General billing issues

## CHAPTER 225

RESALE AND PROCESSING EXEMPTIONS PRIMARILY  
OF BENEFIT TO RETAILERS

- 225.1(423) Paper or plastic plates, cups, and dishes, paper napkins, wooden or plastic spoons and forks, and straws
- 225.2(423) A service purchased for resale
- 225.3(423) Services used in the repair or reconditioning of certain tangible personal property
- 225.4(423) Tangible personal property purchased by a person engaged in the performance of a service
- 225.5(423) Maintenance or repair of fabric or clothing
- 225.6(423) The sales price from the leasing of all tangible personal property subject to tax

## CHAPTER 226

## AGRICULTURAL RULES

- 226.1(423) Sale or rental of farm machinery and equipment
- 226.2(423) Packaging material used in agricultural production
- 226.3(423) Irrigation equipment used in agricultural production
- 226.4(423) Sale of a draft horse
- 226.5(423) Veterinary services
- 226.6(423) Commercial fertilizer and agricultural limestone
- 226.7(423) Sales of breeding livestock
- 226.8(423) Domesticated fowl
- 226.9(423) Agricultural health promotion items
- 226.10(423) Drainage tile
- 226.11(423) Materials used for seed inoculations
- 226.12(423) Fuel used in agricultural production
- 226.13(423) Water used in agricultural production
- 226.14(423) Bedding for agricultural livestock or fowl
- 226.15(423) Sales by farmers
- 226.16(423) Sales of livestock (including domesticated fowl) feeds
- 226.17(423) Farm machinery, equipment, and replacement parts used in livestock or dairy production
- 226.18(423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants
- 226.19(423) Nonexclusive lists

## CHAPTERS 227 to 229

Reserved

## CHAPTER 230

EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND  
OTHER PERSONS ENGAGED IN PROCESSING

|             |   |
|-------------|---|
| 230.1       | Reserved  |
| 230.2(423)  | Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing |
| 230.3(423)  | Services used in processing   |
| 230.4(423)  | Chemicals, solvents, sorbents, or reagents used in processing   |
| 230.5(423)  | Exempt sales of gases used in the manufacturing process   |
| 230.6(423)  | Sale of electricity to water companies  |
| 230.7(423)  | Wind energy conversion property   |
| 230.8(423)  | Exempt sales or rentals of core making and mold making equipment, and sand handling equipment                   |
| 230.9(423)  | Chemical compounds used to treat water  |
| 230.10(423) | Exclusive web search portal business and its exemption  |
| 230.11(423) | Web search portal business and its exemption  |
| 230.12(423) | Large data center business exemption  |
| 230.13(423) | Data center business sales and use tax refunds  |

## CHAPTER 231

## EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

|             |   |
|-------------|---|
| 231.1(423)  | Newspapers, free newspapers and shoppers' guides                                |
| 231.2(423)  | Motor fuel, special fuel, aviation fuels and gasoline                           |
| 231.3(423)  | Sales of food and food ingredients  |
| 231.4(423)  | Sales of candy  |
| 231.5(423)  | Sales of prepared food  |
| 231.6(423)  | Prescription drugs, medical devices, oxygen, and insulin                        |
| 231.7(423)  | Exempt sales of other medical devices which are not prosthetic devices          |
| 231.8(423)  | Prosthetic devices, durable medical equipment, and mobility enhancing equipment |
| 231.9(423)  | Raffles   |
| 231.10(423) | Exempt sales of prizes  |
| 231.11(423) | Modular homes   |
| 231.12(423) | Access to on-line computer service  |
| 231.13(423) | Sale or rental of information services  |
| 231.14(423) | Exclusion from tax for property delivered by certain media                      |
| 231.15(423) | Exempt sales of clothing and footwear during two-day period in August           |
| 231.16(423) | State sales tax phase-out on energies   |

## CHAPTERS 232 to 234

Reserved

## CHAPTER 235

## REBATE OF IOWA SALES TAX PAID

|            |  |
|------------|--|
| 235.1(423) | Sanctioned automobile racetrack facilities |
|------------|--|

## CHAPTERS 236 to 238

Reserved

## CHAPTER 239

## LOCAL OPTION SALES TAX URBAN RENEWAL PROJECTS

- 239.1(423B) Urban renewal project
- 239.2(423B) Definitions
- 239.3(423B) Establishing sales and revenue growth
- 239.4(423B) Requirements for cities adopting an ordinance
- 239.5(423B) Identification of retail establishments
- 239.6(423B) Calculation of base year taxable sales amount
- 239.7(423B) Determination of tax growth increment amount
- 239.8(423B) Distribution of tax base and growth increment amounts
- 239.9(423B) Example
- 239.10(423B) Ordinance term

## CHAPTER 240

RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES  
AND USE TAX AGREEMENT

- 240.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used
- 240.2(423) Permissible categories of exemptions
- 240.3(423) Requirement of uniformity in the filing of returns and remittance of funds
- 240.4(423) Allocation of bad debts
- 240.5(423) Purchaser refund procedures
- 240.6(423) Relief from liability for reliance on taxability matrix
- 240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished
- 240.8(423) Prospective application of defining “retail sale” to include a lease or rental

## CHAPTER 241

EXCISE TAXES NOT GOVERNED BY THE STREAMLINED SALES AND  
USE TAX AGREEMENT

- 241.1(423A,423D) Purpose of the chapter
- 241.2(423A,423D) Director’s administration

## DIVISION I

## STATE-IMPOSED HOTEL AND MOTEL TAX

- 241.3(423A) Definitions
- 241.4(423A) Imposition of tax
- 241.5(423A) Exemptions

## DIVISION II

## EXCISE TAX ON SPECIFIC CONSTRUCTION MACHINERY AND EQUIPMENT

- 241.6(423D) Definitions
- 241.7(423D) Tax imposed
- 241.8(423D) Exemption



CHAPTER 12  
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST  
[Prior to 12/17/86, Revenue Department[730]]

**701—12.1(422) Returns and payment of tax.** Every retailer collecting more than \$50 in tax in any one month shall make a monthly deposit with the department. A retailer collecting between \$50 and \$500 a month shall deposit the actual amount of tax collected during the month or an amount equal to not less than 30 percent of the amount of tax collected and paid during the preceding quarter. A retailer collecting \$500 or more a month shall deposit the actual amount of tax collected. This deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months in the quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter. The quarterly return is due on or before the last day of the month following the end of the quarter.

Effective January 1, 1983, retailers collecting \$50 a month and not more than \$4000 in tax in a semimonthly period shall deposit the actual amount of tax collected during the month or an amount equal to one-third of the amount of tax collected and paid during the preceding quarter.

Every retailer collecting more than \$4000 in tax in a semimonthly period shall make a semimonthly deposit with the department. A retailer collecting more than \$4000 in a semimonthly period shall deposit (1) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the preceding quarter or (2) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the same quarter of the previous year. The method of reporting selected by the retailer, either option 1 or option 2, shall remain consistent for at least four quarters. The first semimonthly deposit is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth of the month. The second semimonthly deposit is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter.

Retailers required to make semimonthly or monthly deposits under any of the above methods of estimating tax based upon a period when the tax rate was 4 percent shall adjust deposits for periods beginning on or after July 1, 1992, to reflect the increase in the tax rate to 5 percent as provided in Iowa Code section 422.43.

On the quarterly return, every retailer shall report the gross sales for the entire quarter listing all allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited for the previous five semimonthly deposits. The quarterly return is due on or before the last day of the month following the end of the calendar quarter.

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit sales tax for only that specific quarter in which the retailer conducted business.

Effective January 1, 1980, if it is expected that the total annual tax liability of a retailer will not exceed \$120 for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The returns and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

Following are nonexclusive examples the department could reasonably expect to be within the guidelines for annual reporting:

1. A person selling tangible personal property or taxable services where a major portion of the business is the selling of tangible personal property or taxable services exempt from the imposition of tax; such as a wholesaler whose sales are primarily for resale, or a contractor whose business is primarily new construction.

2. A person whose business is primarily seasonal, or a person engaged in part-time selling of tangible personal property or taxable services.

3. A person whose sales are of a nontaxable service and who may, on occasion, sell tangible personal property incidental to the service.

When the due date falls on Saturday, Sunday, or a legal holiday, the return or deposit will be due the first business day following such Saturday, Sunday, or legal holiday. If a return or deposit is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return or deposit not be received until after that date. Mailed returns should be addressed to Sales/Use Tax Processing, P.O. Box 10412, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47, 422.51, 422.52, and 423.2.

**701—12.2(422,423) Remittances.** The correct amount of tax collected and due shall accompany the forms prescribed by the department unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. The name, address, and permit number of the sender and amount of tax for the quarterly remittance or a semimonthly or monthly deposit shall be stated unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer unless electronic transmission requirements apply; and, when feasible, the taxpayer shall use them when completing and mailing a return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

For tax periods starting on or after April 1, 1990, semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified in the department. Deposit forms are not required to be filed when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

This rule is intended to implement Iowa Code sections 422.16, 422.51, 422.52, 423.6, 423.13 and 423.14.

**701—12.3(422) Permits and negotiated rate agreements.** A person making retail sales in Iowa is required to obtain a sales tax permit from the department of revenue. Certain qualified purchasers, users, or consumers may obtain a direct pay permit which allows qualified purchasers, users, or consumers to remit tax directly to the department rather than to the retailer at the time of purchase or use. The following provisions govern the issuance of each type of permit.

**12.3(1) Sales tax permits.** Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 701—29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, except cities and counties, who have sales activity from gambling.

**12.3(2) Direct pay permits.** Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property or enumerated services pursuant to Iowa Code chapters 422, 422B, and 423 may remit tax owed directly to the department of revenue instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue.

*a. Qualifications for a direct pay permit.* To qualify for a direct pay permit, all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property or enumerated services.

(2) The applicant must have an accrual of sales and use tax liability on consumed goods of more than \$4,000 in a semimonthly period. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of \$4,000 in sales and use tax liability in a semimonthly period to qualify, if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer must indicate which locations will be utilizing the direct pay permit at the time of application.

(3) The applicant must make deposits and file returns pursuant to Iowa Code section 422.52. See subrule 12.3(2), paragraph “d,” for further details.

*b. Nonqualifying purchases or uses.* The granting of a direct pay permit is not allowed for any of the following:

(1) Taxes imposed on the sale, furnishing, or service of gas, electricity, water, heat, pay television service, or communication service.

(2) Taxes imposed under Iowa Code section 422C.3 (sales tax on the rental receipts of qualifying rental motor vehicles), Iowa Code section 423.7 (use tax on the sale or use of motor vehicles), or Iowa Code section 423.7A (use tax on the lease price of qualifying leased motor vehicles).

*c. Application and permit information.* To obtain a direct pay permit, a purchaser, user, or consumer must properly complete an application form prescribed by the director of revenue and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department of revenue or vendors over the last two years prior to application, an average of \$4,000 in a semimonthly period.

Upon approval, the director will issue a direct pay permit to qualifying applicants. The permit will contain direct pay permit identifying information including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—15.3(422,423).

*d. Remittance and reporting.* Sales, use, and local option tax that is to be reported and remitted to the department will be on a semimonthly basis. Remittance of tax due under a direct pay permit will begin with the first quarter after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit must be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales and service tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a quarterly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 422.52. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 422.52.

*e. Permit revocation and nontransferability.* A direct pay permit may be used indefinitely unless it is revoked by the director. A direct pay permit is not transferable and it may not be assigned to a third party. The director may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 422.53. If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of

purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

*f. Record-keeping requirements.* The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit must retain possession of the direct pay permit. The permit holder must keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(422,423).

(2) Vendor. A vendor must retain a valid exemption certificate under rule 701—15.3(422,423) which is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(422,423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—15.3(422,423).

**12.3(3) Negotiated rate agreements.** Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in subrule 12.3(2), paragraph "b," above, and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

All negotiated rate agreements shall contain the following information or an explanation for its omission:

1. The name of the taxpayer who has entered into the agreement with the department.
2. The name and title of each person signing the agreement and the name, telephone or fax number, and E-mail or physical address of at least one person to be contacted if questions regarding the agreement arise.
3. The period during which the agreement is in effect and the renewal or extension rights (if any) of each party, and the effective date of the agreement.
4. The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items which will be excluded from the agreement, and any circumstances which will result in a changed rate or rates or changed composition of classes to which rates are applicable.
5. Actions or circumstances which render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.
6. Rights, if any, of the parties to resort to mediation or arbitration.
7. An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.
8. The conditions by which the agreement may be terminated and the effective date of the termination.
9. The methodology used to determine the negotiated rate and any schedules needed to verify percentages.
10. Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code sections 422.45(20) and 422.53 as amended by 1997 Iowa Acts, House File 266.

**701—12.4(422) Nonpermit holders.** Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the

bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section 422.43 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section 422.53.

**701—12.5(422,423) Regular permit holders responsible for collection of tax.** A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 422.53 and 423.9.

**701—12.6(422,423) Sale of business.** A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections 422.51(2) and 422.52.

**701—12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors.** In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 422.51(2).

**701—12.8(422) Vending machines and other coin-operated devices.** An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the gross receipts.

This rule is intended to implement Iowa Code sections 422.42(16), 422.43, 422.51, and Iowa Code chapter 455C.

**701—12.9(422) Claim for refund of tax.** Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 30 days following the date of denial. See rule 701—7.41(17A).

For refunds denied on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of denial.

When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A \$10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of their audit liability if the decision in Y's case was also applicable to X.

EXAMPLE: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970 to 1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five-year statute set forth in Iowa Code section 422.73(1). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE: X is audited by the department for the period July 1, 1973, to June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five-year statute of limitations set forth in section Iowa Code 422.73(1). If the claim had been filed on or before December 31, 1979, then the entire audit period July 1, 1973, to June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section 422.73.

#### **701—12.10(423) Audit limitation for certain services.**

**12.10(1) Definitions.** For purposes of this rule, the following definitions shall govern:

“*Landscaping*” means the same as defined in rule 701—26.61(423).

“*Lawn care*” means the same as defined in rule 701—26.61(423).

“*Tree trimming and removal*” means the same as defined in rule 701—26.66(423).

**12.10(2) Audit limitation for lawn care, landscaping, and tree trimming and removal services.** Notwithstanding any other provision of the Iowa Code to the contrary, the department shall not attempt to collect delinquent sales tax or use tax on a transaction involving the furnishing of lawn care, landscaping, or tree trimming and removal services which occurred more than five years prior to

the date of an audit. The date an audit will begin is when the department presents notification that the person is being contacted for an audit.

This rule is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

**701—12.11** Reserved.

**701—12.12(422) Extension of time for filing.** Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section 422.51.

**701—12.13(422) Determination of filing status.**

**12.13(1) Prior to January 1, 2003.** Iowa Code sections 422.51(4) and 422.52 provide, based on the amount of tax collected, how often retailers file deposits or returns with the department (see rule 701—12.1(422)).

The department will determine if the retailer's current filing status is correct by reviewing the most recent four quarters of the retailer's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

| <u>Filing Status</u> | <u>Statutory Requirement</u>            | <u>Test Criteria</u>   |
|----------------------|---|--|
| Semimonthly          | \$4,000 in tax in a semimonthly period. | Tax remitted in 3 of most recent 4 quarters exceeds \$24,000.  |
| Monthly              | \$50 in tax in a month.                 | Tax remitted in 3 of most recent 4 quarters exceeds \$150.   |
| Annual               | \$120 or less in tax in prior year.     | Retailer remits \$120 or less in tax for last 4 quarters and requests annual filing.                             |
| Seasonal             |   | Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only. |
| Quarterly            | All other filers.                       |  |

When it is determined that a retailer's filing status is to be changed, the retailer will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Retailers may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

*a.* Incorrect historical data is used in the conversion. A business may meet the criteria based on initial information available, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

*b.* Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by department.

Exceptions will not be granted in instances where the retailer's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Retailers will be notified in writing of approval or denial of their request for reduced filing periods.

Retailers may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the retailer's request.

**12.13(2) January 1, 2003, and after.** Effective July 1, 2002, the department and the department of management have the authority to change the above-mentioned filing thresholds established by department rule. After review of these filing thresholds, the department has determined that new thresholds are necessary and are to be implemented January 1, 2003. Accordingly, this subrule sets forth the filing thresholds for each filer based on the amount of sales tax collected.

| <u>Filing Status</u> | <u>Threshold</u>   | <u>Test Criteria</u>   |
|----------------------|--|--|
| Semimonthly          | Greater than \$60,000 in annual state sales tax (more than \$2,500 in a semimonthly period).                     | Tax remitted in 3 of most recent 4 quarters examined exceeds \$15,000 per quarter. |
| Monthly              | Between \$6,000 and \$60,000 in annual state sales tax (more than \$500 in a monthly period).                    | Tax remitted in 3 of most recent 4 quarters examined exceeds \$1,500 per quarter.  |
| Quarterly            | Between \$120 and \$6,000 in annual state sales tax.   | Tax remitted in 3 of most recent 4 quarters examined exceeds \$30 per quarter.     |
| Annual               | Less than \$120 in state sales tax for the prior year.   | Tax remitted in prior year is less than \$120.                                     |
| Seasonal             | Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only. |  |

A retailer shall be notified in writing when it is determined that a retailer's filing status will be changed. A retailer has the option of requesting, within 30 days of the date of the department's notice of a change in filing frequency, that the retailer file more or less frequently than required by the department. A request to file on a less frequent basis than assigned by the department must be in writing and submitted to the department. Once such a written request is filed by the retailer, the department will review the request and issue a written determination to the retailer.

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

*a.* Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

*b.* Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

A retailer may also request to file more frequently than assigned by the department; the request may be made orally, in person, or by telephone. With the exception of those retailers who previously filed on a quarterly basis and have been changed to an annual filing frequency, any retailer seeking to file on a more frequent basis than assigned shall be required to deposit revenues by electronic funds transfer if the department allows the retailer to file more frequently.

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

This rule is intended to implement Iowa Code sections 421.14, 422.51, and 422.52, and sections 422.54 as amended by 2002 Iowa Acts, House File 2622, section 11, and 423.13 as amended by 2002 Iowa Acts, House File 2622, section 14.

**701—12.14(422,423) Immediate successor liability for unpaid tax.** A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

**12.14(1) Immediate successors having a duty to withhold.** Only an immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price if necessary. Persons who fail some aspect of this test, e.g., because they take by operation of law rather than by contract or provide no consideration, are not obligated to investigate or withhold. Nonexclusive examples of persons not so obligated are the following:

- a. A person foreclosing on a valid security interest.
- b. A person retaking possession of premises under a valid lease.
- c. A spouse electing to take under a will.
- d. A person taking by gift.
- e. Any other person taking for what would legally be considered "for value" but without the payment of a recognizable "purchase price."

Included within the meaning of the phrase "immediate successor" is a corporation resulting from the action of a sole proprietor who incorporates a business in which the sole proprietor is the only or the controlling shareholder; or a sole proprietorship established from a corporation of which the sole proprietor was the exclusive, majority, or controlling stockholder.

**12.14(2) More than one immediate successor.** If a retailer sells a business or stock of goods to two or more persons the following rules apply:

a. *Sale of stock of goods to two or more persons.* If a retailer sells a substantial portion of the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person is an "immediate successor" and personally liable for payment of tax to the extent of tax, interest, or penalty owed or the amount of the individual purchase price, whichever is the lesser.

EXAMPLE: A sells the stock of goods from a furniture business, in unequal portions, to B, C, and D. B pays a \$5,000 purchase price for a portion of the stock of goods, C pays \$20,000 for a portion of the stock of goods, and D pays a \$30,000 purchase price for the remainder of A's stock of goods. A, at the time of the transfers, owes the department of revenue \$10,000 in sales tax, interest, and penalty. Neither B, C, nor D withholds any amount for payment of tax from the purchase price. B, C, and D individually and together are liable for payment of the tax. Each is personally liable up to the amount of the purchase price which each has paid or the amount of tax, interest, and penalty owing, whichever is the lesser. In this example, B is liable for \$5,000, the lesser amount of B's purchase price (\$5,000) and the amount of tax which A owes (\$10,000); C is liable for \$10,000, since purchase price and tax owed are equal; and D is liable for \$10,000, the lesser amount of tax owed (\$10,000) and D's purchase price (\$30,000). The department can proceed against any one, two, or all three of the immediate successors up to the amount of tax which each owes, as it chooses.

b. *Purchase of differing places of business.* If one person owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

**12.14(3) "Sale of a retailer's business" characterized.** Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. *People v. Gabriel*, 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty

for the sale of any type of tangible personal property constitutes the selling of the retailer's business, and the person to whom the business is sold is an "immediate successor" and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

**12.14(4)** *"Good faith" characterized.* An immediate successor to a retailer has purchased the retailer's business or stock of goods "in good faith" if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists. The list of situations is exclusive:

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid; or

b. The immediate successor has taken "in good faith" a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase. Immediate successors should not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor should request a written statement to this effect. For information regarding delinquent tax, interest, or penalty and tax liens write to: Collections Section Supervisor, Iowa Department of Revenue, P.O. Box 10471, Hoover State Office Building, Des Moines, Iowa 50306. A "certified statement" from a retailer is a statement the truth of which is attested to before a notary public or other officer authorized to take oaths. A certified statement has been taken from a retailer "in good faith" if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer's statement was false or no reason to question the truth of the retailer's statement.

This rule is intended to implement Iowa Code section 421.28.

**701—12.15(422,423) Officers and partners—personal liability for unpaid tax.** If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax.

**12.15(1)** *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

- a. The duties of officers as outlined in the corporate bylaws,
- b. The duties which various officers have assumed in practice,
- c. Which officers are empowered to sign checks for the corporation,
- d. Which officers hire and fire employees, and

e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

**12.15(2)** *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled

and is not open to future adjustment. The usual consumer installment contract is a “note receivable” rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

**12.15(3) *Beginning date of personal liability.*** Officers and partners are not personally liable for state sales tax due and unpaid prior to March 13, 1986. They are liable for state sales taxes which are both due and unpaid on and after that date. See department rule 701—107.12(422B) for an explanation of officer and partner liability for unpaid local option sales tax.

**701—12.16(422) Show sponsor liability.** Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term “similar event” is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. “Good faith” may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52.

**701—12.17(422) Purchaser liability for unpaid sales tax.** For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52.

**701—12.18(423) Biodiesel production refund.** A refund of sales or use tax is available for certain producers of biodiesel for calendar years 2012 to 2014.

**12.18(1) *Qualifications for the refund.*** A biodiesel producer must meet the following criteria to be eligible for the refund.

*a.* The producer must be engaged in the manufacture of biodiesel and have registered with the United States Environmental Protection Agency as a manufacturer in accordance with the requirements of 40 CFR Part 79.4.

*b.* The biodiesel produced must be for use in biodiesel blended fuel in accordance with Iowa Code section 214A.2.

*c.* The biodiesel must be produced in Iowa.

**12.18(2) *Calculation of the refund.***

*a.* The refund is calculated by multiplying the total number of gallons produced by the biodiesel producer in this state during each quarter of the calendar year by the following rate:

- (1) For the calendar year 2012, three cents.
- (2) For the calendar year 2013, two and one-half cents.
- (3) For the calendar year 2014, two cents.

*b.* The refund is calculated on the first 25 million gallons of biodiesel produced at each facility during the calendar year. No refund will be allowed on gallons produced in excess of 25 million at a

facility during each of the calendar years 2012 to 2014. No refund will be allowed for gallons produced at a facility on or after January 1, 2015.

**12.18(3) Claiming the tax credit.** The refund shall be computed after subtracting any amount of sales or use tax imposed and paid upon purchases made by the biodiesel producer. The biodiesel producer must file and report the amount of sales or use tax upon purchases made during each calendar year quarter from 2012 to 2014 by filing a quarterly sales or use tax return. The biodiesel producer must then file Form IA 843, Claim for Refund, for each calendar quarter and report all of the following:

- a. The amount of biodiesel produced during the quarter at each facility.
- b. The calculation of the biodiesel production refund.
- c. The amount of sales or use tax paid upon purchases during the quarter.
- d. The amount of biodiesel production refund requested.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2012. The producer owes \$10,000 of Iowa consumers use tax based on purchases made during the first quarter of 2012. The producer will file an Iowa consumers use tax return and report \$10,000 of tax due, but this amount will not be paid with the return. The producer will also file Form IA 843, Claim for Refund, to request a refund of \$140,000 for the first quarter of 2012. This amount is calculated by multiplying 5 million gallons times three cents, or \$150,000, less the \$10,000 of Iowa consumers use tax due.

This rule is intended to implement Iowa Code section 423.4 as amended by 2011 Iowa Acts, Senate Files 531 and 533.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

[Filed 12/12/74]

[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]

[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]

[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]

[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]

[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]

[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]

[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]

[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]

[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]

[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]

[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]

[Filed 8/13/82, Notice 7/7/82—published 9/1/82, effective 10/6/82]

[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]

[Filed emergency 12/17/82—published 1/5/83, effective 1/1/83]

[Filed emergency 2/10/83—published 3/2/83, effective 3/1/83]

[Filed 2/10/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]

[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]

[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]

[Filed 1/10/86, Notice 12/4/85—published 1/29/86, effective 3/5/86]

[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]

[Filed 10/3/86, Notice 8/13/86—published 10/22/86, effective 11/26/86]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]

[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]

[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]

[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]<sup>o</sup>

[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]

[Filed 5/23/91, Notice 4/17/91—published 6/12/91, effective 7/17/91]

[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]  
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]  
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]  
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]  
[Filed 11/14/97, Notice 10/8/97—published 12/3/97, effective 1/7/98]  
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]  
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]  
[Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]  
[Filed 11/12/08, Notice 10/8/08—published 12/3/08, effective 1/7/09]  
[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

◊ Two or more ARCs



TITLE V  
INDIVIDUALCHAPTER 38  
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

**701—38.1(422) Definitions.**

**38.1(1)** When the word “*department*” appears herein, the word refers to and is synonymous with the “Iowa department of revenue”; the word “*director*” is the “director of revenue” or the director’s authorized assistants and employees.

The administration of the individual income tax is a responsibility of the department. The department is charged with the administration of the individual income tax, fiduciary tax, withholding of tax and individual estimate declarations, subject always to the rules, regulations and direction of the director.

**38.1(2)** The term “*computed tax*” means the amount of tax remaining before deductions of the personal exemption credit and other credits in Iowa Code chapter 422, division II, and before the computation of the school district surtax and the emergency medical services income surtax.

**38.1(3)** The word “*taxpayer*” includes under this division:

- a. Every resident of the state of Iowa.
- b. Every part-year resident of the state of Iowa.
- c. Every estate and trust resident of this state whose income is in whole or in part subject to the state income tax.
- d. Nonresident individuals, estates and trusts (those with a situs outside of Iowa) receiving taxable income from property in Iowa or from business, trade, or profession or occupation carried on in this state.

**38.1(4)** The term “*fiduciary*” shall mean one who acts in place of or for the benefit of another in accordance with the meaning of the term defined in Iowa Code section 422.4. The term includes, but is not limited to, the executor or administrator of an estate, a trustee, guardian or conservator, or a receiver.

**38.1(5)** The term “*employer*” means those who have a right to exercise control as to the performance of services as defined in Iowa Code section 422.4.

**38.1(6)** The term “*employee*” means and includes every individual who is a resident, or who is domiciled in Iowa, or any nonresident, or corporation performing services within the state of Iowa, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. This includes officers of corporations, individuals, including elected officials performing services for the United States government or any agency or instrumentality thereof, or the state of Iowa, or any county, city, municipality or political subdivision thereof.

**38.1(7)** The term “*wages*” means any remuneration for services performed by an employee for an employer, including the cash value of all such remuneration paid in any medium or form other than cash. Wages have the same meaning as provided by the Internal Revenue Code as made applicable to Iowa income tax.

Wages subject to Iowa income tax withholding consist of all remuneration, whether in cash or other form, paid to an employee for services performed for the employer. For this purpose, the word “wages” includes all types of employee compensation, such as salaries, fees, bonuses, and commissions. It is immaterial whether payments are based on the hour, day, week, month, year or on a piecework or percentage plan.

Wages paid in any form other than money are measured by the fair market value of the goods, lodging, meals, or other consideration given in payment for services.

Where wages are paid in property other than money, the employer should make necessary arrangements to ensure that the tax is available for payment. Vacation allowances and back pay, including retroactive wage increases, are taxed as ordinary wages.

Tips or gratuities paid directly to an employee by a customer and not accounted for to the employer are not subject to withholding. However, the recipients must include them in their personal income tax returns.

Amounts paid specifically, either as advances or reimbursements, for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to these taxes. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowance are combined in a single payment.

Wages are to be considered as paid when they are actually paid or when they are constructively paid, that is, when they are credited to the account of, or set apart for the wage earner so that they may be drawn upon by the wage earner at any time, although not then actually reduced to possession.

**38.1(8)** The term “*responsible party*” shall have the same meaning as withholding agent as defined in Iowa Code section 422.4. A withholding agent includes an officer or employee of a corporation or association, or a member or employee of a partnership, who has the responsibility to perform acts covered by Iowa Code section 422.16. As of July 1, 1993, withholding agent also includes a member or a manager of a limited liability company who has the responsibility to perform acts covered by Iowa Code section 422.16 as amended by 1994 Iowa Acts, Senate File 2057. An individual who is a “responsible party” by law cannot shift that responsibility to someone else by attempting to delegate the responsibility to another corporate officer or employee.

Every business which is an employer must have some person who has the duty of withholding and paying those taxes which the law requires an employer to withhold and pay. There may be more than one person, but there must be at least one. The fact that any individual may not have been the only responsible person would not excuse that person from the responsibility of paying withholding taxes. Any withholding agent as defined in this subrule, who knowingly violates the statutory provisions of Iowa Code section 422.16, will be held liable for the tax due: *Pacific National Insurance Co. v. United States*, 1970, 9th Cir., 422 F.2d 26, cert. denied, 398 U.S. 937; *R. E. Dougherty v. United States*, 1971, 327 F. Supp. 202; *Gefen v. United States*, 5th Cir. 1968, 400 F.2d 476.

**38.1(9)** *Domicile*. Rescinded IAB 5/10/95, effective 6/14/95.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

## **701—38.2(422) Statute of limitations.**

### **38.2(1)** *Periods of audit.*

*a.* The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitations does not apply in the instances specified in paragraphs “*b*,” “*c*,” “*d*,” “*e*,” “*f*” and “*g*.”

*b.* If a taxpayer fails to include in the taxpayer’s return items of gross income as defined in the Internal Revenue Code as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extensions of time for filing, whichever time is the later.

*c.* If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

*d.* If a taxpayer fails to file a return, the periods of limitations so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

*e.* While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

*f.* In addition to the periods of limitation set forth in paragraph “*a*,” “*b*,” “*c*,” “*d*,” or “*e*,” the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and

the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance*, 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa individual income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

g. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitation for the taxable year of the net operating loss or net capital loss which results in such carryback.

**38.2(2) Waiver of statute of limitations.** When the taxpayer and the department enter into an agreement to extend the period of limitation, interest continues to accrue on any deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

**38.2(3) Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.** If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code section 422.25.

#### **701—38.3(422) Retention of records.**

**38.3(1)** Every individual subject to the tax imposed by Iowa Code section 422.5 (whether or not the individual incurs liability for the tax) and every withholding agent subject to the provisions of Iowa Code section 422.16 shall retain those books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal income tax return and all supporting federal schedules. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

**38.3(2)** In addition, records relating to other deductions or additions to federal adjusted income and Iowa tax credits shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitations for audit specified in Iowa Code section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

[ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—38.4(422) Authority for deductions.** Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.

#### **701—38.5(422) Jeopardy assessments.**

**38.5(1)** A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department

is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

**38.5(2)** A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

**701—38.6(422) Information deemed confidential.** Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.16, 422.20, and 422.72.

**701—38.7(422) Power of attorney.** For information regarding power of attorney, see rule 701—7.34(421) and 7.38(421,17A).

**701—38.8(422) Delegations to audit and examine.** Pursuant to statutory authority, the director delegates to authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.70.

**701—38.9(422) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond issued by a surety company authorized to conduct business in Iowa and approved by the insurance commissioner as to solvency and responsibility in an amount the director may fix, or in lieu of bond, securities approved by the director in an amount the director may prescribe and keep in the custody of the department. Pursuant to the statutory authorization in Iowa Code section 422.16, the director has determined that the following procedures will be instituted with regard to bonds. However, the bonding procedures were applicable only to nonresident employers or withholding agents for withholding taxes due prior to January 1, 1987. The penalty for failure of a withholding agent to file a bond, described in subrule 38.9(4) applies to taxes required to be withheld on or after January 1, 1990.

**38.9(1) When required.**

*a. New applications by withholding agents.* A new withholding agent applicant will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a withholding agent's identification number for a prior business and the remittance record of the tax under the prior identification number falls within one of the conditions in paragraph "b" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior identification number.

*b. Existing withholding agents.* Existing withholding agents shall be requested to post a bond or security when they have had two or more delinquencies in remitting the withholding tax during the last 24 months if filing returns on a quarterly basis or have had four or more delinquencies during the last 24 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or the late payment of the tax will not count as a delinquency if the withholding agent can satisfy one of the conditions set forth in Iowa Code section 421.27.

*c. Waiver of bond.* If a withholding agent has been requested to post a bond or security or if a withholding agent applicant has been requested to post a bond or security, upon the filing of the bond or security, if the withholding agent maintains a good filing record for a period of two years, the withholding agent may request that the department waive the continued bond or security requirement.

**38.9(2) Type of security or bond.** When it is determined that a withholding agent or withholding agent applicant is required to post collateral to secure the collection of the withholding tax, the following types of collateral will be considered as sufficient: surety bonds, securities or certificates of deposit. When the withholding agent is a corporation, an officer or employee of the corporation may assume personal liability as security for the payment of the withholding tax. The officer or employee will be evaluated as provided in 38.9(1) "a" as if the officer or employee applied as the withholding agent as an individual.

**38.9(3) Amount of bond or security.** When it is determined that a withholding agent or withholding agent applicant is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the withholding agent or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' withholding tax liability will be required. If the applicant or withholding agent will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

**38.9(4) Penalty for failure of a withholding agent to file bond.** If the withholding agent is requested by the department to file a bond to secure collection of the state withholding tax and fails to file the bond, the withholding agent is subject to a penalty. The penalty for failure to file a bond is 15 percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty cannot exceed \$5000.

This rule is intended to implement Iowa Code section 422.16.

**701—38.10(422) Indexation.** Acts of the Sixty-ninth General Assembly, 1981 Regular Session, chapter 132, and Iowa Code section 422.5 provide for the adjustment of the tax brackets and civil service annuity exclusion by a cumulative inflation factor to be determined by the director. The requirement that provided that the state general fund balance on June 30 of the prior calendar year had to be \$60 million or more before there was indexation of the tax rate brackets for the current year was repealed for tax years beginning on or after January 1, 1996.

**38.10(1) to 38.10(17)** Rescinded IAB 2/18/04, effective 3/24/04.

This rule is intended to implement Iowa Code sections 422.4 and 422.21.

**701—38.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims.** A taxpayer may appeal to the director at any time within 60 days from the date of the notice of assessment of tax, additional tax, interest, or penalties. For assessments issued on or after January 1, 1995, if a taxpayer fails to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims. See rule 701—7.41(17A) for information on filing appeals or protests.

This rule is intended to implement Iowa Code sections 421.10 and 422.28.

**701—38.12(422) Indexation of the optional standard deduction for inflation.** Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor is an index, to be determined by the department of revenue by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. For

tax years beginning on or after January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.

This rule is intended to implement Iowa Code section 422.4.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—38.13(422) Reciprocal tax agreements.** Effective for tax years beginning on or after January 1, 2002, the department of revenue may, when the action has been approved by the general assembly and the governor, and when it is cost-efficient, administratively feasible, and of mutual benefit to Iowa and another state, enter into a reciprocal tax agreement with a tax administration agency of the other state. Under this agreement, income earned from personal services in Iowa by residents of the other state will be exempt from Iowa income tax if the other state provides an identical exemption from its state income tax for income earned in the other state from personal services by Iowa residents. For purposes of this rule, “income earned from personal services” includes wages, salaries, commissions, tips, deferred compensation, pensions, and annuities which were earned from personal services in Iowa by a resident of another state that had a reciprocal tax agreement with Iowa at the time the wages, salaries, commissions, tips, deferred compensation, pensions, or annuities were earned.

**38.13(1) Reciprocal tax agreement with Illinois.** Pursuant to the authority of Iowa Code subsection 422.8(5), the department of revenue entered into a reciprocal tax agreement with tax administration officials of Illinois in November 1972 which went into effect for taxable years which began after December 31, 1972. The Iowa-Illinois reciprocal tax agreement cannot be terminated by the Iowa department of revenue unless the termination is authorized by a constitutional majority of each house of the general assembly and is approved by the governor. The Iowa-Illinois reciprocal tax agreement includes the following terms:

*a.* No Illinois or Iowa employer is required to withhold Illinois income tax from compensation paid to an Iowa resident for personal services in Illinois.

*b.* No Illinois or Iowa employer is required to withhold Iowa income tax from compensation paid to an Illinois resident for personal services in Iowa.

*c.* Every Iowa employer who is subject to the jurisdiction of Illinois is liable to the state of Illinois for withholding of Illinois income tax from compensation paid to Illinois residents.

*d.* Every Illinois employer who is subject to the jurisdiction of Iowa is liable to the state of Iowa for the withholding of Iowa income tax from compensation paid to Iowa residents.

*e.* The Illinois department of revenue will encourage Illinois employers who are not subject to the jurisdiction of Iowa to withhold and remit Iowa income tax from wages paid to Iowa residents employed in Illinois.

*f.* The Iowa department of revenue will encourage Iowa employers who are not subject to the jurisdiction of Illinois to withhold and remit Illinois income tax from compensation paid to Illinois residents from employment in Iowa.

*g.* For purposes of the agreement, “compensation” means wages, salaries, commissions, tips, deferred compensation, pensions, and annuities and any other remuneration paid for personal services. In the case of deferred compensation, pensions, and annuities, those incomes are deemed to have been earned at the time of employment. Therefore, if an Illinois resident receives a pension or annuity from employment in Iowa at the time the reciprocal agreement was in effect, the pension or annuity income is not taxable to Iowa since it is “compensation” covered by the reciprocal agreement. “Compensation” does not include unemployment compensation benefits which an Illinois resident receives due to employment in Iowa.

*h.* No Iowa resident is required to pay Illinois income tax or file an Illinois return from compensation paid from personal services in Illinois.

*i.* No Illinois resident is required to pay Iowa income tax or to file an Iowa return on compensation for personal services in Iowa.

*j.* For purposes of the agreement, the term “Iowa resident” means an individual who is a resident under the laws of the state of Iowa, and the term “Illinois resident” means an individual who is a resident as defined in the Illinois Income Tax Act.

**38.13(2)** *Reciprocal tax agreements with states other than Illinois.* The Iowa department of revenue has not entered into reciprocal tax agreements with any state except the state of Illinois. See subrule 38.13(1).

This rule is intended to implement Iowa Code section 422.8 as amended by 2002 Iowa Acts, House File 2116, and section 422.15.

**701—38.14(422) Information returns for reporting income payments to the department of revenue.** Effective January 1, 1993, every person, every corporation, or agent of a person or corporation, lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having control, receipt, custody, or disposal of any of the income items described in subrule 38.14(1), shall file information returns with the department of revenue by the last day of February following the end of the year in which the payments were made. For purposes of this rule, “every person” is every individual who is a resident of this state. For purposes of this rule, “every corporation” includes all corporations that have a place of business in this state.

**38.14(1)** *Incomes to be included in information returns.* The entities described in rule 701—38.14(422) are required to file information returns to the department of revenue on income payments of interest (other than interest coupons payable to the bearer), rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, unemployment compensation, royalties, patronage dividends, or other fixed or determinable annual or periodic gains, profits, and income to the extent that the amount of income is great enough so that an information return on the income is required to be filed with the Internal Revenue Service (IRS) under provisions of the Internal Revenue Code. However, no reporting is required for payments of deferred compensation, pensions, and annuities to nonresidents of Iowa. In addition, no reporting is required for any type of income payment where information on the income payment is available to the department from the Internal Revenue Service.

**38.14(2)** *Information on income payments available from the Internal Revenue Service.* The department can obtain information from the Internal Revenue Service on many income payments made to individuals in the tax year. The following is a list of federal reporting forms and the types of information available on those forms from the Internal Revenue Service for residents of Iowa:

*a.* 1065 K-1.

1. Dividends.
2. Interest.
3. Tax withheld.
4. Royalties.
5. Ordinary income or (loss).
6. Real estate income or (loss).
7. Other rental income or (loss).
8. Other portfolio income or (loss).
9. Guaranteed payments.

*b.* K-1 1041.

1. Dividends.
2. Interest.
3. Other taxable income or (loss).
4. Tax withheld.

- c.* K-1 1120-S.
  - 1. Dividends.
  - 2. Interest.
  - 3. Tax withheld.
  - 4. Royalties.
  - 5. Ordinary income.
  - 6. Real estate.
  - 7. Other rental.
  - 8. Other portfolio.
  
- d.* 1099-S.
  - 1. Real estate sales.
  
- e.* 1099-B.
  - 1. Aggregate profit and loss.
  - 2. Realized profit and loss.
  
- f.* 1098.
  - 1. Mortgage interest.
  
- g.* 1099-G.
  - 1. Tax withheld.
  - 2. Taxable grant.
  - 3. Unemployment compensation.
  - 4. Agricultural subsidies.
  
- h.* 1099-DIV.
  - 1. Dividends.
  - 2. Tax withheld.
  - 3. Capital gains.
  - 4. Cash liquid distribution.
  - 5. Noncash liquid distribution.
  - 6. Investment expense.
  - 7. Ordinary dividends.
  
- i.* 1099-INT.
  - 1. Interest.
  - 2. Tax withheld.
  - 3. Savings bonds.
  - 4. Interest forfeiture.
  - 5. Tax-exempt interest.

This rule is intended to implement Iowa Code section 422.15.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—38.15(422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse.** A husband and wife are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where they file separately on the combined return form.

However, effective for tax years beginning on or after January 1, 1994, a married person who meets the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for a substantial understatement of tax that is attributable to grossly erroneous items of the other spouse. For purposes of determining if an individual is an innocent spouse for state income tax purposes, the provisions in Section 6015 of the Internal Revenue Code will be followed as well as federal court cases, letter rulings, and revenue rulings which deal with innocent spouse. In addition, for tax years beginning on or after January 1, 2002, the provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes. The following are the criteria that must be considered for purposes of determining if an individual is an innocent spouse for Iowa income tax purposes:

1. Understatement of tax attributable to grossly erroneous items of the other spouse. An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. The understatement must be entirely attributable to grossly erroneous items of one spouse in order for the other spouse to be eligible for status as an innocent spouse. As an innocent spouse, the individual will not be liable for the substantial understatement of tax of the other spouse. The tax liability attributable to the understatement is computed by adding penalties and interest that accrued by the date of the deficiency notice. Grossly erroneous items may include any omission from gross income such as income from embezzled funds. Grossly erroneous items may also include deductions or Iowa tax credits that are without factual or legal foundation.

2. Filing status for return with an innocent spouse. For state income tax purposes, a married taxpayer filing a return with a spouse can qualify as an innocent spouse only if the taxpayers file a joint return or file separately on the combined return form. A married taxpayer who files a separate state return will not be eligible for innocent spouse status.

3. Innocent spouse must establish lack of knowledge of other spouse's substantial understatement. Innocent spouse relief applies only if the individual claiming to be an innocent spouse can establish that in signing the state return, the individual did not know and had no reason to know that there was a substantial understatement of tax. The innocent spouse's lack of knowledge must exist until the time the return is filed and not just until the end of the year (or period) covered by the return. The U.S. Tax Court has provided that the standard for determining if a taxpayer had reason to know of an omission is whether a reasonable person under the particular circumstances at the time of signing the return could be expected to know of the omission.

In many cases in which innocent spouse relief is sought, the following factors play a role: business background or education of person claiming innocent spouse relief, involvement in family financial affairs by the person claiming innocent spouse relief, involvement in the family business or the transaction giving rise to the understatement by the person claiming innocent spouse relief, whether or not there were lavish or unusual expenditures in the family or increase in standard of living of the family and knowledge of embezzlement activities of the other spouse.

4. Whether or not it would be equitable to hold the innocent spouse for the substantial understatement. Innocent spouse relief applies only if, taking into account all facts and circumstances, it would be inequitable to hold the claimed innocent spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement. Factors taken into account in determining whether it is inequitable to hold a spouse liable for a tax deficiency include whether the spouse seeking relief has been deserted, divorced, separated, or widowed.

Another important factor in determining equitable treatment for the person claiming innocent spouse relief is whether the person received a benefit attributable to the substantial understatement of taxes. The fact that the spouse received a benefit in the nature of "ordinary support" does not support a finding of significant benefit to deny the spouse relief. In addition, ordinary family support may include maintaining an affluent lifestyle if the standard of living is not enhanced by the tax understatement.

Where the taxpayer participated in the financial affairs of the other spouse and enjoyed the benefits from the activities of the other spouse, innocent spouse relief will not be granted.

5. Time period for requesting innocent spouse relief. For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates

collection action on an income tax deficiency or assessment against the person claiming innocent spouse relief.

This rule is intended to implement Iowa Code section 422.21 as amended by 2002 Iowa Acts, House File 2116.

**701—38.16(422) Preparation of taxpayers' returns by department employees.** A department employee can assist a taxpayer in the preparation and completion of the taxpayer's individual income tax returns and other state tax returns during the employee's hours of employment for the department in either of the following situations:

1. At the time the department employee is conducting an audit of the taxpayer.
2. When the department employee is requested to prepare a taxpayer's individual income tax return or other tax returns by the taxpayer, the taxpayer's spouse, or the taxpayer's authorized representative.

This rule is intended to implement Iowa Code section 421.17.

**701—38.17(422) Resident determination.** For Iowa individual income tax purposes, an individual is a "resident" if: (1) the individual maintains a permanent place of abode within the state, or (2) the individual is domiciled in the state. An individual who is determined to be a "resident" of Iowa is subject to Iowa income tax on all the individual's income for the taxable year, no matter whether the income is earned within Iowa or outside of Iowa, except when an item of income is specifically exempted from taxation by a provision of federal or Iowa law.

**38.17(1) Permanent place of abode.** The establishment of a permanent place of abode requires the maintenance of a place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. Significant factors, among others, to be considered in determining whether an individual maintains such a permanent place of abode are: (1) the amount of time the individual spends in the locality; (2) the nature of the individual's place of abode; (3) the individual's activities in the locality; and (4) the individual's intentions with regard to the length and nature of the individual's stay.

There is a rebuttable presumption that an individual is maintaining a "permanent place of abode" if the individual maintains a place of abode within this state and spends more than 183 days of the tax year within this state. The term "place of abode" includes a house, apartment, condominium, mobile home, or other dwelling place maintained or occupied by the individual whether or not owned or rented by the individual. Situations where presence in the state for 183 days of the tax year may not cause an individual to be considered to be maintaining a "permanent place of abode" would include situations where presence in the state is not voluntary, such as confinement to a correctional facility or an extended hospital stay.

**38.17(2) Domicile.** An individual is "domiciled" in this state if the individual intends to permanently or indefinitely reside in Iowa and intends to return to Iowa whenever the individual may be absent from this state. Individuals who have moved into this state are domiciled in Iowa if the following three elements exist: (1) a definite abandonment of a former domicile; (2) actual removal to, and physical presence in this state; and (3) a bona fide intention to change domicile and to remain in this state permanently or indefinitely. *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d 329, 331 (1963).

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is "domiciled in this state," is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth from *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d, 329, 331 (1963). The director may require an individual claiming domicile outside the state of Iowa to

provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

*a.* There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:

(1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year, and either

(2) Claims a homestead credit or military tax exemption on a home in Iowa, or

(3) Is registered to vote in Iowa, or

(4) Maintains an Iowa driver's license, or

(5) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

*b.* There is a rebuttable presumption that an individual is not domiciled in Iowa if the individual meets all of the following factors:

(1) Does not claim a homestead credit or military exemption on a home in Iowa,

(2) Is not registered to vote in Iowa,

(3) Does not maintain an Iowa driver's license,

(4) Is in Iowa less than 183 days of the tax year; and

(5) The individual maintains a place of abode outside of Iowa where the individual resides for at least 183 days of the tax year.

*c.* In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:

(1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.

(2) Maintains an Iowa driver's license.

(3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.

(4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.

(5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.

(6) Vehicles registered in Iowa.

(7) Location of employment or active participation in a business within Iowa.

(8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.

(9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.

(10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

Unless shown to the contrary, married persons are presumed to have the same residence. Ordinarily, the residence of a minor is that of the person who has permanent custody over the minor.

An individual may qualify as a part-year resident of Iowa by: (1) not maintaining a permanent place of abode; and (2) not having a domicile in Iowa for the entire tax year. In determining part-year resident status, whether an individual is in or out of Iowa for 183 days may not be a factor.

**38.17(3)** *Resident determination for individuals on active duty military service.* The Soldiers and Sailors Civil Relief Act provides in 50 U.S.C. Appx § 574(1) that members of the armed forces of the United States shall not be deemed to have lost a residence or domicile in any state, solely by being absent from that state in compliance with military or naval orders, or to have acquired a residence or domicile in another state while being absent from the state of residence. Thus, residents of Iowa who enter military service will retain their Iowa residence during the tenure of their military service or until they take positive action to change their state of residence.

For tax years beginning prior to January 1, 2011, residents of Iowa in military service will have Iowa income tax withheld from their military pay except when the military pay is earned in a combat zone and is totally or partially exempt from both federal and state income tax. An Iowa resident in military service can change state of residence for purposes of withholding of state income tax by completing Form DD2058 and designating a state other than Iowa as the individual's new state of residence. The military payroll officer of the service person will accept the DD2058 form and stop withholding Iowa income tax from the service person's military pay and start withholding the state income tax of the state of new residence of the service person (assuming the new state of residence has an income tax and assuming the new state of residence requires withholding of income tax from wage payments to its residents in military service). However, the completion of the DD2058 form by the "former Iowa resident" will not be considered as a valid change of residence for Iowa income tax purposes unless the service person was physically residing in the new state of residence at the time the DD2058 form was completed and the service person took other actions to show intent to change state of residence. Other actions to show intent to change state of residence would include: (1) registering to vote in the new state; (2) purchasing real property in the new state; (3) titling and registering vehicles in the new state; (4) notifying the state of previous residence of the state of residence change; (5) preparing a new last will and testament which indicates the new residence; and (6) complying with the tax laws of the state of new residence. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422) regarding the exemption of active duty pay for both resident and nonresident members of the armed forces, armed forces military reserve, or the national guard.

Military personnel who are residents of other states and who come to Iowa as a result of military or naval orders, but who later decide to become legal or actual residents of Iowa, or military personnel who purchase residential property in Iowa and claim homestead credits or the military exemption for the property for property tax purposes are presumed to be residents of Iowa for income tax purposes.

Military personnel who are not residents of the state of Iowa and who receive military pay for service in Iowa shall not be considered to have received this income for services performed within Iowa or from sources within Iowa. These nonresidents of Iowa will be taxable on nonmilitary wages for personal services in Iowa they receive while stationed in Iowa. These individuals will also be taxable to Iowa on incomes they receive from businesses, trades, professions, or occupations operated in Iowa during the time they are stationed in Iowa as well as on nonmilitary incomes from any other sources within Iowa.

Since military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay cannot be considered for purposes of Iowa's taxation of nonresidents in accordance with the Servicemembers Civil Relief Act, Public Law 108-189. The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in rule 701—42.5(422).

For tax years beginning before January 1, 2009, spouses of military personnel who earn wages and other incomes from Iowa sources are taxed on these incomes similarly to other nonresidents of Iowa. Spouses of Iowa resident military personnel who were nonresidents of Iowa at the time of the marriages with the Iowa residents will not be considered to be residents of Iowa until they actually reside in Iowa with their husbands or wives. For tax years beginning on or after January 1, 2009, spouses who earn wages from Iowa sources are not subject to Iowa income tax on these wages if one spouse who is present in Iowa is a member of the armed forces, the other spouse is present in Iowa solely to be with the military spouse, and the spouse who is a member of the armed forces maintains a domicile in another state. This treatment for tax years beginning on or after January 1, 2009, is required by the Military Spouses Residency Relief Act, Public Law No. 111-97.

**38.17(4) Examples of resident determination.**

a. Fred and Mary were domiciled in Iowa when Fred retired in 1994. They have a house in Iowa and a condominium in Florida. Prior to 1994, Fred and Mary spent approximately four months in Florida and the remaining eight months in Iowa. Fred owned a small business when he retired and was retained as a consultant and remained a member of the board of directors after retirement. Fred and Mary have friends and family in both Iowa and Florida. They are also involved in the activities of the local country club as well as other civic and service organizations in both locations. When Fred retired, he and Mary decided to spend more time in Florida, especially during the winter months. They usually

leave for Florida in late October and return to Iowa in early April. They have transferred their automobile registrations to Florida and they have acquired Florida driver's licenses. They have registered to vote in Florida and have voted in Florida elections. They visit doctors and dentists in both locations as the need arises. They maintain bank accounts in both locations and have mail sent to the location at which they are physically residing. Fred and Mary usually return to Iowa for the Thanksgiving and Christmas holidays and Fred returns once a month to attend board meetings. They do not claim a homestead credit or military tax exemption on their Iowa home, but they do use their Iowa address on most of their legal documents and on their federal tax return. They also travel and vacation during the winter months and oftentimes leave Florida to vacation.

Fred and Mary would be considered Iowa residents because they have retained a permanent abode in Iowa.

*b.* Susan takes an apartment in Des Moines when her employer assigns her to the region office of a large accounting firm for a temporary period. She spends more than 183 days in Iowa, but she returns to her apartment in Ohio once a month to visit her friends and to check her mail. She intends to return to Ohio when her assignment in Des Moines is terminated. She has retained her Ohio driver's license and she is registered to vote in Ohio.

Susan would not be considered to be an Iowa resident because she has not established a "permanent" place of abode in Iowa, even though she is present in Iowa for more than 183 days. Also, she has not had a definite abandonment of her former domicile. Susan would be taxed on her Iowa income as a nonresident. However, if Susan was assigned to Des Moines on a permanent basis, she may be considered an Iowa resident even though she retains her apartment in Ohio.

*c.* John is an over-the-road truck driver and his job takes him out of Iowa for approximately 240 days a year. He is married and his wife, Mary, lives in Marshalltown, Iowa. His two school-age children attend school in that community and Mary also has a part-time job as a nurse for the neighborhood clinic. John gets home for most weekends and for the holidays. He is registered to vote in Iowa and utilizes the Iowa homestead and military tax exemptions. He does not own any other real property except a lakeside cabin in Minnesota, where the family vacations during the summer.

John would be considered an Iowa resident even though he is not present in the state for more than 183 days because John intends to return to Iowa whenever he is absent and has not taken any steps to establish residency in any other state.

*d.* Wilber, who is a resident of Idaho, has a heart attack while vacationing in Iowa. He is hospitalized in the University Hospitals in Iowa City. While there, the doctors also discover that he has a rare blood disorder and Wilber is confined to the hospital for nearly nine months, during which time he receives treatment.

Wilber's presence in Iowa is for a medical emergency. When an individual suffers a medical emergency while present in this state for other purposes and cannot be realistically moved from the state or in situations where an individual is confined to an institution as a result of seeking treatment, the time spent in Iowa would not count toward the 183-day rule. Also, Wilber's hospital room would not be considered a permanent place of abode.

*e.* Chuck and Linda both worked for a major manufacturing company in Iowa and both of them decided to take advantage of an early retirement package offered by their employer. They do not have any children, but Chuck has a brother who lives in Davenport, Iowa, and Linda has a sister who lives in Phoenix, Arizona. After retirement, Chuck and Linda sell their house and purchase a motor home. They spend their time traveling the United States and Canada. They do not have a place of abode in any state as they live in their new vehicle. They do not spend more than 183 days in any state during the year. They retained their Iowa driver's licenses and their motor home is registered in Iowa. They also have bank accounts in both Iowa and Arizona, and they have their mail sent to Chuck's brother as well as Linda's sister. They show Iowa as their state of residence for federal income tax purposes. They are not registered to vote in any state.

Chuck and Linda would be considered residents of Iowa. They have not shown an intention to change domicile and remain in another state permanently or indefinitely.

This rule is effective for tax years beginning on or after January 1, 1995.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—38.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return.** For tax years beginning on or after January 1, 1992, if a taxpayer repays in the current tax year an amount of income that had been reported on the taxpayer's Iowa individual income tax return for a prior year that had been filed with the department and the taxpayer would have been eligible for a tax benefit under similar circumstances under Section 1341 of the Internal Revenue Code, the taxpayer will be eligible for a tax benefit on the Iowa return for the current tax year. The tax benefit will be either the reduced tax on the Iowa return for the current tax year due to the deduction of the repaid income or the reduction in tax on the Iowa return or returns for the prior year(s) due to the exclusion of the repaid income. The reduction in tax from the return for the prior year may be claimed as a refundable credit on the return for the current tax year.

EXAMPLE A: A taxpayer reported \$7,000 in unemployment benefits on the taxpayer's 1994 Iowa return that the taxpayer had received in 1994. In early 1995 the taxpayer was notified that \$4,000 of the unemployment benefits had to be repaid. The benefits were repaid by the end of 1995. The taxpayer claimed a deduction on the 1995 Iowa return for the amount of unemployment benefits repaid during 1995 which had been reported on the taxpayer's 1994 Iowa return as that action gave the taxpayer a greater reduction in Iowa income tax liability than the taxpayer would have received from a reduction in tax on the 1994 return by recomputing the liability by excluding the repaid income.

EXAMPLE B: A taxpayer had received a \$5,000 bonus in 1994 which was reported on the taxpayer's 1994 Iowa return. In 1995 the taxpayer's employer advised the employee that the bonus was awarded in error and to be repaid. The \$5,000 bonus was repaid to the employer by the end of 1995. The taxpayer claimed a credit of \$440 on the 1995 Iowa return for repayment of the bonus in 1995. This represented the reduction in tax for 1994 from recomputing the tax liability for that year without the \$5,000 bonus. This provided the taxpayer a greater tax benefit than the taxpayer would have received from claiming a deduction on the 1995 Iowa return from repayment of the bonus.

This rule is intended to implement Iowa Code section 422.5 as amended by 1996 Iowa Acts, Senate File 2168.

**701—38.19(422) Indication of dependent child health care coverage on tax return.** For tax years beginning on or after January 1, 2008, but before January 1, 2010, an individual who is an Iowa resident as of December 31 of the tax year who files an Iowa individual income tax return may report on the return the presence or absence of health care coverage for each dependent child as of December 31 of the tax year for which the exemption credit described in 701—subrule 42.2(1), paragraph "c," is claimed. For tax years beginning on or after January 1, 2008, but before January 1, 2010, it is not mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent, and there is no penalty if this information is not provided on the tax return. For tax years beginning on or after January 1, 2010, it is mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent. The Iowa return will not be considered complete until the indication of the presence or absence of health care coverage for each dependent is made on the return.

**38.19(1) Definition of health care coverage.** Health care coverage includes the following:

- a. Private health care coverage provided through an employer, a relative's employer, or through a union.
- b. Private health care coverage purchased by an individual from a private company.
- c. Government health care coverage provided through the state Medicaid program set forth in Iowa Code chapter 249A, or the HAWK-I (healthy and well kids in Iowa) program set forth in Iowa Code chapter 514I.
- d. Government health care coverage provided by the military including the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS) and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

*e.* Government health care coverage provided by the United States Department of Health and Human Services to eligible American Indians under the Indian Health Service program.

**38.19(2) Notification to the taxpayer.** If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer's income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the HAWK-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or HAWK-I program. The letter will also provide the address for a Web site which has an online application for health care coverage under either the Medicaid or HAWK-I program which can be completed and sent to the Iowa department of human services. The letter will also include the telephone number to call to request a paper application. The taxpayer must submit the application to the Iowa department of human services within 90 days of receipt of the enrollment information from the department of revenue. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or HAWK-I program. A dependent child must be under the age of 21 to be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the HAWK-I program.

**38.19(3) Reporting requirements.** The department, in cooperation with the department of human services, must submit an annual report to the governor and the general assembly which will include the following:

*a.* Number of Iowa families, by income level, who claim the personal exemption credit for dependent children described in 701—subrule 42.2(1), paragraph “*c.*”

*b.* The number of Iowa families, by income level, who claim the personal exemption credit and whether they indicated the presence or absence of health care coverage for their dependent children.

*c.* The number of Iowa families, by income level, claiming the personal exemption credit who received enrollment information from the department of revenue and who subsequently applied and were enrolled in either the Medicaid or HAWK-I program.

This rule is intended to implement Iowa Code section 422.12M as amended by 2009 Iowa Acts, Senate File 389, section 15.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

[Filed 12/12/74]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]

[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]

[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]

[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]

[Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]

[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]

[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]

[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]

[Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]

[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]

[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]

[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]

[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]

[Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]

[Filed 11/20/92, Notice 10/14/92—published 12/9/92, effective 1/13/93]

[Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]

[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]

[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]<sup>◇</sup>  
[Filed 4/21/95, Notice 3/1/95—published 5/10/95, effective 6/14/95]  
[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]  
[Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]  
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]  
[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]  
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]  
[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]  
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]<sup>◇</sup>  
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]  
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]  
[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]  
[Filed ARC 8605B (Notice ARC 8481B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]  
[Filed ARC 9103B (Notice ARC 8944B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9104B (Notice ARC 8954B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9822B (Notice ARC 9739B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

<sup>◇</sup> Two or more ARCs

CHAPTER 40  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—40.1(422) Net income defined.** Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.79(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.2(422) Interest and dividends from federal securities.** For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

“Obligations of the United States” are those obligations issued “to secure credit to carry on the necessary functions of government.” *Smith v. Davis* (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the “borrowing” and “supremacy” clauses of the United States Constitution. *Society for Savings v. Bowers* (1955) 349 U.S. 143, 144, 99 L.Ed.2d 950, 955, 75 S.Ct. 607, 608; *Hibernia v. City and County of San Francisco* (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. *Smith v. Davis*, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor’s primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). *Rockford Life Ins. Co. v. Department of Revenue*, 107 S.Ct. 2312 (1987).

The following list contains widely held United States Government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department’s interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States Government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government-sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

**40.2(1)** Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. *United States Government obligations:* United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation
- b. Territorial obligations:*
  1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
  2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
  3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
  4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).
- c. Federal agency obligations:*
  1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
  2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
  3. Farm Credit Banks—Principal and interest from systemwide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
  4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
  5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).
  6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).
  7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).
  8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).
  9. Federal Deposit Insurance Corporation (FDIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).
  10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).
  11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).
  12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).
  13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).
  14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).
  15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).

16. Housing and Urban Development (HUD).
  - Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).
  - Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
  - Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
  - Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
  - Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).
17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).
18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).
19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).
20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).
21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).
22. Treasury Investment Growth Receipts.
23. Certificates on Government Receipts.

**40.2(2)** Taxable securities. There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor are the principal and interest from these securities specifically exempted from taxation by the respective authorizing Acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

- a. Federal agency obligations:*
  1. Federal or State Savings and Loan Associations
  2. Export-Import Bank of the United States
  3. Building and Loan Associations
  4. Interest on federal income tax refunds
  5. Postal Savings Account
  6. Farmers Home Administration
  7. Small Business Administration
  8. Federal or State Credit Unions
  9. Mortgage Participation Certificates
  10. Federal National Mortgage Association
  11. Federal Home Loan Mortgage Corporation (Freddie Mac)
  12. Federal Housing Administration
  13. Federal National Mortgage Association (Fannie Mae)
  14. Government National Mortgage Association (Ginnie Mae)
  15. Merchant Marine (Maritime Administration)
  16. Federal Agricultural Mortgage Corporation (Farmer Mac)
- b. Obligations of international institutions:*
  1. Asian Development Bank
  2. Inter-American Development Bank

3. International Bank for Reconstruction and Development (World Bank)

c. *Other obligations:*

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 514 US —, 130 L.Ed.2d 470, 115 S.Ct. — (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For tax years beginning on or after January 1, 1987, interest from Mortgage Backed Certificate Guaranteed by Government National Mortgage Association (“Ginnie Maes”) is subject to Iowa income tax. See *Rockford Life Insurance Company v. Illinois Department of Revenue*, 96 L.Ed.2d 152.

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.3(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions.** Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. Board of Regents: Bonds issued under Iowa Code sections 262.41, 262.51, 262.60, 262A.8, and 263A.6.
2. Urban Renewal: Bonds issued under Iowa Code section 403.9(2).
3. Municipal Housing Law - Low-income housing: Bonds issued under Iowa Code section 403A.12.
4. Subdistricts of soil conservation districts, revenue bonds: Bonds issued under Iowa Code section 467A.22 (transferred to Iowa Code section 161A.22 in 1993 Iowa Code).
5. Aviation authorities, revenue bonds: Bonds issued under Iowa Code section 330A.16.
6. Rural water districts: Bonds and notes issued under Iowa Code section 357A.15.
7. Iowa Alcoholic Beverage Control Act - Warehouse project: Bonds issued under Iowa Code section 123.159.
8. County Health Center: Bonds issued under Iowa Code section 331.441(2) “c”(7).
9. Iowa Finance Authority, Sewage treatment and drinking water facilities financing: Bonds issued under Iowa Code section 220.131(6) (transferred to Iowa Code section 16.131(6) in 1993 Iowa Code).
10. Agricultural Development Authority, Beginning farmer loan program: Bonds issued under Iowa Code section 175.17.
11. Iowa Finance Authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
12. Iowa Finance Authority, E911 Program notes and bonds: Bonds issued under Iowa Code section 477B.20(6). (Transferred to Iowa Code section 34A.20(6) in 1993 Iowa Code.)
13. Quad Cities Interstate Metropolitan Authority Bonds: Bonds issued under Iowa Code section 330B.24. (Transferred to Iowa Code section 28A.24 in 1993 Iowa Code.)
14. Iowa Finance Authority, Municipal Investment Recovery Program: Bonds issued under Iowa Code section 220.173(4). (Transferred to Iowa Code section 16.173(4) in 1993 Iowa Code.)
15. Prison Infrastructure Revenue Bonds: Bonds issued under Iowa Code section 16.177(8).
16. Government Flood Damage Program Bonds: Bonds issued under Iowa Code section 16.183(4).
17. Iowa sewage treatment bonds: Bonds issued under Iowa Code section 16.131(6).

18. Community college residence halls and dormitories bonds: Bonds issued under Iowa Code section 260C.61.

19. Community college bond program bonds: Bonds issued under Iowa Code section 260C.71(6).

20. Regents institutions medical and hospital buildings at University of Iowa bonds: Bonds issued under Iowa Code section 263A.6.

21. Interstate bridges bonds: Bonds issued under Iowa Code section 313A.36.

22. Iowa higher education loan authority: Obligations issued by the authority on or after July 1, 2000, pursuant to either division of Iowa Code chapter 261A as authorized in Iowa Code section 261A.27.

23. Vision Iowa program: Bonds issued on or after July 1, 2000, upon request of the vision Iowa board pursuant to subsection 8 of Iowa Code section 12.71.

24. Honey Creek premier destination park bonds: Bonds issued under Iowa Code Supplement section 463C.12(8).

25. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under 2006 Iowa Acts, chapter 1179, section 70.

26. Iowa jobs program bonds: Bonds issued under 2009 Iowa Acts, Senate File 376, section 1.

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 514 US —, 130 L.Ed. 2d 470, 115 S.Ct. — (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code sections 12.71, 261A.27, 357A.15, 422.7, 463C.12 and Iowa Code Supplement section 12.87.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.4(422) Certain pensions, annuities and retirement allowances.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.5(422) Military pay.**

**40.5(1)** Rescinded IAB 6/3/98, effective 7/8/98.

**40.5(2)** For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977, but before January 1, 2011. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977, but before January 1, 2011. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422). However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

*a.* When universal compulsory military service is reinstated by the United States Congress. “Compulsory military service” is defined to be the actual act of drafting individuals into the military service and not just the registration of individuals under the Military Selective Service Act (50 App. U.S.C. 453); or

*b.* When a state of war is declared to exist by the United States Congress.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guard and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.5.  
[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.6(422) Interest and dividend income.** This rule applies to interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the term of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.7(422) Current year capital gains and losses.** In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code are to be followed.

This rule is intended to implement Iowa Code section 422.7.

**701—40.8(422) Gains and losses on property acquired before January 1, 1934.** When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.9(422) Work opportunity tax credit and alcohol fuel credit.** Where an individual claims the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol fuel credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The work opportunity tax credit applies to eligible individuals who begin work after September 30, 1996, and before September 1, 2011. The adjustment for the alcohol fuel credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement Iowa Code section 422.7.

**701—40.10(422) Exclusion of interest or dividends.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.11(422) Two-earner married couple deduction.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.12(422) Income from partnerships or limited liability companies.** Residents engaged in a partnership or limited liability company, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership or limited liability company, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual who is a member of a partnership or limited liability company doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not. See 701—Chapter 45.

This rule is intended to implement Iowa Code sections 422.7, 422.8, and 422.15.

**701—40.13(422) Subchapter “S” income.** Where a corporation elects, under Sections 1371-1379 of the Internal Revenue Code, to distribute the corporation’s income to the shareholders, the corporation’s income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident

and nonresident shareholders shall report their share of the corporation's net taxable income on their respective Iowa returns. *Isaacson v. Iowa State Tax Commission*, 183 N.W.2d 693, Iowa Supreme Court, February 9, 1971. Residents shall report their distributable share in total while nonresidents shall report only their portion of their distributable share which was earned in Iowa. For tax years beginning on or after January 1, 1996, residents should refer to 701—Chapter 50 to determine if they qualify to compute Iowa taxable income by allocation and apportionment. See 701—Chapter 54 for allocation and apportionment of corporate income.

This rule is intended to implement Iowa Code sections 422.7, 422.8, 422.15, and 422.36.

**701—40.14(422) Contract sales.** Interest derived as income from a land contract is intangible personal property and is assignable to the recipient's domicile. Gains received from the sale or assignment of land contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see 40.16(422).

This rule is intended to implement Iowa Code sections 422.7 and 422.8.

**701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes.** Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

However, the fact that the taxpayers file separately for Iowa income tax purposes does not mean that the spouses will be subject to limitations that would apply if the taxpayers had filed separate federal returns. Instead, tax provisions that are applicable for taxpayers filing joint federal returns are also applicable to the taxpayers when they file separate Iowa returns unless the tax provisions are superseded by specific provisions in Iowa income tax law.

For example, married taxpayers that file separate federal returns cannot take the child and dependent care credit (in most instances) and cannot take the earned income credit. Taxpayers that file a joint federal return and elect to file separately for Iowa income tax purposes can take the child and dependent care credit and the earned income credit on their Iowa returns assuming they meet the qualifications for claiming these credits on the joint federal return.

The following paragraphs and examples are provided to clarify some issues and provide some guidance for taxpayers who filed a joint federal income tax return and elect to file separate Iowa returns or separately on the combined Iowa return form.

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to \$100,000 (for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to \$100,000 (for the tax year beginning on or after January 1, 2003) that was allowable on the

taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to \$50,000 (for the tax year beginning on or after January 1, 2003) that would have applied if the spouse had filed a separate federal return.

In situations where a married couple has ownership of a business, the deduction for the expensing of depreciable assets which is allowable on the spouses' joint federal return should be allocated between the spouses in the same ratio as incomes and losses from the business are reported by the spouses. Subrule 40.15(4) sets out criteria for allocation of incomes and losses of businesses in which married couples have an ownership interest.

2. Capital losses. Except for the Iowa capital gains deduction for limited amounts of net capital gains from certain types of assets described in rule 701—40.38(422), the federal income tax provision for reporting capital gains and losses and for the carryover of capital losses in excess of certain amounts are applicable for Iowa individual income tax purposes. When married taxpayers file a joint federal income tax return and elect to file separate Iowa returns or separately on the combined return form, the spouses must allocate capital gains and losses between them on the basis of the ownership of the assets that were sold or exchanged. That is, the spouses must allocate the capital gains and losses between them on the separate Iowa returns as the capital gains and losses would have been allocated if the taxpayers had filed separate federal returns instead of a joint federal return. However, each spouse is not subject to the \$1,500 capital loss limitation on the separate Iowa return which is applicable to a married taxpayer that files a separate federal return. Instead, the spouses are collectively subject to the same \$3,000 capital loss limitation for married taxpayers filing joint federal returns which is authorized under Section 1211(b) of the Internal Revenue Code. In circumstances where both spouses have net capital losses, each of the spouses can claim a capital loss of up to \$1,500 on the separate Iowa return. In a situation where one spouse has a net capital loss of less than \$1,500 and the other spouse has a capital loss greater than \$1,500, the first spouse can claim the entire capital loss, while the second spouse can claim the portion of the net capital loss on the joint federal return that was not claimed by the first spouse. In no case can the net capital losses claimed on separate Iowa returns by married taxpayers exceed the \$3,000 maximum capital loss that is allowed on the joint federal return. In a circumstance where one spouse has a net capital loss and the other spouse has a net capital gain, the amounts of capital gains and losses claimed by the spouses on their separate Iowa returns must conform with the net capital gain amount or net capital loss amount claimed on the joint federal return for the taxpayers. The following examples illustrate how capital gains and losses are to be allocated between spouses filing separate Iowa returns or separately on the combined Iowa return form for married taxpayers who filed joint federal returns.

EXAMPLE 1. A married couple filed a joint federal return which showed a net capital loss of \$3,000. All of the capital loss was attributable to the husband, as the wife had no capital gains or losses. Therefore, when the taxpayers filed separate Iowa returns, the husband's return showed a \$3,000 capital loss and the wife's return showed no capital gains or losses.

EXAMPLE 2. A married couple filed a joint federal return showing a net capital loss of \$3,000, which was the maximum loss they could claim, although they had aggregate capital losses of \$8,000. The husband had a net capital loss of \$6,000 and the wife had a net capital loss of \$2,000. When the taxpayers filed their separate Iowa returns each spouse claimed a net capital loss of \$1,500, since each spouse had a capital loss of up to \$1,500. The husband had a net capital loss carryover of \$4,500 and the wife had a net capital loss carryover of \$500.

EXAMPLE 3. A married couple filed a joint federal return showing a net capital loss of \$2,500. The husband had a net capital gain of \$7,500 and the wife had a net capital loss of \$10,000. The wife claimed a net capital loss of \$10,000 on her separate Iowa return, while the husband reported a net capital gain of \$7,500 on his separate Iowa return.

EXAMPLE 4. A married couple filed a joint federal return showing a net capital loss of \$3,000. The wife had a net capital loss of \$800 and the husband had a net capital loss of \$2,500. The wife claimed a \$800 net capital loss on her separate Iowa return. The husband claimed a net capital loss on his separate Iowa return of \$2,200 which was the portion of the net capital loss claimed on the joint federal return that was not claimed by the wife. The husband had a net capital loss carryover of \$300.

3. Unemployment compensation benefits. When a husband and wife have filed a joint federal return and elect to file separate Iowa returns or separately on the Iowa combined return form, the spouses are to report the same amount of unemployment compensation benefits on their Iowa returns as was reported for federal income tax purposes as provided in Section 85 of the Internal Revenue Code. When unemployment compensation benefits are received in the tax year the benefits are to be reported by the spouse or spouses who received the benefits as a result of employment of the spouse or spouses. Nonresidents of Iowa, including nonresidents covered by the reciprocal agreement with Illinois, are to report unemployment compensation benefits on the Iowa income tax return as Iowa source income to the extent the benefits pertain to the individual's employment in Iowa. In a situation where the unemployment compensation benefits are the result of employment in Iowa and in one or more other states, the unemployment compensation benefits should be allocated to Iowa on the basis of the individual's Iowa salaries and wages for the employer to the total salaries and wages for the employer. However, to the extent that unemployment compensation benefits pertain to a person's employment in Iowa for a railroad and the benefits are paid by the railroad retirement board, the benefits are totally exempt from Iowa income tax pursuant to 45 U.S.C. Section 352(e).

**40.15(1)** *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

**40.15(2)** *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report the share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

*a.* Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

*b.* Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in the property.

**40.15(3)** *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must report on each spouse's state return the salary and wages which are attributable to services performed pursuant to each individual's employment. The income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

*a.* Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of the payment is reasonable for the services or labor actually performed. It is presumed that the compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting the income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workers' compensation requirements are met, the payments may not be separately reported by the salaried spouse.

*b.* Wages and salaries received by a husband or wife pursuant to an employment agreement with an employer other than a spouse. Wages or compensation paid for services or labor performed by a husband or wife pursuant to an employment agreement with some other employer is presumed income of only that spouse that is employed and must be reported separately only by that spouse.

**40.15(4)** *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' names, as

evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs “a” or “b” of this subrule and consideration of paragraphs “c,” “d,” and “e” of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

*a.* Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have currently been filed with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership implied merely from a common ownership of property.

*b.* Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband and wife who filed a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

*c.* Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

*d.* Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that are appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

*e.* Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the spouses must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a spouse must be disregarded in determining the allocable income attributable to that spouse.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 8356B, IAB 12/2/09, effective 1/6/10]

**701—40.16(422) Income of nonresidents.** Except as otherwise provided in this rule all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from a business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though the gain from the sale of the property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see 40.14(422).

**40.16(1) Nonresidents exempt from paying tax.** See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

These provisions for reducing tax in 701—subrule 39.5(10), paragraph “c,” and 701—subrule 39.5(11), paragraph “b,” do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

**40.16(2) Compensation for personal services of nonresidents.** The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States Government by a nonresident member of the armed forces is explained in 40.5(422).

Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers (and similar performers), must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects (and other similar professions), even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the

gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. However, pursuant to federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a merchant marine company, or a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

**40.16(3)** *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state only such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

**40.16(4)** *Apportionment of business income from business carried on both within and without the state.*

*a.* If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

*b.* The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

*c.* Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the recipient of the service receives benefit of the service in this state.

*d.* If the taxpayer believes that the gross sales or gross receipts methods subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within this state the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in the taxpayer's return.

**40.16(5)** *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Following are examples to illustrate when intangible income may or may not be subject to the allocation provisions of Iowa Code section 422.8 and rules 701—40.15(422) and 701—42.5(422):

EXAMPLE A - An Illinois resident is a laborer at a factory in Davenport. A \$50 payroll deduction is made each week from the laborer's paycheck to the company's credit union. The Illinois resident will earn \$600 in interest income from the Iowa credit union account in 1983. The interest income would

not be included in the net income allocated to Iowa since the interest income is not derived from the taxpayer's business or utilized for business purposes.

EXAMPLE B - A Nebraska resident is a self-employed plumber, who has a plumbing business in Council Bluffs. The plumber has an interest-bearing checking account in an Iowa bank which the plumber uses to pay bills for the plumbing business. The plumber will earn \$200 in interest income from the checking account in 1982. The plumber will have a net income of \$25,000 from the plumbing business which will be reported on the plumber's 1982 Iowa return. The interest income earned by this nonresident would be taxable to Iowa since it is derived from the business and is utilized in the business.

EXAMPLE C - An Illinois resident has a farm in Illinois. The Illinois resident has an account in an Iowa savings and loan association and invests earnings from the Illinois farm in the Iowa savings and loan account. In 1982, the Illinois farmer will earn \$1,000 in interest income from the account in the Iowa savings and loan. The interest income is not included in the net income allocable to Iowa since the interest income is not derived from the taxpayer's trade or business.

EXAMPLE D - An Illinois resident has Iowa farms. The Illinois resident invests the profits from the farms in a savings account in an Iowa bank. Several times a year, the taxpayer transfers part of the funds from the savings account to the taxpayer's checking account to purchase machinery to be used in the farming operations. The interest income would not be included in income allocated to Iowa since the interest income is not derived from the taxpayer's trade or business nor is the savings account utilized as a business account.

EXAMPLE E - An Illinois resident is a physician, whose practice is in Iowa. The physician has a business checking account in an Iowa bank that is used to pay the bills relating to the physician's practice. In the same bank, the physician has a personal savings account where all the physician's receipts for a given month are deposited. On the first working day of the month, funds are transferred from the savings account to the checking account to pay the bills that have accrued during the month. The interest income from the savings account would be included in net income allocated to Iowa since it is derived from and utilized in the business.

EXAMPLE F - A nonresident has a farm in Iowa which is the nonresident's principal business, although this person is an Illinois resident. The nonresident has an interest-bearing checking account in an Iowa bank. This checking account is used to pay personal expenditures as well as to pay expenses incurred in operation of the farm. In 1982, the taxpayer will earn \$550 in interest from the checking account. The interest would be included in net income allocated to Iowa since the interest is derived from the business, generated from a business account, and utilized in the business.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

EXAMPLE G - A nonresident is a partner in a family investment partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make occasional decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would not be included in net income allocated to Iowa since it was not derived from a business carried on within the state.

**40.16(6) *Distributive shares of nonresident partners.*** When a partnership derives income from sources within this state as determined in 40.16(3) to 40.16(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

**40.16(7) *Interest and dividends from government securities.*** Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code are not to be included in

determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

**40.16(8)** *Gains or losses from sales or exchanges of real property and tangible personal property by a nonresident of Iowa.* If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within the state of Iowa, such gains or losses are subject to the Iowa income tax and shall be reported to this state by the nonresident. Gains or losses attributable to Iowa will be determined as follows:

1. Gains or losses from sales or exchanges of real property located in this state are allocable to this state.

2. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are to be followed.

**40.16(9)** *Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa.* Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs:

*a. Capital gains from sales or exchanges of stock in C corporations and S corporations.* When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis.

For example, a situation in which capital stock owned by a nonresident of Iowa was used as collateral to secure a loan to remodel a retail store in Iowa, regardless of the ownership of the store, would meet the test for the stock being used as an integral part of some business activity in Iowa.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on 40 percent of its income in the year of the sale or exchange, then 40 percent of the capital gain would be attributable or taxable by Iowa.

However, the fact that the gain from the sale or exchange of stock is taxable or partially taxable to Iowa does not mean that the dividends received by the nonresident in the year of sale are taxable to Iowa. Dividends from stock used in an Iowa specific business activity would not be taxable to Iowa except under special circumstances. An illustration of these special circumstances would be when the dividends are from capital stock from a business where the purchase and sale of stock constitute a regular business in Iowa. In this situation the dividends would be taxable to Iowa. See subrule 40.16(5).

*b. Capital gains from sales or exchanges of interests in partnerships.* When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to

be localized or “sourced” at the situs of the partnership’s activities as a matter of law. *Arizona Tractor Co. v. Arizona State Tax Com’n.*, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership’s activities in and out of Iowa in the year of the sale or exchange.

Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner’s interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph “a” of this subrule.

*c. Capital gains from sales or exchanges of sole proprietorships.* When a nonresident sells or exchanges the individual’s interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be taxable to Iowa.

*d. Capital gains from sales or exchanges of interests in limited liability companies.* Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph “b” of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph “a” of this subrule.

*e. Taxation of corporate liquidations.* As a matter of Iowa law, the proceeds from corporate liquidating distributions are not considered to be the proceeds from the sale or exchange of corporate stock. Rather, such proceeds represent the transfer back to the shareholder of that shareholder’s pro-rata share of the actual assets of the corporation in which each shareholder held only an equitable ownership interest prior to the dissolution. *Lynch v. State Board of Assessment and Review*, 228 Iowa 1000, 1003-1004, 291 N.W. 161 (1940). The amount of such gain is calculated by subtracting the distribution realized from the shareholder’s basis in the stock. *Id.* Thus, any gain realized by the shareholder upon such distribution is considered a capital gain from a sale or exchange of the assets by the shareholder for purposes of sourcing the shareholder’s liquidating distribution gain. Consequently, the gain, whether it is from a distribution of cash or other property, is controlled by the general source or situs rules in subrule 40.16(8) governing the taxation of the sale or exchange of tangible personal property by a nonresident and subrule 40.16(10) governing the sale or exchange of intangible personal property by a nonresident.

*f. Capital losses realized by a nonresident of Iowa from the sale or exchange of an ownership interest in an Iowa business entity.* In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described in paragraphs “a” through “e” of this subrule. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to \$3,000, with the carryover of the portion of net capital losses that exceed \$3,000.

**40.16(10)** *Capital gains and losses from sales or exchanges of intangible personal property other than ownership interests in business entities.* Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—40.17(422) Income of part-year residents.** A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of taxation:

1. For that portion of the taxable year for which the taxpayer was a nonresident, the taxpayer shall allocate to Iowa only the income derived from sources within Iowa.
2. For that portion of the taxable year for which the taxpayer was an Iowa resident, the taxpayer shall allocate to Iowa all income earned or received whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the amount of the moving expense to the extent allowed by Section 217 of the Internal Revenue Code. Any reimbursement of moving expense shall be included in Iowa-source gross income. A taxpayer moving from Iowa to another state or country may not adjust the Iowa-source gross income by the amount of moving expense, nor should any reimbursement of moving expense be allocated to Iowa.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

**701—40.18(422) Net operating loss carrybacks and carryovers.** Net operating losses shall be allowed or allowable for Iowa individual income tax purposes and will be computed using a method similar to the method used to compute losses allowed or allowable for federal income tax purposes. In determining the applicable amount of Iowa loss carrybacks and carryovers, the adjustments to net income set forth in Iowa Code section 422.7 and the deductions from net income set forth in Iowa Code section 422.9 must be considered.

**40.18(1)** *Treatment of federal income taxes.*

*a.* Refund of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

- (1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.
- (2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.
- (3) Refunds reported in the year in which the net operating loss occurs which contain both business and nonbusiness components shall be analyzed and separated accordingly. The amount of refund attributable to business income shall be that amount of federal taxes paid on business income which are being refunded.

*b.* Federal income taxes paid in the year of the loss which contain both business and nonbusiness components shall be analyzed and separated accordingly. Federal income taxes paid in the year of the loss shall be reflected as a deduction to business income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall also be allowed as a deduction but will be limited to the amount of gross income which is not derived from a trade or business.

**40.18(2)** *Nonresidents doing business within and without Iowa.* If a nonresident does business both within and without Iowa, the nonresident shall make adjustments reflecting the apportionment of the operating loss on the basis of business done within and without the state of Iowa, according to rule 40.16(422). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

**40.18(3) Loss carryback and carryforward.** The net operating loss attributable to Iowa as determined in rule 40.18(422) shall be subject to the federal 2-year carryback and 20-year carryover provisions if the net operating loss was for a tax year beginning after August 5, 1997, or subject to the federal 3-year carryback and the 15-year carryforward provisions if the net operating loss was for a tax year beginning prior to August 6, 1997. However, in the case of a casualty or theft loss for an individual taxpayer or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming, the net operating loss is to be carried back 3 taxable years and forward 20 taxable years if the loss is for a tax year beginning after August 5, 1997. The net operating loss or casualty or theft loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the taxable income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years if the net operating loss is for a tax year beginning after August 5, 1997, or the net operating loss shall be carried forward 15 taxable years if the loss is for a tax year beginning before August 6, 1997. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa individual return filed with the department.

**40.18(4) Loss not applicable.** No part of a net loss for a year for which an individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

**40.18(5) Special adjustments applicable to net operating losses.** Section 172(d) of the Internal Revenue Code provides for certain modifications when computing a net operating loss. These modifications refer to, but are not limited to, such things as considerations of other net operating loss deductions, treatment of capital gains and losses, and the limitation of nonbusiness deductions. Where applicable, the modifications set forth in Section 172 of the Internal Revenue Code shall be considered when computing the net operating loss carryover or carryback for Iowa income tax purposes.

**40.18(6) Distinguishing business or nonbusiness items.** In computing a net operating loss, nonbusiness deductions may be claimed only to the extent of nonbusiness income. Therefore, it is necessary to distinguish between business and nonbusiness income and expenses. For Iowa net operating loss purposes, an item will retain the same business or nonbusiness identity which would be applicable for federal income tax purposes.

**40.18(7) Examples.** The computation of a net operating loss deduction for Iowa income tax purposes is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year:

|  |       |           |
|--|-------|-----------|
| Gross income from retail sales business                        |       | \$125,000 |
| Interest income from federal securities                        |       | 2,000     |
| Salary from part-time job                                      |       | 12,500    |
| Individual A's federal return showed the following deductions: |       |           |
| Business deductions (retail sales)                             |       | \$150,000 |
| Itemized (nonbusiness) deductions:                             |       |           |
| Interest   | \$400 |           |
| Real estate tax  | 600   |           |
| Iowa income tax  | 800   | \$ 1,800  |

Individual A paid \$3,000 federal income tax during the year which consisted of \$2,500 federal withholding (business) and a \$500 payment (nonbusiness) which was for the balance of the prior year's federal tax liability.

The federal computations are as follows:

|                                    | <u>Per Return</u>  | <u>Computed NOL</u> |
|------------------------------------|--------------------|---------------------|
| Income:                            |                    |                     |
| Retail Sales                       | \$125,000          | \$125,000           |
| Interest income-federal securities | 2,000              | 2,000               |
| Salary                             | <u>12,500</u>      | <u>12,500</u>       |
| Subtotal                           | \$139,500          | \$139,500           |
| Deductions:                        |                    |                     |
| Business                           | \$150,000          | \$150,000           |
| Itemized deductions                | <u>1,800</u>       | <u>1,800</u>        |
| (Loss) per federal                 | <u>(\$ 12,300)</u> |                     |
| Computed net operating loss        |                    | <u>(\$ 12,300)</u>  |

Since the nonbusiness deductions do not exceed the nonbusiness income, the loss per the federal return and the computed net operating loss are the same.

The Iowa computations are as follows:

|                        | <u>Per Return</u>  | <u>Computed NOL</u> |
|------------------------|--------------------|---------------------|
| Income:                |                    |                     |
| Retail sales           | \$125,000          | \$125,000           |
| Salary                 | <u>12,500</u>      | <u>12,500</u>       |
| Subtotal               | \$137,500          | \$137,500           |
| Deductions:            |                    |                     |
| Business               | \$150,000          | \$150,000           |
| Federal tax deductions | 3,000              | 2,500               |
| Itemized deductions    | <u>1,000</u>       | <u>-</u>            |
| (Loss) per return      | <u>(\$ 16,500)</u> |                     |
| Computed Iowa NOL      |                    | <u>(\$ 15,000)</u>  |

NOTE: Itemized (nonbusiness deductions) are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes under Iowa Code section 422.7. The only federal tax deduction allowable is that related to business activity.

*b.* Individual B had the following items of income for the taxable year:

|  |           |
|--|-----------|
| Gross income from restaurant business  | \$300,000 |
| Wages                                  | 12,000    |
| Business long-term capital gain @100%  | 1,000     |
| Municipal bond interest (nonbusiness)  | 1,000     |
| Federal tax refund of prior year taxes | 500       |
| Iowa tax refund of prior year taxes    | 100       |

Individual B's federal return showed the following deductions:

|                                     |           |
|-------------------------------------|-----------|
| Business deductions from restaurant | \$333,000 |
| Itemized deductions:                |           |

|                               |            |       |
|-------------------------------|------------|-------|
| Interest (nonbusiness)        | \$590      |       |
| Real estate tax (nonbusiness) | 780        |       |
| Iowa income tax*              | 520        |       |
| Alimony (nonbusiness)         | 600        |       |
| Union dues (business)         | <u>100</u> | 2,590 |

\*Iowa estimated payments totaled \$220 of which \$70 related to nonbusiness income and \$150 related to business capital gains and business profits. \$300 in Iowa tax was withheld from his wages.

Individual B paid \$2,000 in federal income taxes during the tax year. \$1,500 of this amount was withholding on wages and \$500 was a federal estimated payment based on capital gains and projected business profits.

In the previous year 75 percent of B's income was from business sources and 25 percent was from nonbusiness sources.

The federal computations are as follows:

|                             | <u>Per Return</u>  | <u>Computed NOL</u> |
|-----------------------------|--------------------|---------------------|
| Income:                     |                    |                     |
| Retail sales                | \$300,000          | \$300,000           |
| Wages                       | 12,000             | 12,000              |
| Capital gains               | 500(a)             | 1,000(a)            |
| Iowa refund                 | <u>100</u>         | <u>100</u>          |
| Subtotal                    | \$312,600          | \$313,100           |
| Deductions:                 |                    |                     |
| Business                    | \$333,000          | \$333,000           |
| Itemized deductions         | <u>2,590</u>       | <u>575(b)</u>       |
| (Loss) per federal          | <u>(\$ 22,990)</u> |                     |
| Computed net operating loss |                    | <u>(\$ 20,475)</u>  |

(a) Capital gains are reduced by 50 percent in computing adjusted gross income, but must be reported in full in computing a net operating loss.

(b) Itemized deductions are limited to business deductions consisting of \$100 for union dues, \$450 for Iowa tax on business income, and nonbusiness deductions to the extent of nonbusiness income which amounts to \$25. The only nonbusiness income is 25 percent of the \$100 Iowa refund.

The Iowa computations are as follows:

|                         | <u>Per Return</u> | <u>Computed NOL</u> |
|-------------------------|-------------------|---------------------|
| Income:                 |                   |                     |
| Retail sales            | \$300,000         | \$300,000           |
| Wages                   | 12,000            | 12,000              |
| Capital gains           | 500               | 1,000               |
| Municipal bond interest | 1,000             | 1,000               |
| Federal refund          | <u>500</u>        | <u>500</u>          |
| Subtotal                | \$314,000         | \$314,500           |

|                     |                    |                    |
|---------------------|--------------------|--------------------|
| Deductions:         |                    |                    |
| Business            | \$333,000          | \$333,000          |
| Federal tax         | 2,000              | 2,000              |
| Itemized deductions | <u>2,070(c)</u>    | <u>1,225(d)</u>    |
| (Loss) per return   | <u>(\$ 23,070)</u> |                    |
| Computed Iowa NOL   |                    | <u>(\$ 21,725)</u> |

(c) Iowa income tax is not an itemized deduction for Iowa income tax purposes.

(d) Itemized deductions are limited to business deductions of \$100 for union dues and nonbusiness deductions to the extent of nonbusiness income of \$1,125. Nonbusiness income includes \$1,000 of municipal bond interest and 25 percent (\$125) of the federal tax refund.

**40.18(8)** *Net operating losses for nonresidents and part-year residents for tax years beginning on or after January 1, 1982.* For tax years beginning on or after January 1, 1982, nonresidents and part-year residents may carryback/carryforward only those net operating losses from Iowa sources. Nonresidents and part-year residents may not carryback/carryforward net operating losses which are from all sources.

Before the Iowa net operating loss of a nonresident or part-year resident is available for carryback/carryforward to another tax year, the loss must be decreased or increased by a number of possible adjustments depending on which adjustments are applicable to the taxpayer for the year of the loss. Iowa Net Operating Loss (NOL) Worksheet (41-123) may be used to make the adjustments to the net operating loss and compute the net operating loss deduction available for carryback/carryforward.

If the net operating loss was increased by an adjustment for an individual retirement account or H.R.10 retirement plan, the net operating loss should be decreased by the amount of the adjustment. The net operating loss should also be decreased by the amount of any capital loss or by the capital gain deduction to the extent the capital loss or capital gain deduction was from the sale or exchange of an asset from an Iowa source.

In a situation where the nonresident or part-year resident taxpayer received a federal income tax refund in the year of the NOL, the refund should reduce the loss in the ratio of the Iowa source income to the all source income for the tax year in which the refund was generated.

The net operating loss should be increased by any federal income tax paid in the loss year for a prior year in the ratio of the Iowa income for the prior year to the all source income for the prior year. Federal income tax withheld from wages or other compensation received in the loss year may be used to increase the Iowa net operating loss to the extent the tax is withheld from wages or other compensation earned in Iowa.

Federal estimate tax payments would be allocated to Iowa and increase the net operating loss on the basis of the Iowa income not subject to withholding to total income not subject to withholding. In any case where this method of allocation of federal estimate payments to Iowa is not considered to be equitable, the taxpayer may allocate the payments using another method as long as this method is disclosed on the taxpayer's Iowa individual income tax return for the year of the loss. However, the burden of proof is on the taxpayer to show that an alternate method of allocation is equitable.

Nonbusiness deductions included in the itemized deductions paid during the year of the net operating loss may be used to increase the NOL to the extent of nonbusiness income which is reported to Iowa in computation of the net operating loss. In most instances of net operating losses for nonresidents, no itemized deductions will be allowed in computing the net operating loss deduction. This is because most nonresidents will have no nonbusiness income reported to Iowa. Business deductions included in the federal itemized deductions may be used to increase the net operating loss deduction to the extent the deductions pertain to a business, trade, occupation or profession conducted in Iowa.

EXAMPLE A. A nonresident taxpayer had the following all source income and Iowa source income for 1982:

| Category               | All Source Income | Iowa Source Income |
|------------------------|-------------------|--------------------|
| Wages                  | \$20,000          | \$20,000           |
| Interest               | 5,000             | 0                  |
| Rental income          | 5,000             | 5,000              |
| Business loss          | (50,000)          | (10,000)           |
| Iowa net income (loss) | <u>(\$20,000)</u> | <u>\$15,000</u>    |

The nonresident taxpayer did not have an Iowa net operating loss available for carryback/carryforward for Iowa income tax purposes because the taxpayer’s Iowa source income was not negative. The taxpayer’s all source loss of (\$20,000) does not qualify for carryback/carryforward on the Iowa return. However, since the taxpayer’s all source income is negative, the taxpayer will not have an Iowa income tax liability for the year of the all source loss.

EXAMPLE B. A nonresident taxpayer received a federal refund of \$1,000 in 1983. The refund was from the taxpayer’s 1981 federal return where the taxpayer’s Iowa income was 20% of the total income. \$2,000 of federal income tax was withheld from the taxpayer’s Iowa wages in 1982. The taxpayer had \$10,000 in itemized deductions in 1982. However, the taxpayer had no Iowa nonbusiness income in 1982. In addition, no Iowa business deductions were included in the itemized deductions available on the federal return. The individual had the following all source income and Iowa source income in 1982:

| Category         | All Source Income | Iowa Source Income |
|------------------|-------------------|--------------------|
| Wages            | \$60,000          | \$10,000           |
| Interest         | 3,000             | 0                  |
| Rental income    | 5,000             | 5,000              |
| Farm income loss | (30,000)          | (30,000)           |
| Capital gain     | 2,000             | 2,000              |
| Total incomes    | <u>\$40,000</u>   | <u>(\$13,000)</u>  |

The taxpayer’s Iowa source loss of (\$13,000) was decreased by \$200 of the federal refund since 20% of the refund was considered to be from Iowa income. The loss was decreased by \$3,000 which was the capital gain deduction of the Iowa source asset sold in 1982. The loss was increased by the federal income tax withheld of \$2,000 from Iowa wages. Because there is no Iowa source nonbusiness income nor Iowa source business deductions, the taxpayer’s itemized deductions will not affect the net operating loss deduction.

Shown below is a recap of the net operating loss deduction for the nonresident taxpayer.

|  |                   |
|--|-------------------|
| Iowa source net loss . . . . .               | (\$13,000)        |
| Iowa portion of federal refund . . . . .     | 200               |
| Federal tax withheld on Iowa wages . . . . . | (2,000)           |
| Capital gain deduction . . . . .             | <u>3,000</u>      |
| Total  | <u>(\$11,800)</u> |

The taxpayer’s net operating loss deduction available for carryback/carryforward to another tax year is (\$11,800).

After all adjustments are made to the Iowa net operating loss to compute the net operating loss deduction available for carryback/carryforward, the NOL deduction is applied to the carryback/carryforward tax year as described in paragraph “a” and paragraph “b” below:

a. *Application of net operating losses to tax years beginning prior to January 1, 1982.* In cases where a net operating loss deduction for a nonresident or part-year resident for a tax year beginning on

or after January 1, 1982, is applied to a tax year beginning prior to January 1, 1982, the net operating loss deduction is applied to the taxable income for the carryback/carryforward year unless the NOL deduction is greater than the taxable income. If the NOL deduction is greater than the taxable income, the taxable income is increased by any Iowa source capital loss or any Iowa source capital gain deduction before the NOL deduction is applied against the taxable income.

EXAMPLE 1. A nonresident taxpayer has an Iowa net operating loss deduction of (\$15,000) from the taxpayer's 1982 Iowa return. The taxpayer is carrying the NOL deduction back to 1979 where taxpayer's Iowa taxable income was \$14,000. The taxpayer had a net capital loss of \$3,000 in 1979. Because the taxpayer's 1979 taxable income of \$14,000 was \$1,000 less than the NOL deduction, the taxable income was increased by \$1,000 of the net capital loss so there would be no carryover of the NOL to 1980. However, since the NOL deduction erased all the taxable income for 1979, the taxpayer would be granted a refund of all the Iowa income tax paid for the carryback year of 1979, plus applicable interest.

*b. Application of net operating losses to tax years beginning on or after January 1, 1982.* In situations where a net operating loss of a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is carried back/carried forward for application to a tax year beginning on or after January 1, 1982, the net operating loss deduction is applied to the Iowa source income of the taxpayer for the carryback/carryforward year. The Iowa source income is the income on line 25 of Section B of Schedule IA-126 for the 1982 and 1983 Iowa returns and line 26 of Section B of Schedule IA-126 for the 1984 Iowa return and the incomes on similar corresponding lines of Section B of Schedule IA-126 for tax years after 1984. In situations where the net operating loss deductions are larger than the Iowa source incomes, the Iowa source incomes are increased by any Iowa source capital gains or capital losses that are applicable, not to exceed the NOL deduction.

The Iowa source net income after reduction by the NOL deduction is divided by the all source income for the taxpayer. The resulting percentage is the adjusted Iowa income percentage. This percentage is subtracted from 100 percent to arrive at the revised nonresident/part-year resident credit for the taxpayer. The taxpayer's overpayment as a result of the net operating loss is the amount by which the revised nonresident/part-year credit exceeds the nonresident/part-year credit prior to application of the net operating loss deduction.

EXAMPLE 1. A nonresident taxpayer had a net operating loss deduction of \$11,800 for the 1996 tax year. When the 1996 Iowa return was filed, the taxpayer elected to carry the loss forward to the 1997 tax year. The taxpayer's all source net income and Iowa source net income for 1997 were as shown below. The net operating loss carryforward from 1996 is deducted only from the Iowa source income for 1997:

| Category                           | All Source Income | Iowa Source Income |
|------------------------------------|-------------------|--------------------|
| Wages                              | \$ 60,000         | \$ 20,000          |
| Interest                           | 3,000             | 0                  |
| Rental income                      | 10,000            | 3,000              |
| Farm income                        | 25,000            | 25,000             |
| Capital gain                       | 2,000             | 2,000              |
| Net operating loss<br>carryforward | —                 | (11,800)           |
| Iowa net income                    | \$100,000         | \$ 38,200          |

The Iowa source income of \$38,200 after reduction by the NOL carryforward is divided by the all source income of \$100,000 which results in an Iowa income percentage of 38.2. This percentage is subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of 61.8. When the tax after credit amount of \$7,364 is multiplied by the nonresident/part-year credit percentage of 61.8, this results in a credit of \$4,551. This credit is \$869 greater than the nonresident/part-year credit of \$3,682 would have been for 1997 without application of the net operating loss deduction which was carried forward from 1996.

**40.18(9) Net operating loss carryback for a taxpayer engaged in the business of farming.** Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a \$10,000 loss from a grain farming business and the taxpayer had wages in the tax year of \$7,000, the taxpayer's loss for the year is only \$3,000. Therefore, the taxpayer has a net operating loss from farming of \$3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 and Iowa Code Supplement section 422.9(3).

**701—40.19(422) Casualty losses.** Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward seven years in the event said casualty losses exceed income in the loss year.

This rule is intended to implement Iowa Code section 422.7.

**701—40.20(422) Adjustments to prior years.** When Iowa requests for refunds are filed, they shall be allowed only if filed within three years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is the later. Even though a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income on a previous year to determine the correct amount of loss carryforward.

This rule is intended to implement Iowa Code section 422.73.

**701—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals.** For tax years beginning on or after January 1, 1984, but before January 1, 1989, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) is allowed an additional deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, or after July 1, 1984, where the taxpayer first qualifies as a small business under the expanded definition of a small business effective July 1, 1984, and meets one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 913.40 applies.

For tax years beginning on or after January 1, 1989, the additional deduction for wages paid or accrued for work done in Iowa by certain individuals is 65 percent of the wages paid for the first 12 months of employment of the individuals, not to exceed \$20,000 per individual. Individuals must meet the same criteria to qualify their employers for this deduction for tax years beginning on or after January 1, 1989, as for tax years beginning before January 1, 1989.

For tax years ending after July 1, 1990, a taxpayer who operates a business which does not qualify as a small business specified in subrule 40.21(2) may claim an additional deduction for wages paid or accrued for work done in Iowa by certain convicted felons provided the felons are described in the four numbered paragraphs above and the following unnumbered paragraph and provided the felons are first hired on or after July 1, 1990. The additional deduction is 65 percent not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

The qualifications mentioned in subrules 40.21(1), 40.21(4), 40.21(5) and 40.21(6) and in subrule 40.21(3), paragraphs “f” and “g,” apply to the additional deduction for work done in Iowa by a convicted felon in situations where the taxpayer is not a small business as well as in situations where the taxpayer is a small business.

The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

**40.21(1)** The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual’s employment as determined by the department of workforce development, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

**40.21(2)** The term “small business” means a business entity organized for profit including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

*a.* The small business shall not have had more than 20 full-time equivalent employee positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which an individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

| <u>Average Number of Weekly Hours</u> | <u>Category</u> |
|---------------------------------------|-----------------|
| More than 0 but less than 15          | ¼               |
| 15 or more but less than 25           | ½               |
| 25 or more but less than 35           | ¾               |
| 35 or more                            | 1 (full-time)   |

b. The small business shall not have more than \$1 million in annual gross revenues, or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

#### **40.21(3) Definitions.**

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

*f.* The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

*g.* The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

**40.21(4)** If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

**40.21(5)** The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

**40.21(6)** If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, House Files 287 and 759.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

#### **701—40.22(422) Disability income exclusion.**

**40.22(1)** Effective for tax years beginning on or after January 1, 1984, a taxpayer who is permanently and totally disabled and has not attained age 65 by the end of the tax year or reached mandatory retirement age can exclude a maximum of \$100 per week of payments received in lieu of wages. In order for the payments to qualify for the exclusion, the payments must be made under a plan providing payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability.

**40.22(2)** In the case of a married couple where both spouses meet the qualifications for the disability exclusion, each spouse may exclude \$5,200 of income received on account of disability.

**40.22(3)** There is a reduction in the exclusion, dollar for dollar, to the extent that a taxpayer’s federal adjusted gross income (determined without this exclusion and without the deduction for the two-earner married couple) exceeds \$15,000. In the case of a married couple, both spouses’ incomes must be considered for purposes of determining if the disability income exclusion is to be reduced for income that exceeds \$15,000. The taxpayers’ disability income exclusion is eliminated when the taxpayers’ federal adjusted gross income is equal to or exceeds \$20,200. The deduction of the taxpayers’ disability income exclusion because the taxpayers’ federal adjusted gross income is greater than \$15,000 is illustrated in the following example:

A married couple is filing their 1984 Iowa return. The husband retired during the year and received \$8,000 in disability income during the 40-week period in 1984 that he was retired. The husband's other income in 1984 was \$2,500 and the wife's income was \$7,500.

Of the \$8,000 in disability payments received by the husband in the 40-week period he was retired in 1984, only \$4,000 is eligible for the exclusion. This is because the maximum amount that can be excluded on a weekly basis as a result of the disability exclusion is \$100.

However, the \$4,000 that qualifies for the exclusion must be reduced to the extent that the taxpayer's federal adjusted gross income exceeds \$15,000. In this example, the taxpayer's federal adjusted gross income is \$18,000, which exceeds \$15,000 by \$3,000. Therefore, the amount eligible for exclusion of \$4,000 must be reduced by \$3,000. This gives the taxpayers an exclusion of \$1,000.

**40.22(4)** For purposes of the disability income exclusion, "permanent and total disability" means the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which (a) can be expected to last for a continuous period of 12 months or more or (b) can be expected to result in death. A certificate from a qualified physician must be attached to the individual's tax return attesting to the taxpayer's permanent and total disability as of the date the individual claims to have retired on disability. The certificate must include the name and address of the physician and contain an acknowledgment that the certificate will be used by the taxpayer to claim the exclusion. In an instance where an individual has been certified as permanently and totally disabled by the Veterans Administration, Form 6004 may be attached to the return instead of the physician's certificate. Form 6004 must be signed by a physician on the VA disability rating board.

**40.22(5)** Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

**40.22(6)** The disability income exclusion is not applicable to federal income tax for tax years beginning after 1983. There are many revenue rulings, court cases and other provisions which were relevant to the disability income exclusion for the tax periods when the exclusion was available on federal returns. These provisions, court cases and revenue rulings concerning the disability income exclusion are equally applicable to the disability income exclusion on Iowa returns for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.7.

**701—40.23(422) Social security benefits.** For tax years beginning on or after January 1, 1984, but before January 1, 2014, social security benefits received are taxable on the Iowa return. Although Tier 1 railroad retirement benefits were taxed similarly as social security benefits for federal income tax purposes beginning on or after January 1, 1984, these benefits are not subject to Iowa income tax. 45 U.S.C. Section 231m prohibits taxation of railroad retirement benefits by the states.

The following subrules specify how social security benefits are taxed for Iowa individual income tax purposes for tax years beginning on or after January 1, 1984, but prior to January 1, 1994; for tax years beginning on or after January 1, 1994, but prior to January 1, 2007; and for tax years beginning on or after January 1, 2007, but prior to January 1, 2014:

**40.23(1)** *Taxation of social security benefits for tax years beginning on or after January 1, 1984, but prior to January 1, 1994.* For tax years beginning on or after January 1, 1984, but prior to January 1, 1994, social security benefits are taxable on the Iowa return to the same extent as the benefits are taxable for federal income tax purposes. When both spouses of a married couple receive social security benefits and file a joint federal income tax return but separate returns or separately on the combined return form, the taxable portion of the benefits must be allocated between the spouses. The following formula should be used to compute the amount of social security benefits to be reported by each spouse on the Iowa return:

$$\text{Taxable Social Security Benefits on the Federal Return} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The example shown below illustrates how taxable social security benefits are allocated between spouses:

A married couple filed a joint federal income tax return for 1984. They filed separately on the combined return form for Iowa income tax purposes. During the tax year the husband received \$6,000 in social security benefits and the wife received \$3,000 in social security benefits. \$2,000 of the social security benefits was taxable on the federal return.

The \$2,000 in taxable social security benefits is allocated to the spouses on the following basis:

$$\begin{array}{r} \text{Husband} \\ \$2,000 \times \frac{\$6,000}{\$9,000} = \$1,333.40 \end{array} \qquad \begin{array}{r} \text{Wife} \\ \$2,000 \times \frac{\$3,000}{\$9,000} = \$666.60 \end{array}$$

In situations where taxpayers have received both social security benefits and Tier 1 railroad retirement benefits and are taxable on a portion of those benefits, the formula which follows should be used to determine the social security benefits to be included in net income:

$$\begin{array}{l} \text{Taxable Social Security Benefits} \\ \text{and Railroad Retirement} \\ \text{Benefits on Federal Return} \end{array} \times \frac{\begin{array}{l} \text{Total Social Security Benefit} \\ \text{Received} \end{array}}{\begin{array}{l} \text{Total Social Security Benefits and} \\ \text{Railroad Retirement Benefits} \\ \text{Received} \end{array}}$$

**40.23(2)** *Taxation of social security benefits for tax years beginning on or after January 1, 1994, but prior to January 1, 2007.* For tax years beginning on or after January 1, 1994, but prior to January 1, 2007, although up to 85 percent of social security benefits received may be taxable for federal income tax purposes, no more than 50 percent of social security benefits will be taxable for state individual income tax purposes. Thus, in the case of Iowa income tax returns for 1994 through 2006, social security benefits will be taxed as the benefits were taxed from 1984 through 1993 as described in subrule 40.23(1).

The amount of social security benefits that is subject to tax is the lesser of one-half of the annual benefits received in the tax year or one-half of the taxpayer's provisional income over a specified base amount. The provisional income is the taxpayer's modified adjusted gross income plus one-half of the social security benefits and one-half of the railroad retirement benefits received. Although railroad benefits are not taxable, one-half of the railroad retirement benefits received may be used to determine the amount of social security benefits that is taxable for state income tax purposes. Modified adjusted gross income is the taxpayer's federal adjusted gross income, plus interest that is tax-exempt on the federal return, plus any of the following incomes:

1. Savings bond proceeds used to pay expenses of higher education excluded from income under Section 135 of the Internal Revenue Code.
2. Foreign source income excluded from income under Section 911 of the Internal Revenue Code.
3. Income from Guam, American Samoa, and the Northern Mariana Islands excluded under section 931 of the Internal Revenue Code.
4. Income from Puerto Rico excluded under Section 933 of the Internal Revenue Code.

A taxpayer's base amount is: (a) \$32,000 if married and a joint federal return was filed, (b) \$0 if married and separate federal returns were filed by the spouses and (c) \$25,000 for individuals who filed federal returns and used a filing status other than noted in (a) and (b).

The IA 1040 booklet and instructions for 1994 through 2006 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows. Similar worksheets will be used for computing the amount of social security benefits that is taxable for years 1995 through 2006. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of all of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse any time in 1994). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits enter smaller of line 2 or line 10 here and on line 14 IA 1040. 11. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

**40.23(3)** *Taxation of social security benefits for tax years beginning on or after January 1, 2007, but prior to January 1, 2014.* For tax years beginning on or after January 1, 2007, but prior to January 1, 2014, the amount of social security benefits subject to Iowa income tax will be computed as described in subrule 40.23(2), but will be further reduced by the following percentages:

|                              |     |
|------------------------------|-----|
| Calendar years 2007 and 2008 | 32% |
| Calendar year 2009           | 43% |
| Calendar year 2010           | 55% |
| Calendar year 2011           | 67% |
| Calendar year 2012           | 77% |
| Calendar year 2013           | 89% |

The Iowa individual income tax booklet and instructions for 2007 through 2013 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse anytime during the year). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits before phase-out exclusion. Enter smaller of line 2 or line 10. 11. \_\_\_\_\_
12. Multiply line 11 by applicable exclusion percentage. 12. \_\_\_\_\_
13. Taxable social security benefits. Subtract line 12 from line 11. 13. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education and employer-provided adoption benefits.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Spouse 1 (or Spouse 2)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The amount on line 12 of this worksheet is the phase-out exclusion of social security benefits which must be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and this amount must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

**40.23(4)** *Taxation of social security benefits for tax years beginning on or after January 1, 2014.* For tax years beginning on or after January 1, 2014, no social security benefits are taxable on the Iowa return. However, the 100 percent phase-out exclusion of social security benefits must still be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and

701—39.5(422), and the 100 percent phase-out exclusion of social security benefits must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2408.

**701—40.24(99E) Lottery prizes.** Prizes awarded under the Iowa Lottery Act are Iowa earned income. Therefore, individuals who win lottery prizes are subject to Iowa income tax in the aggregate amount of prizes received in the tax year, even if the individuals were not residents of Iowa at the time they received the prizes.

This rule is intended to implement Iowa Code section 99E.19.

**701—40.25(422) Certain unemployment benefits received in 1979.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.26(422) Contributions to the judicial retirement system.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.27(422) Incomes from distressed sales of qualifying taxpayers.** For tax years beginning on or after January 1, 1986, taxpayers with gains from sales, exchanges, or transfers of property must exclude those gains from net income, if the gains are considered to be distressed sale transactions.

**40.27(1) Qualifications that must be met for transactions to be considered distressed sales.** There are a number of qualifications that must be met before a transaction can be considered to be a distressed sale. The transaction must involve forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. The following three additional qualifications need to have been met.

*a.* The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

*b.* Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt-to-asset ratio exceeded 90 percent as computed under generally accepted accounting principles.

*c.* The taxpayer's net worth at the end of the tax year was less than \$75,000.

In determining the taxpayer's debt-to-asset ratio immediately before the forfeiture, transfer, or sale or exchange and at the end of the tax year, the taxpayer must include any asset transferred within 120 days prior to the transaction or within 120 days prior to the end of the tax year without adequate and full consideration in money or money's worth.

Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure constitutes documentation of the distressed sale and must be made a part of the return. Balance sheets showing the taxpayer's debt-to-asset ratio immediately before the distressed sale transaction and the taxpayer's net worth at the end of the tax year must also be included with the income tax return. The balance sheets supporting the debt-to-asset ratio and the net worth must list the taxpayer's personal assets and liabilities as well as the assets and liabilities of the taxpayer's farm or other business.

For purposes of this provision, in the case of married taxpayers, except in the instance when the husband and wife live apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth or the taxpayers' debt-to-asset ratio.

**40.27(2) Losses from distressed sale transactions of qualifying taxpayers.** Losses from distressed sale transactions meeting the qualifications described above were disallowed prior to the time that the provision for disallowing these losses was repealed in the 1990 session of the General Assembly. Taxpayers whose Iowa income tax liabilities were increased because of disallowance of losses from distressed sales transactions may file refund claims with the department to get refunds of the taxes paid due to disallowance of the losses. Refund claims will be honored by the department to the extent that

the taxpayers provide verification of the distressed sale losses and the claims are filed within the statute of limitations for refund given in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code section 422.7.

**701—40.28(422) Losses from passive farming activities.** Rescinded IAB 2/18/04, effective 3/24/04.

**701—40.29(422) Intangible drilling costs.** For tax years beginning on or after January 1, 1986, but before January 1, 1987, intangible drilling and development costs which pertain to any well for the production of oil, gas, or geothermal energy, and which are incurred after the commencement of the installation of the production casing for the well, are not allowed as an expense in the tax year when the costs were paid or incurred and must be added to net income. Instead of expensing the intangible drilling and development costs which are incurred after the commencement of the installation of the production casing for a well, the expenses must be amortized over a 26-month period, beginning in the month in which the costs are paid or incurred if the costs were incurred for a well which is located in the United States, the District of Columbia, and those continental shelf areas which are adjacent to United States territorial waters and over which the United States has exclusive rights with respect to the exploration and exploitation of natural resources as provided in Section 638 of the Internal Revenue Code.

In the case of intangible drilling and development costs which are incurred for oil or gas wells outside the United States, those costs must be recovered over a ten-year straight-line amortization period beginning in the year the costs are paid or incurred. However, in lieu of amortization of the costs, the taxpayer may elect to add these costs to the basis of the property for cost depletion purposes.

For tax years beginning on or after January 1, 1987, the intangible drilling costs, which are an addition to income subject to amortization, are the intangible drilling costs described in Section 57(a)(2) of the Internal Revenue Code. These intangible drilling costs are an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

**701—40.30(422) Percentage depletion.** For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.31(422) Away-from-home expenses of state legislators.** For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax.** For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax. To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.33(422) Partial exclusion of pensions and annuities for retired and disabled public employees.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry.** For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of \$20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

**701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans.** For tax years beginning on or after January 1, 1989, proceeds from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

**701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program.** Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

**701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board.** Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

**701—40.38(422) Capital gains deduction or exclusion for certain types of net capital gains.** Effective for tax years beginning on or after January 1, 1990, but prior to January 1, 1998, a deduction is allowed in computing net income for 45 percent of the net capital gains described in subrules 40.38(1) to 40.38(4). See subrules 40.38(6) through 40.38(14) for the capital gain deduction or

exclusion which is applicable for net capital gains received in tax years beginning on or after January 1, 1998. However, the aggregate net capital gains from subrules 40.38(1) through 40.38(4) which are to be considered for the tax year for the capital gain deduction cannot exceed \$17,500 for all individual taxpayers except married taxpayers filing separate state returns. In the case of married taxpayers filing separate returns, the aggregate net capital gains to be considered for the deduction cannot exceed \$8,750 per spouse. Married taxpayers filing separately on the combined return form shall prorate the \$17,500 capital gain deduction limitation between the spouses in the ratio of each spouse's net capital gains from subrules 40.38(1) through 40.38(4) to the total net capital gains of both spouses from subrules 40.38(1) through 40.38(4). Effective for tax years beginning on or after January 1, 1994, the capital gain deduction is not allowed for purposes of computation of a net operating loss for the tax year and for purposes of computing the income for a tax year to which a net operating loss is carried. Subrule 40.38(5) includes information on how the capital gain deduction is treated in a tax year with a net operating loss and in a tax year with the capital gain deduction where a net operating loss deduction is carried.

**40.38(1)** Net capital gains from sales or exchanges of real property, tangible personal property, or other assets of a business owned by the taxpayer for a minimum of ten years and in which the taxpayer has materially participated for a minimum of ten years. Net capital gains from the sales or exchanges of real property, tangible personal property, or other assets from a business the taxpayer has owned for ten years and in which the taxpayer materially participated as defined in Section 469(h) of the Internal Revenue Code for ten years qualify for the capital gain deduction. In the case of installment sales of real property, tangible personal property, or other assets of a business, where the selling price of the business assets is paid to the seller in one or more years after the year in which the sales transaction occurred, all installments received on or after January 1, 1990, qualify for the capital gains deduction, assuming the taxpayers had met the ownership and material participation requirements at the time the sales transactions occurred. *Herbert Clausen and Sylvia Clausen v. the Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 1996 from the sale of the taxpayer's farmland in 1988, the installment received in 1996 would qualify for the 45 percent capital gain deduction if the taxpayer had owned the farmland at least ten years at the time of the sale and the taxpayer had materially participated in the farm business for a minimum of ten years at the time of the sale. The following terms and definitions clarify which sales and exchanges of assets of a business qualify for the capital gain deduction authorized in rule 701—40.38(422).

*a.* Business. A business includes any activity engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. In addition, a business for purposes of the capital gains deduction in rule 701—40.38(422) must have been owned by the taxpayer for at least ten years and the taxpayer must have materially participated in the business for at least ten years.

*b.* Assets of a business. Those assets of a business which may qualify for capital gain treatment under rule 701—40.38(422) if the assets are sold or exchanged under the conditions described in this rule are real property, tangible personal property, or other assets of a business which were held by the business more than one year at the time the assets were sold or exchanged. However, for purposes of this subrule, tangible personal property of a business does not include cattle or horses described in subrule 40.38(2), other livestock described in subrule 40.38(3), or timber which is described in subrule 40.38(4).

*c.* Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged. If the taxpayer has involvement in a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the Treasury rules for material participation in §1.469-5 and §1.469-5T, for ten years or more immediately before the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether or not a particular taxpayer has material participation in a business, participation of the taxpayer's spouse in a business must also be taken into account. The spouse's participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer, or if the spouse has no ownership interest in

the business. A taxpayer is most likely to have material participation in a business if that business is the taxpayer's principal business. However, it is possible for a taxpayer to have had material participation in more than one business in a tax year for purposes of this subrule.

A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are carried on. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business.

The fact that the taxpayer utilizes employees or contracts services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business.

Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

1. The individual participates in the business for more than 500 hours in the taxable year.

EXAMPLE. Joe and Sam Smith are brothers who formed a computer software business in 1981 in Altoona, Iowa. In 1991, Joe spent approximately 550 hours selling software for the business and Sam spent about 600 hours developing new software programs for the business. Both Joe and Sam would be considered to have materially participated in the computer software business in 1991.

2. The individuals' participation in the business constitutes substantially all of the participation in the business for the tax year.

EXAMPLE. Roger McKee is a teacher in a small town in southwest Iowa. He owns a truck with a snowplow blade. He contracts with some of his neighbors to plow driveways. He maintains and drives the truck. In the winter of 1991, there was little snow so Mr. McKee spent only 20 hours in 1991 in clearing driveways. Roger McKee is deemed to have materially participated in the snowplowing business in 1991.

3. The individual participates in the business for more than 100 hours in the tax year and no other individual spends more time in the business activity than the taxpayer.

4. The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each of the businesses. Thus, the taxpayer is regarded as materially participating in each of the business activities.

EXAMPLE. Frank Evans is a full-time CPA. He owns a restaurant and a record store. In 1992, Mr. Evans spent 400 hours in working at the restaurant and 150 hours at the record store. Mr. Evans is treated as a material participant in each of the businesses in 1992.

5. An individual who has materially participated (by meeting any of the tests in numbered paragraphs "1" through "4" above) in a business for five of the past ten years will be deemed a material participant in the current year.

EXAMPLE. Joe Bernard is the co-owner of a plumbing business. He retired in 1988 after 35 years in the business. Since Joe's retirement, he has retained his interest in the business. Joe is considered to be materially participating in the business for the years through 1993 or for the five years after the year of retirement. Thus, if the plumbing business is sold before the end of 1993, the sale will qualify for the Iowa capital gain on Joe's 1993 Iowa return because he was considered to be a material participant in the business according to the federal rules for material participation.

6. An individual who has materially participated in a personal service activity for at least three years will be treated as a material participant for life. A personal service activity involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting or any other trade or business in which capital is not a material income-producing factor.

EXAMPLE. Gerald Williams is a retired attorney, but retains an interest in the law firm he was involved in for over 40 years. Because the law firm is a personal services activity, Mr. Williams is considered to be a material participant in the law firm even after his retirement from the firm.

7. An individual who participates in the business activity for more than 100 hours may be treated as materially participating in the activity if, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. The following paragraphs provide clarification regarding the facts and circumstances test:

- A retired or disabled farmer is treated as materially participating in a farming activity for the current year if the farmer materially participated in the activity for five of the last eight years before the farmer's retirement or disability. That is, the farmer must have been subject to self-employment tax in five of the eight years before retirement or disability and had to have been either actively farming so the income was reported on Schedule F or materially participating in a crop-share activity for five of those eight last years prior to retirement or disability.

EXAMPLE. Fred Smith was 80 years old in 1991 when he sold 200 acres of farmland he had owned since 1951. Mr. Smith retired in 1981. In the last eight years before retirement, Mr. Smith was paying self-employment tax on his farm income which was reported on Schedule F for each of those eight years. In the years before he sold the farmland, Mr. Smith was leasing the farmland on a cash-rent basis, whereby Mr. Smith would not be considered to be materially participating in the farming activity. Because Mr. Smith had material participation in the farmland in the eight years before retirement, Mr. Smith was considered to have met the material participation requirement, so the capital gain qualified for the Iowa capital gain deduction.

- A surviving spouse of a farmer is treated as materially participating in the farming activity for the current tax year if the farmer met the material participation requirements at the time of death and the spouse actively participates in the farming business activity. That is, the spouse participates in the making of management decisions relating to the farming activity or arranges for others to provide services (such as repairs, plowing, and planting).

- Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following apply: Anybody other than the taxpayer is compensated for management services; or somebody provides more hours of management services than the taxpayer.

Material participation by individuals in specific types of activities. The following are individuals in specific types of activities that may have unique problems or circumstances related to material participation in a business:

1. Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in paragraphs "1," "5" and "6" above as if the taxpayer were not a limited partner for the tax year.

2. Work not customarily done by owners. Work done in connection with an activity shall not be treated as participation in the activity if both of the following apply:

Such work is not of a type that is customarily done by an owner of such activity; and

One of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

3. Participation in a business by an investor. Work done by an individual in the individual's capacity as an investor in an activity is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business.

4. Cash farm lease. A farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity.

5. Farm landlord involved in crop-share arrangement. A farm landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord meets one of the four following tests:

TEST 1. The landlord does any three of the following: (1) Pay or be obligated to pay for at least half the direct costs of producing the crop; (2) Furnish at least half the tools, equipment, and livestock used in producing the crop; (3) Consult with the tenant; and (4) Inspect the production activities periodically.

TEST 2. The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.

TEST 3. The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.

TEST 4. The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.

6. Conservation reserve payments. Farmers entering into long-term contracts providing for less intensive use of highly erodible or other specified cropland can receive compensation for conversion of such land in the form of an “annualized rental payment.” Although the CRP payments are referred to as “rental payments,” the payments are considered to be receipts from farm operations and not rental payments from real estate.

If an individual is receiving CRP payments and is not considered to be retired from farming, the CRP payments are subject to self-employment tax. If individuals actively manage farmland placed in the CRP program by directly participating in seeding, mowing, and planting the farmland or by overseeing these activities, the owner will be considered to have had material participation in the farming activity.

7. Rental activities or businesses. For purposes of subrules 40.38(1) and 40.38(7), the general rule is that a taxpayer who actively participates in a rental activity or business which would be considered to have been material participation in another business or activity would be deemed to have had material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in numbered paragraphs “4,” “5,” and “6” immediately above). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1991 and has received rental income from these duplexes since 1991. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in maintaining the duplexes than Mr. Stanley. The duplexes are sold in 2004, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2004 Iowa return since he met the material participation requirements for this rental activity.

**40.38(2)** Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching. Net capital gains from the sales of cattle or horses held 24 months or more for breeding, dairy, or sporting purposes qualify for the capital gains deduction on limited capital gains provided in rule 701—40.38(422) if more than 50 percent of the taxpayer’s gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner has held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, sporting, or dairy purposes depends on all the facts and circumstances of each case.

Whether or not cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in Treasury Regulations §1.1231-2.

A taxpayer’s gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. This includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer’s land. It also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 1988 tax year gross income from farming includes the total of the amounts from line 12 or line 52 of Schedule F and line 8 of Form 4835, (Farm Rental Income and Expenses), plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, sport, or dairy purposes, as shown on Form 4797 (Sale of Business Property). In the case of an individual’s returns for tax years beginning after 1988, equivalent lines from returns and supplementary forms would be used to determine a taxpayer’s gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer’s gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the previous paragraph is divided by the taxpayer’s total gross income. If the resulting percentage is greater

than 50 percent, the taxpayer's capital gains from sales of cattle and horses described previously in this subrule will be considered for the capital gain deduction provided in rule 701—40.38(422).

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether or not the taxpayers received more than half of their gross income from farming or ranching.

However, in situations where married taxpayers file separate Iowa returns or separately on the combined return form, each spouse must separately determine whether or not that spouse has more than 50 percent of gross income from farming or ranching operations.

**40.38(3)** Net capital gains from sale of breeding livestock, other than cattle or horses, held 12 or more months by taxpayers who received more than one-half of gross incomes from farming or ranching. Net capital gains from the sale of breeding livestock, other than cattle or horses, held 12 or more months from the date of acquisition qualify for the capital gain deduction in rule 701—40.38(422), if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, reptiles, etc. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in Treasury Regulation §1.1231-2, the livestock will also be deemed to have been breeding livestock for this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(2).

The procedure in subrule 40.38(2) for determining whether or not more than 50 percent of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

**40.38(4)** Net capital gains from sales of timber held by the taxpayer more than one year. Effective for tax years beginning on or after January 1, 1990, capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gains deduction described in rule 701—40.38(422). In all of the following examples of circumstances where gains from sales of timber qualify for capital gains treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, crossties, and other wood products. It does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer owned, or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

|  |                |
|--|----------------|
| Fair market value of timber on January 1, 1990 | \$400,000      |
| Minus: Adjusted basis for depletion            | <u>100,000</u> |
| Capital gain on cutting of timber              | \$300,000      |

The fair market value shown above of \$400,000 is the basis of the timber. A later sale of the cut timber, including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term "evergreen trees" is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer's farm, there is no sale until the tree is cut. However, "evergreen trees" sold in a live state do not qualify for capital gain treatment.

Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber.

Additional information about gains and losses from the sale of timber is included under Treasury Regulations §1.631-1 and §1.631-2.

**40.38(5)** Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried. The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

*a.* For tax years beginning on or after January 1, 1994, the capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 1994 return showing a net loss of \$12,000. On this return Mr. Jones claimed a capital gain deduction of \$3,000 from sale of breeding stock, other than cattle or horses, held 12 months or more which was considered in computing the loss of \$12,000. However, the \$3,000 capital gain deduction is not allowed in the computation of the net operating loss deduction for 1994 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 1994 is \$9,000.

*b.* In the case of net operating losses for tax years beginning on or after January 1, 1994, which are carried back to a tax year prior to 1994 where the taxpayer has claimed the capital gains deduction described above, the capital gains deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of \$20,000 on the Iowa return he filed for 1994. Mr. Brown elected to carry back the net operating loss to his 1991 Iowa return. The 1991 return showed a taxable income of \$27,000 which included a capital gain deduction of \$3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by \$3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 1994 was applied to an income of \$30,000 for the carryback year.

**40.38(6)** Exclusion of net capital gains from the sales of real property, from the sales of assets of a business entity, from the sales of certain livestock of a business, from the sales of timber, from liquidation of assets of certain corporations, and from certain stock sales which are treated as acquisition of assets of the corporation. For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(7) to 40.38(13) are excluded in the computation of net income for qualified individual taxpayers. Net capital gains means capital gains net of capital losses because Iowa's starting point for computing net income is federal adjusted gross income. Subrule 40.38(14) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

**40.38(7)** Net capital gains from the sale of real property used in a business. Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent the owner had held the real property in the business for ten or more years and the owner had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1), paragraph "c."

For capital gains reported for tax years ending prior to January 1, 2006, the term "held" is defined as "owned." See Decision of the Administrative Law Judge in James and Linda Bell, Docket No. 01DORF013, January 15, 2002. Therefore, the real property had to be owned by the taxpayer for ten or more years to meet the ownership requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term "held" is determined using the holding period provisions set forth in Section 1223 of the Internal

Revenue Code and the federal regulations which adopt Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the ownership requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

Note that for purposes of taxation of capital gains from the sales of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(8).

In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gain from their net incomes if the real property was owned for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is, if the owner of the business had owned and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

Capital gains from the sale of real property by a C corporation do not qualify for the capital gain exclusion except under the specific circumstances of a liquidation described in subrule 40.38(12).

Capital gains from the sale of real property held for ten or more years for speculation but not used in a business also do not qualify for the capital gain exclusion.

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and owned ABC Company for more than ten years at the time 500 acres of the land were sold for a capital gain of \$100,000 in 1998. The capital gain recognized in 1998 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and ownership time requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1980. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 1998, Smith and Company sold 200 acres of the farmland for a \$50,000 gain. \$25,000 of the gain passed through to John Smith and \$25,000 of the gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the \$25,000 capital gain from the land sale because he had met the time of ownership and time of material participation requirements. John Smith could not exclude the \$25,000 gain since although he had met the time of ownership requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for taxpayer's sales of real estate from a business to a lineal descendant of the taxpayer as is described for sales of business assets in subrule 40.38(8).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been owned for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 1992 and farmed that land until the land was sold in 1998 for a capital gain of \$20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 1993, formed an S corporation, and included the land in the assets of the S corporation. The land was sold in 1998 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized a capital gain of \$15,000 from the land sale which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had owned the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and which he had materially participated in for 20 years. There were two tracts of farmland in the farming business. In 1998, he sold one tract of farmland in the farming business that he had owned for more than 10 years for a \$50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had \$30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 1998 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey owned the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain exclusion. The exclusion is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain exclusion since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son, Joseph, after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1994, when Ralph died, under Section 1223 of the Internal Revenue Code. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain exclusion under Iowa law since he materially participated for ten years or more and the capital gain was reported for a tax year ending on or after January 1, 2006.

**40.38(8)** Net capital gains from the sale of assets of a business by an individual that had owned the business ten years and had materially participated in the business for ten years. Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent the individual had owned the business for ten or more years and the individual had materially participated in the business for ten or more years. In addition to the ownership and material participation qualifications for the capital gain exclusion, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

For purposes of this rule, the term “substantially all of the tangible property or service of the business” means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business’s tangible personal property and service was \$400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the sale of the assets must be \$360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

Note that if the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. Note also that if the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer’s net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten years prior to the sale of the assets of the business.

In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

For the purposes of this rule, the term “service of the business” means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, retail business, or a service business, such as a law or accounting firm.

However, when the business owned by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer does not need to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income.

For purposes of these rules, the term “lineal descendant” means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

In situations in which substantially all the tangible personal property or service was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had owned the business for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale.

Note that additional information on sales of business assets which may qualify for the exclusion and criteria for material participation in a business may be found in subrule 40.38(1).

Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale which would make the capital gains from the sale exempt from taxation if the installment sale of the business had occurred on or after January 1, 1998.

Sale of capital stock of an Iowa corporation or an Iowa farm corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain exclusion, whether the corporation is a C corporation or an S corporation.

Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain exclusion. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

Note that the sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the “business” or unless it represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, non-unitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exemption of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 1998, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a \$100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich’s 1998 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 1998, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had owned the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 1998 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 1998 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. The trucks were valued at \$30,000 at the time of sale which was about 10 percent of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 1998 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown’s business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop in the same building that were part of a sole proprietorship owned only by Mr. Bennet, who had owned and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 1998 for \$100,000 and had a capital gain of \$40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was \$250,000. Mr. Bennet could not exclude the capital gain on his 1998 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 1998 when the assets of the partnership were sold to Ray’s son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which held a chain of six gas stations in an Iowa city. In 1998, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain from the sale of \$30,000. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of

the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 1998 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year ownership and material participation qualifications are met.

**EXAMPLE 7.** Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had owned both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records. In 1998, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 1998 because the cafe and fast-food restaurant were considered to be separate and distinct non-unitary businesses.

**EXAMPLE 8.** Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2002, Mr. Jackson transfers 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust is reported on Mr. Jackson's individual income tax return. In 2005, the assets of Jackson Products Corporation are sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

**40.38(9)** Net capital gains from the sales of cattle or horses held for two years and used for certain purposes. Net capital gains from the sales of certain cattle or horses held for 24 months or more before the sale and which were owned by taxpayers who received more than one-half of their gross incomes in the tax year from farming or ranching operations are excluded from taxation. The cattle or horses must have been held the required two-year period for breeding, dairy, or sporting purposes in order for the capital gain from the sale of the horses and cattle to qualify for exclusion. These are the same sales of horses and cattle that are eligible for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code.

In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

However, capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain exclusion.

Information about whether cattle or horses were held for draft, breeding, dairy, or sporting purposes is described in detail in subrule 40.38(2). The same subrule includes criteria for determining if more than 50 percent of a taxpayer's gross income in a tax year was from farming or ranching. Note that this standard for determining a taxpayer's qualification for the capital gain deduction or exclusion is if the taxpayer's gross income from farming or ranching, not net income from those activities, is greater than 50 percent of the taxpayer's total gross income and not total net income.

**EXAMPLE.** Bob Deen had a cattle operation that held black angus cattle in the operation for breeding purposes. In 1998, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was \$125,000, but he had a \$10,000 loss from his farming operation. Mr. Deen also had wages of \$25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 1998 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from

his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

**40.38(10)** Net capital gains from sales of certain livestock other than horses and cattle. Net capital gains from sale of breeding livestock, other than cattle or horses held 12 or more months by taxpayers who have more than 50 percent of their gross incomes in the tax year from farming or ranching operations, are excluded from taxation. These are the same sales of breeding livestock other than cattle or horses that are eligible for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code. In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer does not need to have more than 50 percent of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain exclusion.

Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the exclusion to the extent the owners receiving the capital gains meet the qualifications for the exclusion on the basis of having more than 50 percent of the gross income in the tax year from farming or ranching activities.

Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the exclusion.

Animals that are considered livestock other than cattle or horses for purposes of this rule are listed in subrule 40.38(3). Criteria for determining whether more than 50 percent of a taxpayer's gross income in the tax year is from farming or ranching are defined in subrule 40.38(2).

**40.38(11)** Capital gains from the sales of timber held by the taxpayer more than one year. These sales of timber are sales that would qualify for capital gain treatment for federal income tax purposes under Section 1231 of the Internal Revenue Code. Thus, if the sale of timber products meets the criteria for capital gain treatment for federal income tax purposes, the capital gain will qualify for exclusion on the Iowa income tax return.

Subrule 40.38(4) includes information on which tree products are considered to be timber for purposes of this rule as well as which sales of timber qualify for the capital gain exclusion. Additional information about gains and losses from the sale of timber products is found in Treasury Regulations §1.631-1 and §1.631-2.

Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain exclusion.

Capital gains from the sale of timber by a C corporation do not qualify for the capital gain exclusion.

**40.38(12)** Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes. Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain exclusion. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

**40.38(13)** Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes. Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had owned an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. Note that the burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

**40.38(14)** Net capital gain deduction or exclusion not allowed for purposes of computation of a net operating loss or for computation of income for a tax year to which a net operating loss is carried. Although the net capital gain deduction or exclusion in this rule is allowed for the purposes of computation of a taxpayer's net income for a tax year, the deduction or exclusion is not allowed for the purposes of the computation of a net operating loss in the tax year. In addition, if a net operating loss for a tax year beginning on or after January 1, 1998, is carried forward to a subsequent tax year or is carried back to a prior tax year, the net capital gain deduction or exclusion is not allowed for the purposes of computing the income for the tax year to which the net operating loss was carried.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.39(422) Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system.** Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the E911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

**701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield.** For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

**701—40.41(422) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.42(422) Depreciation of speculative shell buildings.**

**40.42(1)** For tax years beginning on or after January 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal adjusted gross income in order to deduct depreciation computed under this rule.

**40.42(2)** On sale or other disposition of the speculative building, the taxpayer must report on the taxpayer's Iowa individual income tax return the same gain or loss as is reported on the taxpayer's federal individual income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

**40.42(3)** For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1(27) "c."

This rule is intended to implement Iowa Code section 422.7.

**701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative.** Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3(2) "a" (2) which are received by an individual providing unskilled in-home health care services to a member of the caregiver's

family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 to 10.

For purposes of this exemption, a member of the caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal descendant such as grandchild and great-grandchild, and those previously described relatives who are related by marriage or adoption. Those licensed health care professionals who are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, audiologists, and other similar licensed health care professionals.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—40.44(422,541A) Individual development accounts.** Individual development accounts are authorized for low-income taxpayers for tax years beginning on or after January 1, 1994. Additions to the accounts are described in the following subrule:

**40.44(1) Exemption of additions to individual development accounts.** The following additions to individual development accounts are exempt from the state income tax of the owners of the accounts to the extent the additions were subject to federal income tax:

a. The amount of contributions made in the tax year to an account by persons and entities other than the owner of the account.

b. The amount of any savings refund or state match payments made in the tax year to an account as authorized for contributions made to the accounts by the owner of the account.

c. Earnings on the account in the tax year or interest earned on the account.

**40.44(2) Additions to net income for withdrawals from individual development accounts.** Rescinded IAB 9/11/96, effective 10/16/96.

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 2008 Iowa Acts, Senate File 2430.

**701—40.45(422) Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa.** For tax years beginning on or after January 1, 1994, a distribution from a pension plan, annuity, individual retirement account, or deferred compensation plan which is received by a nonresident of Iowa is exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the pensioner, annuitant, owner of individual retirement account, or participant in a deferred compensation arrangement. For tax years beginning on or after January 1, 1996, distributions of nonqualified retirement benefits which are paid by a partnership to its retired partners and which are received by a nonresident of Iowa are exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the partner. In a situation where the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies before the date of documented retirement, any distribution from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to the beneficiary receiving the distributions if the beneficiary is a nonresident of Iowa. If the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies after the date of documented retirement, any distributions from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to a beneficiary receiving distributions if the beneficiary is a nonresident of Iowa.

For purposes of this rule, the distributions from the pensions, annuities and deferred compensation arrangements were from pensions, annuities, and deferred compensation earned entirely or at least partially from employment or self-employment in Iowa. For purposes of this rule, distributions from individual retirement arrangements were from individual retirement arrangements that were funded by

contributions from the arrangements that were deductible or partially deductible on the Iowa income tax return of the owner of the individual retirement accounts.

The following subrules include definitions and examples which clarify when distributions from pensions, annuities, individual retirement accounts, and deferred compensation arrangements are exempt from Iowa income tax, when the distributions are received by nonresidents of Iowa:

**40.45(1) Definitions.**

*a.* The word “beneficiary” means an individual who receives a distribution from a pension or annuity plan, individual retirement arrangement, or deferred compensation plan as a result of either the death or divorce of the pensioner, annuitant, participant of a deferred compensation arrangement, or owner of an individual retirement account.

*b.* The term “individual’s documented retirement” means any evidence that the individual can provide to the department of revenue which would establish that the individual or the individual’s beneficiary is receiving distributions from the pension, annuity, individual retirement account, or the deferred compensation arrangement due to the retirement of the individual.

Examples of documents that would establish an individual’s retirement may include: copies of birth certificates or driver’s licenses to establish an individual’s age; copies of excerpts from an employer’s personnel manual or letter from employer to establish retirement or early retirement policies; a copy of a statement from a physician to establish an individual’s disability which could have contributed to a person’s retirement.

*c.* The term “nonresident” applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.17(2) for the definition of domicile.

**40.45(2) Examples:**

*a.* John Jones had worked for the same Iowa employer for 32 years when he retired at age 62 and moved to Arkansas in March of 1994. Mr. Jones started receiving distributions from the pension plan from his former employer starting in May 1994. Because Mr. Jones was able to establish that he was receiving the distributions from the pension plan due to his retirement from his employment, Mr. Jones was not subject to Iowa income tax on the distributions from the pension plan. Note that Mr. Jones had sold his Iowa residence in March and established his domicile in Arkansas at the time of his move to Arkansas.

*b.* Wanda Smith was the daughter of John Smith who died in February 1994 after 25 years of employment with a company in Urbandale, Iowa. Wanda Smith was the sole beneficiary of John and started receiving distributions from John’s pension in April 1994. Wanda Smith was a bona fide resident of Oakland, California, when she received distributions from her father’s pension. Wanda was not subject to Iowa income tax on the distributions since she was a nonresident of Iowa at the time the distributions were received.

*c.* Martha Graham was 55 years old when she quit her job with a firm in Des Moines to take a similar position with a firm in Dallas, Texas. Ms. Graham had worked for the Des Moines business for 22 years before she resigned from the job in May 1994. Starting in July 1994, Ms. Graham received monthly distributions from the pension from her former Iowa employer. Although Ms. Graham was a nonresident of Iowa, she was subject to Iowa income tax on the pension distribution since the taxpayer didn’t have a documented retirement.

*d.* William Moore was 58 years old when he quit his job with a bank in Mason City in February 1994 after 30 years of employment with the bank. By the time Mr. Moore started receiving pension payments from his employment with the bank, he had moved permanently to New Mexico. Shortly after he arrived in New Mexico, Mr. Moore secured part-time employment. The pension payments were not taxable to Iowa as Mr. Moore was retired notwithstanding his part-time employment in New Mexico.

*e.* Joe Brown had worked for an Iowa employer for 25 years when he retired in June 1992 at the age of 65. Mr. Brown started receiving monthly pension payments in July 1992. Mr. Brown resided in Iowa until August 1994, when he moved permanently to Nevada to be near his daughter. Mr. Brown

was not taxable to Iowa on the pension payments he received after his move to Nevada. Mr. Brown's retirement occurred in June 1992 when he resigned from full-time employment.

This rule is intended to implement Iowa Code section 422.8.

**701—40.46(422) Taxation of compensation of nonresident members of professional athletic teams.** Effective for tax years beginning on or after January 1, 1995, the Iowa source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual's total compensation for services provided for the athletic team that is in the ratio that the number of duty days spent in Iowa rendering services for the team during the tax year bears to the total number of duty days spent both within and without Iowa in the tax year. Thus, if a nonresident member of a professional athletic team has \$50,000 in total compensation from the team in 1995 and the athlete has 20 Iowa duty days and 180 total duty days for the team in 1995, \$5,556 of the compensation would be taxable to Iowa ( $\$50,000 \times 20/180 = \$5,556$ ).

The following subrules include definitions, examples, and other information which clarify Iowa's taxation of nonresident members of professional athletic teams:

**40.46(1) Definitions.**

a. The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

b. The term "member of a professional athletic team" includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

c. The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered. "Total compensation" includes, but is not limited to, salaries, wages, bonuses (as described in subparagraph (1) of this paragraph), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, and any other payments not related to services rendered for the team.

For purposes of this paragraph, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in this rule are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff, or "bowl" games played by a team, or for the member's selection to all-star, league, or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

1. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

2. The signing bonus is payable separately from the salary and any other compensation; and

3. The signing bonus is nonrefundable.

d. Except as provided in subparagraphs (4) and (5) of this paragraph, the term "duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are included in the allocation described in this rule for the tax year in which they occur, including where a team's official preseason training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one tax year.

(1) Duty days also includes days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the previously mentioned period (e.g., participation in instructional leagues, the "Pro Bowl" or promotional "caravans"). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(2) Included within duty days are game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(3) Duty days for any person who joins a team during the period from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes, or is scheduled to compete, begins on the day the person joins the team. Conversely, duty days for any person who leaves a team during such period ends on the day the person leaves the team. When a person switches teams during a taxable year, separate duty day calculations are to be made for the period the person was with each team.

(4) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, are not to be treated as duty days.

(5) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Iowa, are not to be considered duty days spent in Iowa. However, all days on the disability list are considered to be included in total duty days spent both within and outside the state of Iowa.

(6) Total duty days for members of a professional athletic team that are not professional athletes are the number of days in the year that the members are employed by the professional athletic team. Thus, in the case of a coach of a professional athletic team who was coach for the entire year of 1995, the coach's total duty days for 1995 would be 365.

(7) Travel days in Iowa by a team member that do not involve a game, practice, team meeting, all-star game, or other personal service for the team are not considered to be duty days in Iowa. However, to the extent these days fall within the period from the team's preseason training period through the team's final game, these Iowa travel days will be considered in the total duty days spent within and outside Iowa, for team members who are professional athletes.

(8) Duty days in Iowa do not include days a team member performs personal services for the professional athletic team in Iowa on those days that the team member is a bona fide resident of a state with which Iowa has a reciprocal tax agreement. See rule 701—38.13(422).

**40.46(2)** *Filing composite Iowa returns for nonresident members of professional athletic teams.* Professional athletic teams may file composite Iowa returns on behalf of team members who are nonresidents of Iowa and who have compensation that is taxable to Iowa from duty days in Iowa for the athletic team. However, the athletic team may include on the composite return only those team members who are nonresidents of Iowa and who have no Iowa source incomes other than the incomes from duty days in Iowa for the team. The athletic team may exclude from the composite return any team member who is a nonresident of Iowa and whose income from duty days in Iowa is less than \$1,000. See rule 701—48.1(422) about filing Iowa composite returns.

**40.46(3)** *Examples of taxation of nonresident members of professional athletic teams.*

*a.* Player A, a member of a professional athletic team, is a nonresident of Iowa. Player A's contract for the team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A is to receive \$500,000 for the year 1/year 2 season and \$600,000 for the year 2/year 3 season. Assuming player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season), the portion of compensation received by player A for taxable year 2, attributable to Iowa, is determined by multiplying the compensation player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Iowa during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of player A's duty days spent both within and outside Iowa for the entire taxable year.

*b.* Player B, a member of a professional athletic team, is a nonresident of Iowa. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at

a clinic, which is not a facility of the team, but is located in Iowa, B's team travels to Iowa for a game. The number of days B's team spends in Iowa for practice, games, meetings, for example, while B is present at the clinic, are not to be considered duty days spent in Iowa for player B for that taxable year for purposes of this rule, but these days are considered to be included within total duty days spent both within and outside Iowa.

c. Player C, a member of a professional athletic team, is a nonresident of Iowa. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Iowa as well as at personal facilities in Iowa. The days C performs rehabilitation exercise in the facilities of C's team are considered duty days spent in Iowa for player C for that taxable year for purposes of this rule. However, days player C spends at personal facilities in Iowa are not to be considered duty days spent in Iowa for player C for that taxable year for purposes of this rule, but the days are considered to be included within total duty days spent both within and outside Iowa.

d. Player D, a member of a professional athletic team, is a nonresident of Iowa. During the season, D travels to Iowa to participate in the annual all-star game as a representative of D's team. The number of days D spends in Iowa for practice, the game, meetings, for example, are considered to be duty days spent in Iowa for player D for that taxable year for purposes of this rule, as well as included within total duty days spent both within and outside Iowa.

e. Assume the same facts as given in paragraph "d," except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending this game solely as a spectator. The number of days player D spends in Iowa for the game is not to be considered to be duty days spent in Iowa for purposes of this rule. However, the days are considered to be included within total duty days spent both within and outside Iowa.

**40.46(4)** *Use of an alternative method to compute taxable portion of a nonresident's compensation as a member of a professional athletic team.* If a nonresident member of a professional athletic team believes that the method provided in this rule for allocation of the member's compensation to Iowa is not equitable, the nonresident member may propose the use of an alternative method for the allocation of the compensation to Iowa. The request for an alternative method for allocation must be filed no later than 60 days before the due date of the return, considering that the due date may be extended for up to 6 months after the original due date if at least 90 percent of the tax liability was paid by the original due date (April 30 for taxpayers filing on a calendar-year basis).

The request for an alternative method should be filed with the Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.41(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors.** For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is

a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received \$95,000 in retirement benefits and the husband received \$5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the \$10,000 retirement income exclusion or a retirement income exclusion of \$9,500. The husband would be entitled to 5 percent of the \$10,000 retirement income exclusion or an exclusion of \$500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had \$15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire \$10,000 retirement income exclusion to exclude \$10,000 of his pension benefits since the spouse did not use any of the \$10,000 retirement income exclusion for the tax year.

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$10,000. The other spouse was 55 years of age and received a pension income of \$8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of \$8,000 is allowed on the Iowa return. The exclusion of \$8,000 is allowed since a married couple is allowed a combined exclusion of up to \$12,000.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to \$3,000 for single individuals, up to \$3,000 for each married person filing a separate Iowa return, up to \$3,000 for each married person filing separately on the combined return form, and up to \$6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had \$2,000 in pension income that could be excluded, since the pension income was \$3,000 or less. The other spouse had \$6,000 in pension income and could exclude \$3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional \$1,000 of the up to \$3,000 retirement income exclusion that was not used by the other spouse.

*"Insurable interest"* is a term used in life insurance which also applies to this rule and is defined to be "such an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured, or from the ties of blood or marriage to him, as would justify a reasonable expectation of advantage or benefit from the continuance of his life." *Warnock v. Davis*, 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; *Appeal of Corson*, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams' Adm'r v. Reed*, Ky., 36 S.W. 568, 570; *Trinity College v. Travelers' Co.*, 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel*, 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the

expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis*, 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800.

For purposes of this rule, the term “insurable interest” will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.

For purposes of this rule, the term “survivor” is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.

A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.

A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.

The fact that a niece of the pensioner or annuitant was named beneficiary of an uncle’s pension where the uncle had no closer relatives does not in itself establish that the niece had an insurable interest in the pension benefits, if the niece was not receiving monetary benefits or the niece did not have some special relationship to the uncle at the time of the uncle’s death.

If a grandson was receiving college tuition regularly from his grandfather and received the grandfather’s pension as a beneficiary of the grandfather after the grandfather’s death, the grandson would be deemed to have an insurable interest in the benefits and would be eligible for the partial retirement benefit exclusion.

A person who is not related to the pensioner or annuitant, such as a partner in a business or a creditor, may have an insurable interest in the pensioner or annuitant. However, the burden of proof is on a nonrelated person to show that the person had an insurable interest in the pensioner or the annuitant at the time of death of the pensioner or annuitant.

There are numerous court cases which deal with whether a person had established an insurable interest in the life of an individual that was insured. These cases may be used as a guideline to determine whether or not a person receiving a pension or annuity due to the death of an annuitant or pensioner had an insurable interest in the annuitant or pensioner at the time of death of the pensioner or annuitant. Thus, if a person would have met criteria for an insurable interest for purposes of an interest in a person’s life insurance policy, the person would also be considered to be qualified for an insurable interest in a pensioner or annuitant.

Retirement benefits subject to the retirement income exclusion include, but are not limited to: benefits from defined benefit or defined contribution pension and annuity plans, benefits from annuities, incomes from individual retirement accounts, benefits from pension or annuity plans contributed by

an employer or maintained or contributed by a self-employed person and benefits and earnings from deferred compensation plans. However, the exclusion does not apply to social security benefits. A surviving spouse who is not disabled or is not 55 years of age or older can only exclude retirement benefits received as a result of the death of the other spouse and on the basis that the deceased spouse would have been eligible for the exclusion in the tax year. In order for a survivor other than the surviving spouse to qualify for the partial exclusion of retirement benefits, the survivor must have received the retirement benefits as a result of the death of a pensioner or annuitant who would have qualified for the exclusion in the tax year on the basis of age or disability. In addition, the survivor other than the surviving spouse would have had to have an insurable interest in the pensioner or annuitant at the time of the death of the pensioner or annuitant.

For purposes of this rule, a disabled individual is a person who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

Note that the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for purposes of determining whether or not a particular individual's income is low enough to exempt that taxpayer from tax. In addition, the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for the alternative tax computation, which is available to all taxpayers except those taxpayers filing as single individuals.

Finally, the pension or other retirement benefits are to be considered as a part of net income for individuals using the single filing status whose tax liabilities are limited so the liabilities cannot reduce the person's net income plus exempt benefits below \$9,000, or below \$18,000 for taxpayers 65 years of age or older for the 2007 and 2008 tax years, or below \$24,000 for taxpayers 65 years of age or older for the 2009 and subsequent tax years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7.  
[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.48(422) Health insurance premiums deduction.** For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For

tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid \$1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire \$1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is \$980.

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, Senate File 129.

**701—40.49(422) Employer social security credit for tips.** Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994.

This rule is intended to implement Iowa Code Supplement section 422.7.

**701—40.50(422) Computing state taxable amounts of pension benefits from state pension plans.** For tax years beginning on or after January 1, 1995, a retired member of a state pension plan, or a beneficiary of a member, who receives benefits from the plan where there was a greater contribution to the plan for the member for state income tax purposes than for federal income tax purposes can report less taxable income from the benefits on the Iowa individual income tax return than was reported on the federal return for the same tax year. This rule applies only to a member of a state pension plan, or the beneficiary of a member, who received benefits from the plan sometime after January 1, 1995, and only in circumstances where the member received wages from public employment in 1995, 1996, 1997, or 1998, or possibly in 1999 for certain teachers covered by the state pension plan authorized in Iowa Code chapter 294 so the member had greater contributions to the state pension plan for state income tax purposes than for federal income tax purposes. Starting with wages paid on or after January 1, 1999, to employees covered by a state pension plan other than teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions made to the pension plan will be made on a pretax basis for state income tax purposes as well as for federal income tax purposes. However, in the case of teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions to the pension plan on behalf of these teachers on a pretax basis for state income tax purposes may start after January 1, 1999.

For example, in the case of a state employee who was covered by IPERS and had wages from covered public employment of \$41,000 or more in 1995, that person would have made posttax contributions to IPERS of \$1,517 for state income tax purposes for 1995 and zero posttax contributions to IPERS for federal income tax purposes for 1995. The \$1,517 in contributions to IPERS for federal income tax purposes was made on a pretax basis and was considered to have been made by the employee's employer or the state of Iowa and not the employee. At the time this employee receives retirement benefits from IPERS, the retired employee will be subject to federal income tax on the portion of the benefits that is attributable to the \$1,517 IPERS contribution made in 1995. However, this employee will not be subject

to state income tax on the portion of the IPERS benefits received which is attributable to the \$1,517 contribution to IPERS for 1995.

This rule does not apply to members or beneficiaries of members who elect to take a lump sum distribution of benefits from a state pension plan in lieu of receiving monthly payments of benefits from the plan.

The following subrules further clarify how the portion of certain state pension benefits that is taxable for state individual income tax purposes for tax years beginning on or after January 1, 1995, is determined.

**40.50(1)** *Definitions related to state taxation of benefits from state pension plan.* The following definitions clarify those terms and phrases that have a bearing on the state's taxation of certain individuals who receive retirement benefits from state pension plans:

*a.* For purposes of this rule, the terms "state pension," "state pensions," and "state pension plans" mean only those pensions and those pension plans authorized in Iowa Code chapter 97A for public safety peace officers, chapter 97B for Iowa public employees (IPERS), chapter 294 for certain teachers, and chapter 411 for police officers and firefighters. There are other pension plans available for some public employees in the state which may be described as "state pensions" or "state pension plans" in other contexts or situations, but these pension plans are not covered by this rule. An example of a pension plan that is not a "state pension plan" for purposes of this rule is the judicial retirement system for state judges authorized in Iowa Code section 602.9101.

*b.* For purposes of this rule, "member" is an individual who was employed in public service covered by a state pension plan and is either receiving or was receiving benefits from the pension plan.

*c.* For purposes of this rule, "beneficiary" is a person who has received or is receiving benefits from a state pension plan due to the death of an individual or member who earned benefits in a state pension plan.

*d.* For purposes of this rule, the term "IPERS" means the Iowa public employees retirement system.

*e.* For purposes of this rule, the term "pretax," when the term is applied to a contribution made to a state pension plan during a year from a public employee's compensation, means a contribution to a state pension plan that is not taxed on the employee's income tax return for the tax year in which the contribution is made. The contribution is considered to have been made by the state or the employee's employer and not by the employee so this contribution is not part of the employee's basis in the pension that is not taxed when the pension is received.

*f.* For purposes of this rule, the term "posttax," when the term is applied to a contribution made to a state pension plan during a year from a public employee's compensation, means the contribution is included in the employee's taxable income for the tax year of the contribution and the contribution is considered to have been made by the employee. That is, the contribution is part of the employee's basis in the pension which is not taxed at the time the pension is received.

**40.50(2)** *Computation of the taxable amount of the state pension for federal income tax purposes.* An individual who receives benefits in the tax year from one of the state pension plans is not subject to federal income tax on the benefits to the extent of the pensioner's or member's recovery of posttax contribution to the pension plan. The individual receiving benefits in the year from a state pension plan should get a Form 1099-R showing the total benefits received in the tax year from the pension plan. The individual can determine the federal taxable amount of the benefits by using the general rule or the simplified general rule which is described in federal publication 17 or federal publication 575. Note that members who first receive pension benefits after November 18, 1996, must compute the federal taxable amount of their pension benefits by using the simplified general rule shown in the federal tax publications. Note also that individuals receiving benefits in the tax year from IPERS who started receiving benefits in 1993 or in later years will receive information with the 1099-R form which shows the amount of gross benefits received in the tax year that is taxable for federal income tax purposes.

**40.50(3)** *Computing the taxable amount of state pension benefits for state individual income tax purposes.* An individual receiving state pension benefits in the tax year must have a number of facts about the state pension in order to be able to compute the taxable amount of the pension for Iowa

income tax purposes. The individual must know the gross pension benefits received in the tax year, the taxable amount of the pension for federal income tax purposes, the employee's contribution to the pension for federal income tax purposes, and the employee's contribution to the pension for state income tax purposes. In situations where the employee's contribution for state income tax purposes is equal to the contribution for federal income tax purposes, the same amount of the pension will be taxable on the state income tax return as is taxable on the federal return.

In cases when all of an individual's employment covered by a state pension plan occurred on or after January 1, 1995, so that all the contributions to the pension plan (other than posttax service purchases) for the employee were made on a pretax basis for federal income tax purposes, all of the benefits received from the pension would be taxed on the federal income tax return. In this situation, the state taxable amount of the pension would be computed using the general rule or the simplified general rule shown in federal publication 17 or federal publication 575. The employee's state contribution or state basis would be entered on line 2 of the worksheet in the federal publication that is usually used to compute the taxable amount of the pension for the federal income tax return.

To compute the state taxable amount of the state pension in situations where the employee had a contribution to the pension for federal tax purposes, the federal taxable amount for the year is first subtracted from the gross pension benefit received in the year which leaves the amount of the pension received in the year which was not taxable on the federal return. Next, the member's posttax contribution or basis in the pension for federal tax purposes is divided by the member's posttax contribution or basis in the pension for state income tax purposes which provides the ratio of the member's federal basis or contribution to the member's state contribution or basis. Next, the amount of the state pension received in the year that is not taxed on the federal return is divided by the ratio or percentage that was determined in the previous step, which provides the exempt amount of the pension for state tax purposes. Finally, the state exempt amount determined in the previous step is subtracted from the gross amount received in the year, which leaves the taxable amount for state income tax purposes. Note that individuals who retired in 1993 and in years after 1993 and are receiving benefits from IPERS will receive information from IPERS which will advise them of the taxable amount of the pension for state income tax purposes. The examples in subrule 40.50(4) are provided to illustrate how the state taxable amounts of state pension benefits received in the tax year are computed in different factual situations.

**40.50(4) Examples.**

*a.* A state employee retired in April 1996 and started receiving IPERS benefits in April 1996. The retired state employee received \$1,794.45 in gross benefits from IPERS in 1996. The federal taxable amount of the benefits was \$1,690.36. The employee's federal posttax contribution or basis in the pension was \$4,907 and the state posttax contribution or basis was \$7,194. The nontaxable amount of the IPERS benefits for federal income tax was \$104.09 which was calculated by subtracting the federal taxable amount of \$1,690.36 from the gross amount of the benefits of \$1,794.45. The ratio of the employee's posttax contribution to the pension for federal income tax purposes was 68.21 percent of the employee's contribution to the pension for state income tax purposes. This was determined by dividing \$4,907 by \$7,194. The nontaxable amount of the IPERS benefit for federal income tax purposes of \$104.09 was then divided by 68.21 percent, which is the ratio determined in the previous step, and which results in a total of \$152.60. This was the nontaxable amount of the pension for state income tax purposes. When \$152.60 is subtracted from the gross benefits of \$1,794.45 paid in the year, the remaining amount is \$1,641.85 which is the taxable amount of the pension that should be reported on the individual's Iowa individual income tax return for the 1996 tax year.

*b.* A state employee retired in July 1995. The retired employee received \$1,881.88 in IPERS benefits in 1996 and \$1,790.60 of the benefits was taxable on the individual's federal return for 1996. The person's federal posttax contribution to the IPERS pension was \$3,130 and the posttax contribution for state income tax purposes was \$3,821. The amount of benefits not taxable for federal income tax purposes was \$91.28 which was computed by subtracting the amount of pension benefits of \$1,790.60 that was taxable on the federal income tax return from the gross benefits of \$1,881.88 received in 1996. The retiree's federal posttax contribution of \$3,130 to IPERS was divided by the retiree's posttax contribution of \$3,821 to IPERS for state income tax purposes which resulted in a ratio of 81.91 percent. The amount

of IPERS benefits of \$91.28 exempt for federal income tax purposes is divided by the 81.91 percent computed in the previous step which results in an amount of \$111.44 which is the amount of IPERS benefits received in 1996 which is not taxable on the Iowa return. \$111.44 is subtracted from the gross benefits of \$1,881.88 received in 1996 which leaves the state taxable amount for 1996 of \$1,770.44.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, House File 2513.

**701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area.** For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

**701—40.52(422) Mutual funds.** Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in 701—subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.
2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.
3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

**701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted.** The Iowa educational savings plan trust was created so that individuals can contribute funds on behalf of beneficiaries in accounts administered by the treasurer of state to cover future higher education costs of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes

are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted.

**40.53(1)** *Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.* Effective with contributions made on or after July 1, 1998, an individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. Rollover contributions from other states' educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount given or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

For example, an individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making \$2,000 contributions to the trust on behalf of each of the ten grandchildren. When the participant files the 1998 Iowa individual income tax return, the participant can claim a deduction on the return for the \$20,000 contributed to the Iowa educational savings plan trust on behalf of the individual's ten grandchildren.

**40.53(2)** *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary's account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

**40.53(3)** *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* If a participant cancels a beneficiary's account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary, or if a participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses, the refund of the funds is to be included in net income on the participant's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the participant.

For example, because a beneficiary of a certain participant died in the year 2000, this participant in the Iowa educational savings plan trust canceled the participant agreement for the beneficiary with the trust and received a refund of \$4,200 of funds in the beneficiary's account. Because \$4,000 of the refund represented contributions that the participant had deducted on prior Iowa individual income tax returns, the participant was to report on the Iowa return for the tax year 2000, \$4,000 in contributions that had been deducted on the participant's Iowa returns for 1998 and 1999.

**40.53(4)** *Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust.* To the extent that the contribution was not deductible for federal income tax purposes, an individual can deduct on the Iowa individual income tax return a gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, House File 923.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.54(422) Roth individual retirement accounts.** Roth individual retirement accounts were authorized in the Taxpayer Relief Act of 1997 and are applicable for tax years beginning after

December 31, 1997. Generally, no deduction is allowed on either the federal income tax return or the Iowa individual income tax return for a contribution to a Roth IRA. The following subrules include information about tax treatment of certain transactions for Roth IRAs.

**40.54(1)** *Taxation of income derived from rolling over or converting existing IRAs to Roth IRAs.* At the time existing IRAs are rolled over to or converted to Roth IRAs in the 1998 calendar year or in a subsequent year, any income realized from the rollover or conversion of the existing IRA is taxable. However, in the case of conversion of existing IRAs to Roth IRAs in 1998, the taxpayer can make an election to have all the income realized from the conversion subject to tax in 1998 rather than have the conversion income spread out over four years. If the conversion income is spread out over four years, one-fourth of the conversion income is included on the 1998 Iowa and federal returns of the taxpayer and one-fourth of the income is included on the taxpayer's Iowa and federal returns for each of the following three tax years. Note that if an existing IRA for an individual is converted to a Roth IRA for the individual in a calendar year after 1998, all the income realized from the conversion is to be reported on the federal return and the Iowa return for that tax year for the individual. That is, when conversion of existing IRAs to Roth IRAs occurs after 1998, there is no provision for having the conversion income taxed over four years.

For example, an Iowa resident converted three existing IRAs to one Roth IRA in 1998, realized \$20,000 in income from the conversion, and did not elect to have all the conversion income taxed on the 1998 Iowa and federal returns. Because the taxpayer did not make the election so all the conversion income was taxed in 1998, \$5,000 in conversion income was to be reported on the taxpayer's federal and Iowa returns for 1998 and similar incomes were to be reported on the federal and Iowa returns for 1999, 2000, and 2001. Note that to the extent the recipient of the Roth IRA conversion income is eligible, the conversion income is subject to the pension/retirement income exclusion described in rule 701—40.47(422).

**40.54(2)** *Roth IRA conversion income for part-year residents.* To the extent that an Iowa resident has Roth IRA conversion income on the individual's federal income tax return, the same income will be included on the resident's Iowa income tax return. However, when an individual with Roth IRA conversion income in the tax year is a part-year resident of Iowa, the individual may allocate the conversion income on the Iowa return in the ratio of the taxpayer's months in Iowa during the tax year to 12 months. In a situation where an individual spends more than half of a month in Iowa, that month is to be reported to Iowa for purposes of the allocation.

For example, an individual moved to Des Moines from Omaha on June 12, 1998, and had \$20,000 in Roth IRA conversion income in 1998. Because the individual spent 7 months in Iowa in 1998, 7/12, or 60 percent, of the \$20,000 in conversion income is allocated to Iowa. Thus, \$12,000 of the conversion income should be reported on the taxpayer's Iowa return for 1998.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, Senate File 2357.

**701—40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims.** For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the Holocaust or income payments received by individuals who are heirs of victims of the Holocaust are excluded in the computation of net incomes, to the extent the payments were included in the individuals' federal adjusted gross incomes. Victims of the Holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by Holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim

of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7.

**701—40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions.** For tax years beginning on or after January 1, 2001, income from the sale of obligations of the state of Iowa and its political subdivisions shall be added to Iowa net income to the extent not already included. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa net income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition of the bonds from the Iowa individual income tax.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, chapter 116.

**701—40.57(422) Installment sales by taxpayers using the accrual method of accounting.** For tax years beginning on or after January 1, 2000, and prior to January 1, 2002, taxpayers who use the accrual method of accounting and who have sales or exchanges of property that they reported on the installment method for federal income tax purposes must report the total amount of the gain or loss from the transaction in the tax year of the sale or exchange pursuant to Section 453 of the Internal Revenue Code as amended up to and including January 1, 2000.

EXAMPLE 1. Taxpayer Jones uses the accrual method of accounting for reporting income. In 2001, Mr. Jones sold farmland he had held for eight years for \$200,000 which resulted in a capital gain of \$50,000. For federal income tax purposes, Mr. Jones elected to report the transaction on the installment basis, where he reported \$12,500 of the gain on his 2001 federal return and will report capital gains of \$12,500 on each of his federal returns for the 2002, 2003 and 2004 tax years.

However, for Iowa income tax purposes, Mr. Jones must report on his 2001 Iowa return the entire capital gain of \$50,000 from the land sale. Although Taxpayer Jones must report a capital gain of \$12,500 on each of his federal income tax returns for 2002, 2003 and 2004, from the installment sale of the farmland in 2001, he will not have to include the installments of \$12,500 on his Iowa income tax returns for those three tax years because Mr. Jones had reported the entire capital gain of \$50,000 from the 2001 transaction on his 2001 Iowa income tax return.

EXAMPLE 2. Taxpayer Smith uses the accrual method of accounting for reporting income. In 2002, Mr. Smith sold farmland he had held for eight years for \$500,000 which resulted in a capital gain of \$100,000. For federal income tax purposes, Mr. Smith elected to report the transaction on the installment basis, where he reported \$20,000 of the gain on his 2002 federal return and will report the remaining capital gains on federal returns for the four subsequent tax years. Because this installment sale occurred in 2002, Mr. Smith shall report \$20,000 of the capital gain on his Iowa income tax return for 2002 and will report the balance of the capital gains from the installment sale on Iowa returns for the next four tax years, the same as reported on his federal returns for those years.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, House File 2116.

**701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States.** For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to state military service or federal service or duty are not subject to Iowa income tax on the amount of distributions received during the tax year from qualified retirement plans of the members to the extent the distributions were taxable for federal income tax purposes. In addition, the members are not subject to state penalties on the distributions even though the members may have been subject to federal penalties on the distributions for early withdrawal of benefits. Because the distributions described above are not taxable for Iowa income tax purposes, a national guard member or armed forces reserve

member who receives a distribution from a qualified retirement plan may request that the payer of the distribution not withhold Iowa income tax from the distribution.

This rule is intended to implement Iowa Code section 422.7 as amended by 2004 Iowa Acts, House File 2208.

**701—40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate.** All payments received on or after July 1, 2002, by a beneficiary of a deceased pensioner or annuitant are exempt from Iowa income tax to the extent the payments are from an annuity purchased under an employee's pension or retirement plan when the commuted value of the installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes. Thus, a lump sum payment received by a beneficiary from an annuity purchased under an employee's pension or retirement plan is exempt from Iowa income tax to the extent the commuted value of the annuity was included as part of the decedent employee's estate for Iowa inheritance tax purposes. Under prior law, only installment payments of an annuity received by a beneficiary were exempt from Iowa income tax if the commuted value of the installments had been included as part of the decedent employee's estate for Iowa inheritance tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, Senate File 2305.

**701—40.60(422) Additional first-year depreciation allowance.**

**40.60(1)** *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

**40.60(2)** *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa individual income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa individual income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

*a.* If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between federal depreciation and Iowa depreciation relating to the disallowance of 50 percent bonus depreciation. Taxpayer now elects to take the 50 percent bonus depreciation for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2005 Iowa return.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

**40.60(3)** *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

**40.60(4)** *Qualified disaster assistance property.* For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

**40.60(5)** *Assets acquired after December 31, 2009, but before January 1, 2013.* For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2013, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2013, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.** For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2010, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation New Dawn. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, but before January 1, 2011, for service not covered by military orders for one of the operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. For active duty pay received on or after January 1, 2011, see rule 701—40.76(422). An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve.** A taxpayer may subtract, in computing net income, the costs not reimbursed that were incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services

on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member. The deduction for Iowa tax purposes is the same that is allowed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 186.

**701—40.63(422) Exclusion of income from military student loan repayments.** Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty.** An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.65(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa individual income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa individual income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa individual income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa individual income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa individual income tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa individual income tax.

**40.65(1)** If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer

must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between the federal Section 179 expensing allowance and the Iowa Section 179 expensing allowance. Taxpayer now elects to take the increased Section 179 expensing allowance for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2005 Iowa return.

**40.65(2)** If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to \$25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

See 701—subrule 53.23(2) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant.** For tax years beginning on or after January 1, 2005, a taxpayer, while living, may subtract up to \$10,000 in unreimbursed expenses that were incurred relating to the taxpayer's donation of all or part of a liver, pancreas, kidney, intestine, lung or bone marrow to another human being for immediate human organ transplantation. The taxpayer can claim this deduction only once, and the deduction can be claimed in the year in which the transplant occurred. The unreimbursed expenses must not be compensated by insurance to qualify for the deduction.

The unreimbursed expenses which are eligible for the deduction include travel expenses, lodging expenses and lost wages. If the deduction is claimed for travel expenses and lodging expenses, these expenses cannot also be claimed as an itemized deduction for medical expenses under Section 213(d) of the Internal Revenue Code for Iowa tax purposes. The deduction for lost wages does not include any sick pay or vacation pay reimbursed by an employer.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 801.

**701—40.67(422) Deduction for alternative motor vehicles.** For tax years beginning on or after January 1, 2006, but beginning before January 1, 2015, a taxpayer may subtract \$2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles, qualified plug-in electric drive motor vehicles and new qualified alternative fuel vehicles. The advanced lean burn technology, qualified

hybrid and qualified alternative fuel vehicles must be placed in service before January 1, 2011, to qualify for the deduction. The qualified plug-in electric drive motor vehicles must be placed in service before January 1, 2012, to qualify for the deduction. The qualified fuel cell motor vehicles must be placed in service before January 1, 2015, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer's federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.68(422) Injured veterans grant program.**

**40.68(1)** For tax years beginning on or after January 1, 2006, a taxpayer who receives a grant under the injured veterans grant program provided in 2006 Iowa Acts, Senate File 2312, section 1, may subtract, to the extent included in federal adjusted gross income, the amount of the grant received. The injured veterans grant program is administered by the Iowa department of veterans affairs, and grants of up to \$10,000 are provided to veterans who are residents of Iowa and are injured in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

**40.68(2)** For tax years beginning on or after January 1, 2006, a taxpayer may subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts contributed to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in 2006 Iowa Acts, Senate File 2312, section 1. If a deduction is claimed for these amounts contributed to the injured veterans grant program, this deduction cannot also be claimed as an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2312.

**701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain.** For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

**40.69(1) Reporting requirements.** In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

**40.69(2) Claiming the exclusion when gain is not recognized for federal tax purposes.** For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when

property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.7.

**701—40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects.**

**40.70(1)** *Projects registered on or after January 1, 2007, but before July 1, 2009.* For tax years beginning on or after January 1, 2007, a taxpayer who is a resident of Iowa may exclude, to the extent included in federal adjusted gross income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—42.37(15,422). See rule 701—38.17(422) for the determination of Iowa residency.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—42.37(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a limited liability company with three members, all of whom are Iowa residents. If any of the three members receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, such member(s) cannot exclude this income on the Iowa income tax return because the member(s) has an equity interest in the business which received the credit.

**40.70(2)** *Projects registered on or after July 1, 2009.* For tax years beginning on or after July 1, 2009, a taxpayer who is a resident of Iowa may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa individual income tax return for each of the tax years 2010-2013.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, section 5, and Iowa Code section 422.7.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—40.71(422) Exclusion for certain victim compensation payments.** Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.
2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.
3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

**701—40.72(422) Exclusion of Vietnam Conflict veterans bonus.**

**40.72(1)** For tax years beginning on or after January 1, 2007, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to \$500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

**40.72(2)** For tax years beginning on or after January 1, 2008, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs. Bonuses of up to \$500 are awarded to veterans who were inducted into active duty service from the state of Iowa, who served on active duty in the United States armed forces from July 1, 1958, through May 31, 1975, and who have not received a bonus for that service from Iowa or another state.

This rule is intended to implement Iowa Code section 422.7 as amended by 2008 Iowa Acts, House File 2283.

**701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents.** Effective for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

**40.73(1) Term of coverage.** Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

**40.73(2) Federal treatment.** Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return. For tax years beginning on or after January 1, 2011, income is no longer reported on the federal income tax

return on the value of health care coverage of children who are not claimed as dependents and who have not attained age 27 as of the end of the tax year; therefore, no adjustment is required on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.74(422) Exclusion for AmeriCorps Segal Education Award.** Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund.** For tax years beginning on or after January 1, 2010, a taxpayer may subtract, to the extent included in federal adjusted gross income, the amounts received from the Iowa veterans trust fund related to travel expenses directly related to follow-up medical care for wounded veterans and their spouses and amounts received related to unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

This rule is intended to implement Iowa Code section 422.7 as amended by 2010 Iowa Acts, House File 2532.

[ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard.** For tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income.

**40.76(1)** Definition of active duty personnel. Active duty personnel who qualify for the exclusion include the following:

- a. Active duty members of the regular armed forces, which include the Army, Navy, Marines, Air Force and Coast Guard of the United States.
- b. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are on an active duty status as defined in Title 10 of the United States Code.
- c. Members of the national guard who are in an active duty status as defined in Title 10 of the United States Code.

**40.76(2)** Military personnel who do not qualify for the exclusion include the following:

- a. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are not in an active duty status as defined in Title 10 of the United States Code.
- b. Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.
- c. Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.
- d. Other members of the national guard who do not receive pay from the federal government.

**40.76(3)** Income from nonmilitary activities. Any wages earned from nonmilitary wages for personal services conducted in Iowa by both residents and nonresidents of Iowa will still be subject to Iowa individual income tax. In addition, both residents and nonresidents of Iowa who earn income from businesses, trades, professions or occupations operated in Iowa that are unrelated to military activity will be subject to Iowa individual income tax on that income.

**40.76(4)** Exemption from Iowa withholding. Active duty personnel meeting the requirements of subrule 40.76(1) who are receiving pay from the federal government on or after January 1, 2011, that is exempt from Iowa individual income tax may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received from the federal government.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.77(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—40.78(422) Allowance of certain deductions for 2008 tax year.**

**40.78(1)** For the tax year beginning on or after January 1, 2008, but before January 1, 2009, the following deductions provided in the federal Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The deduction for disaster-related casualty losses allowed under Section 165(h) of the Internal Revenue Code.

**40.78(2)** Taxpayers who did not claim these deductions on the Iowa return for 2008 as originally filed, or taxpayers who claimed these deductions on the Iowa return as filed and subsequently filed an amended return disallowing these deductions, must file an amended return for the 2008 tax year to claim these deductions. The amended return must be filed within the statute of limitations provided in 701—subrules 43.3(8) and 43.3(15). If the amended return is filed within the statute of limitations, the taxpayer is only entitled to a refund of the excess tax paid. The taxpayer will not be entitled to any interest on the excess tax paid.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.79(422) Special filing provisions related to 2010 tax changes.**

**40.79(1)** For the tax year beginning on or after January 1, 2010, but before January 1, 2011, the following adjustments will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The increased expensing allowance authorized under Section 179(b) of the Internal Revenue Code.

**40.79(2)** Taxpayers who did not claim these adjustments on the Iowa return for 2010 as originally filed have two options to reflect these adjustments. Taxpayer may either file an amended return for the 2010 tax year to reflect these adjustments or taxpayer may reflect these adjustments on the tax return for the 2011 tax year. If the taxpayer elects to reflect these adjustments on the 2011 tax return, the following provisions are suspended related to the claiming of the following adjustments for 2011:

*a.* The limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code with regard to the Section 179(b) adjustment.

b. The applicable dollar limit provision of Section 222(b)(2)(B) of the Internal Revenue Code with regard to the qualified tuition and related expenses adjustment.

**40.79(3) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for 2010. Taxpayer elects not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer reported a loss from the taxpayer's trade or business on the 2011 federal return, so no Section 179 expense can be claimed on the federal return for 2011 in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for 2011 since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

EXAMPLE 2: Taxpayers are a married couple who claimed a \$4,000 tuition and related expenses deduction on their federal return for 2010. Taxpayers did not claim this deduction on their Iowa return as originally filed for 2010. Taxpayers elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayers reported federal adjusted gross income in excess of \$160,000 on their 2011 federal return, so no deduction for tuition and related expenses can be claimed on the 2011 federal return in accordance with Section 222(b)(2)(B) of the Internal Revenue Code. Taxpayers can claim the \$4,000 deduction on the Iowa return for 2011 since the dollar limit provision of Section 222(b)(2)(B) is suspended for Iowa tax purposes.

EXAMPLE 3: Taxpayer is an elementary school teacher who claimed a \$250 deduction for out-of-pocket expenses for school supplies on the federal return for 2010. Taxpayer did not claim this deduction on the Iowa return as originally filed for 2010. Taxpayer elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer also claimed a \$200 deduction for out-of-pocket expenses for school supplies on the federal return for 2011. Taxpayer can claim a \$450 (\$250 plus \$200) deduction on the Iowa return for 2011.

This rule is intended to implement 2011 Iowa Acts, Senate File 533, section 143.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

[Filed 12/12/74]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed 10/14/77, Notice 9/7/77—published 11/2/77, effective 12/7/77]

[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]

[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]

[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]

[Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]

[Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]

[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]<sup>o</sup>

[Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]

[Filed 1/25/85, Notice 12/19/84—published 2/13/85, effective 3/20/85]

[Filed 5/3/85, Notice 3/27/85—published 5/22/85, effective 6/26/85]

[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]

[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]

[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]

[Filed 10/3/86, Notice 8/27/86—published 10/22/86, effective 11/26/86]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]

[Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]

[Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]

[Filed 9/18/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]

[Filed 1/4/89, Notice 11/30/88—published 1/25/89, effective 3/1/89]

[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]  
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]  
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]  
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]<sup>◊</sup>  
[Filed 1/17/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]<sup>◊</sup>  
[Filed emergency 5/8/92—published 5/27/92, effective 5/8/92]  
[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]  
[Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]  
[Filed 6/4/93, Notice 2/17/93—published 6/23/93, effective 7/28/93]  
[Filed emergency 7/15/93—published 8/4/93, effective 7/15/93]  
[Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]  
[Filed emergency 10/22/93—published 11/10/93, effective 10/22/93]  
[Filed 12/17/93, Notice 11/10/93—published 1/5/94, effective 2/9/94]  
[Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]  
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]  
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]  
[Filed 7/14/95, Notice 6/7/95—published 8/2/95, effective 9/6/95]  
[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]  
[Filed 7/25/96, Notice 6/19/96—published 8/14/96, effective 9/19/96]  
[Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]  
[Filed 5/30/97, Notice 4/23/97—published 6/18/97, effective 7/23/97]  
[Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]<sup>◊</sup>  
[Filed 2/20/98, Notice 1/14/98—published 3/11/98, effective 4/15/98]<sup>◊</sup>  
[Filed 5/15/98, Notice 4/8/98—published 6/3/98, effective 7/8/98]  
[Filed 10/2/98, Notice 8/26/98—published 10/21/98, effective 11/25/98]  
[Filed emergency 1/8/99 after Notice 12/2/98—published 1/27/99, effective 1/8/99]  
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]  
[Filed 12/23/99, Notice 11/17/99—published 1/12/00, effective 2/16/00]  
[Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]  
[Filed 1/5/01, Notice 11/29/00—published 1/24/01, effective 2/28/01]  
[Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]  
[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]  
[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]  
[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]  
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]<sup>◊</sup>  
[Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]  
[Filed emergency 9/24/04—published 10/13/04, effective 9/24/04]  
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]  
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
[Filed emergency 2/25/05—published 3/16/05, effective 2/25/05]  
[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]  
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]  
[Filed 11/1/06, Notice 8/16/06—published 11/22/06, effective 12/27/06]  
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]  
[Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]  
[Filed 6/27/07, Notice 5/23/07—published 7/18/07, effective 8/22/07]  
[Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]  
[Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]  
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]  
[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]  
[Filed ARC 8356B (Notice ARC 8223B, IAB 10/7/09), IAB 12/2/09, effective 1/6/10]

[Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 8605B (Notice ARC 8481B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]  
[Filed ARC 9103B (Notice ARC 8944B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
[Filed ARC 9822B (Notice ARC 9739B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

◊ Two or more ARCs

CHAPTER 41  
DETERMINATION OF TAXABLE INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—41.1(422) Verification of deductions required.** Deductions from gross income, otherwise allowable, will not be allowed in cases where the department requests the taxpayer to furnish information sufficient to enable it to determine the validity and correctness of such deductions, until such information is furnished. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

This rule is intended to implement Iowa Code section 422.25.

**701—41.2(422) Federal rulings and regulations.** In determining whether “taxable income,” “net operating loss deduction” or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the commissioner of internal revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which calls for an alternative method for determining “taxable income,” “net operating loss deduction” or any other deduction, or unless the department finds that an applicable internal revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.

**701—41.3(422) Federal income tax deduction and federal refund.** Federal income taxes paid or accrued during the tax year are a permissible deduction for Iowa income tax purposes, adjusted by any federal refunds received or accrued during the tax year. Taxpayers who are not on an accrual basis of accounting shall deduct their federal income taxes in the year paid.

**41.3(1) Federal income tax deduction.** The federal income tax deduction for cash basis taxpayers equals the sum of the following:

*a.* The entire amount of federal income tax withheld during the taxable year from compensation of the taxpayer. Where a husband and wife file separate returns or separately on a combined Iowa return, the actual federal income tax withheld from wages earned by either spouse or both spouses must be deducted by each in accordance with wage statement(s) and may not be prorated between the spouses.

*b.* Tax paid at any time during the taxable year on a filing of federal estimated tax or on any amendment to such filing. Where a husband and wife file separate Iowa returns or separately on a combined Iowa return, the federal estimated tax payments made in the tax year shall be prorated between the spouses by the ratio of each spouse’s income not subject to withholding to the total income not subject to withholding of both spouses, including the federal estimated tax payment made in January of the tax year which was made for the prior tax year. If an estimated tax payment or portion of the payment is made for self-employment tax, then the spouse who has earned the self-employment income shall report the amount of estimated tax designated as self-employment tax. The federal tax deduction for the tax year does not include the self-employment tax paid through the federal estimated payments made in the tax year. However, one-half of the self-employment tax paid in the tax year is deductible in computing federal adjusted gross income pursuant to Section 164(f) of the Internal Revenue Code so this self-employment tax is also deductible in computing net income.

*c.* Any additional federal tax on a prior federal return paid during the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, additional federal tax paid shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which the additional federal tax was paid. If additional federal tax paid includes federal self-employment tax, then that amount of self-employment tax shall be deducted by the spouse who earned the self-employment income. Any federal tax paid for a tax year in which an Iowa individual income tax return was not required to be filed is not allowed as a deduction in the year the federal taxes were paid.

EXAMPLE 1. Individual A earned \$8,500 in income for the 2004 tax year and paid \$200 in federal tax with the filing of the federal return in 2005. Individual A was not required to file an Iowa return for 2004 because the Iowa net income was under \$9,000. Individual A cannot claim a deduction for the \$200 in federal tax paid on the 2005 Iowa return because an Iowa return was not required to be filed for the 2004 tax year.

EXAMPLE 2. Individual B moved into Iowa on January 1, 2005, and filed an initial Iowa individual income tax return for the 2005 tax year. Individual B paid \$1,000 in additional federal income tax with the filing of the 2004 federal income tax return in 2005. Individual B cannot claim a deduction for the \$1,000 in federal tax paid on the 2005 Iowa return because an Iowa return was not filed for the 2004 tax year.

*d.* The earned income credit computed under Section 32 of the Internal Revenue Code and the additional child tax credit computed under Section 24(d) of the Internal Revenue Code, to the extent that these credits reduce the federal income tax liability on the prior federal return filed during the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, the earned income credit and the additional child tax credit shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which these credits were claimed.

EXAMPLE: Individual A filed a 2003 federal income tax return reporting a tax liability of \$2,000. Individual A had \$500 of federal income tax withheld and \$2,500 of earned income credit. Individual A can deduct \$500 as a federal income tax deduction on the Iowa return for 2003 and \$1,500 as a federal tax deduction on the Iowa return for 2004, since the federal tax deduction is limited to the extent it reduced the federal income tax liability.

*e.* The motor vehicle fuel tax credit computed under Section 34 of the Internal Revenue Code for the taxable year. Where a husband and wife file separately or separately on a combined Iowa return, the motor vehicle fuel tax credit shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income of both spouses in the year for which these credits were claimed.

EXAMPLE: Individual B filed a 2003 federal income tax return reporting a tax liability of \$1,500. Individual B paid \$1,000 in federal estimated tax during 2003 and claimed a \$400 motor vehicle fuel tax credit on the 2003 federal return. Individual B can deduct \$1,400 as a federal income tax deduction on the Iowa return for 2003.

**41.3(2) Federal income tax refunds.**

*a.* Any refund of federal income tax received during the taxable year must be used to reduce the amount deducted for federal income tax to the extent the refunded amount was deducted on the Iowa return in a prior year. When a husband and wife file separately or separately on a combined Iowa return, the federal income tax refund to be reported shall be prorated between the spouses by the ratio of net income reported by each spouse to total net income reported by both spouses. If an amount of self-employment tax is required to be added back to Iowa net income, then the spouse who earned the self-employment income which generated the self-employment tax shall report that amount as an addition to net income. Any federal tax refund received for a tax year in which an Iowa individual income tax return was not required to be filed is not required to be reported in the year the federal refund was received.

EXAMPLE 1: Individual A earned \$7,500 in income for the 2004 tax year and had \$1,000 in federal income tax withheld. Individual A received a refund of the entire \$1,000 federal tax withheld with the filing of the federal return in 2005. Individual A was not required to file an Iowa return for 2004 because the Iowa net income was under \$9,000. Individual A does not have to report the \$1,000 federal refund received on the 2005 Iowa return because an Iowa return was not required to be filed for the 2004 tax year.

EXAMPLE 2: Individual B moved into Iowa on July 1, 2005, and filed an initial Iowa individual income tax return for the 2005 tax year. Individual B received a \$2,000 federal income tax refund with the filing of the 2004 federal income tax return in 2005. Individual B does not have to report the \$2,000 federal refund on the 2005 Iowa return because an Iowa return was not filed for the 2004 tax year.

b. Any portion of the federal refund received due to the earned income credit computed under Section 32 of the Internal Revenue Code or the additional child tax credit computed under Section 24(d) of the Internal Revenue Code does not have to be reported on the Iowa return. However, any portion of the federal refund received due to the motor vehicle fuel tax credit computed under Section 34 of the Internal Revenue Code does have to be reported on the Iowa return.

EXAMPLE 1: Individual A filed a 2003 federal income tax return reporting a tax liability of \$2,000. Individual A had \$500 of federal income tax withheld and \$2,500 of earned income credit and received a federal income tax refund of \$1,000 after filing the return in 2004. Individual A does not have to report the \$1,000 federal refund on the Iowa return for 2004, since the refund resulted from the earned income credit.

EXAMPLE 2: Individual B filed a 2003 federal income tax return reporting a tax liability of \$500. Individual B had \$1,000 of federal income tax withheld and \$1,000 of earned income credit and received a federal income tax refund of \$1,500 after filing the return in 2004. Individual B must report a \$500 federal refund on the Iowa return for 2004, since the portion of the refund relating to the earned income credit does not have to be reported.

EXAMPLE 3: Individual C filed a 2003 federal income tax return reporting a tax liability of \$1,000. Individual C paid \$900 in federal estimated tax and claimed a \$400 federal motor vehicle fuel tax credit and received a federal refund of \$300 after filing the return in 2004. Individual C must report the \$300 federal refund on the Iowa return for 2004, since the refund resulted from the motor vehicle fuel tax credit.

c. Any portion of the federal refund received due to the first-time homebuyer credit computed under Section 36 of the Internal Revenue Code does not have to be reported on the Iowa return. Similarly, any recapture of the credit under Section 36(f) of the Internal Revenue Code is not allowed as a deduction for federal taxes paid.

EXAMPLE: Individual A filed a 2008 federal income tax return reporting a tax liability of \$1,000. Individual A had \$1,200 of federal tax withheld and \$7,500 of first-time homebuyer credit and received a federal income tax refund of \$7,700 after filing the return in 2009. Individual A must report a \$200 federal refund on the Iowa return for 2009, since the portion of the federal refund relating to the first-time homebuyer credit does not have to be reported. The \$500 of federal taxes that will be recaptured and paid for each year on the federal income tax return for 2009-2023 in accordance with Section 36(f) of the Internal Revenue Code will not be allowed as a deduction on the Iowa return for federal taxes paid.

**41.3(3) Federal income tax deduction—part-year residents.**

a. For tax years beginning on or before December 31, 1981, the federal income tax deduction attributable to Iowa by part-year residents shall be determined by multiplying the federal tax paid or accrued for the entire taxable year by a fraction, the numerator of which is the Iowa net income and the denominator of which is the federal adjusted gross income except that the taxpayer can deduct actual federal income tax withheld on that income subject to withholding which was earned while the taxpayer was an Iowa resident if the federal tax withheld on the Iowa income is separately shown on the wage statement(s) of the taxpayer.

b. For tax years beginning on or after January 1, 1982, the federal income tax deduction attributable to Iowa by part-year residents shall be the same deduction as is available for resident taxpayers.

**41.3(4) Federal income tax deduction—nonresidents.**

a. For tax years beginning on or before December 31, 1981, the federal income tax deduction attributable to Iowa by nonresidents shall be determined by multiplying the federal tax paid or accrued for the entire taxable year by a fraction, the numerator of which is the Iowa net income and denominator of which is the federal adjusted gross income.

If separate Iowa nonresident returns are filed by a husband and wife who filed a joint federal return, each spouse's Iowa adjusted gross income must be divided by the total federal net income of both spouses in order to compute a ratio that can be used to determine the federal tax deduction attributable to each spouse. In any event, the ratio including the combined ratio of husband and wife cannot exceed 100 percent.

Federal income taxes paid during the taxable year on prior years' federal income tax returns will not be allowable on the nonresident return for the taxable year unless Iowa returns were filed for the prior years for which the federal taxes were paid.

Any federal income tax, either paid by a nonresident or withheld from their compensation, which is later refunded to the taxpayer, shall be included as Iowa income by the nonresident for the year the refund is received, in the same portion that such federal tax was deducted by the nonresident in a prior Iowa income tax return.

*b.* For tax years beginning on or after January 1, 1982, the federal income tax deduction attributable to Iowa by nonresidents of Iowa shall be the same deduction as is available for resident taxpayers.

**41.3(5)** *Federal rebate received in 2001.* For tax years beginning in the 2001 calendar year, the federal tax rebate or advanced refund of federal income tax provided to certain individuals in 2001 pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is not to be included as part of an individual's federal income tax refund for the individual's federal tax deduction for Iowa individual income tax purposes. The federal rebate is also referred to as the tax reduction credit.

EXAMPLE. John and Betty Smith received a federal refund of \$1,200 in March 2001 from federal income tax that had been deducted on their 2000 Iowa individual income tax return. The Smiths also received a refund of federal income tax of \$500 in June 2001 from an amended 1999 federal return. The federal income tax refunded had been deducted on the Smiths' 1999 Iowa income tax return. Finally, the Smiths received a \$600 federal rebate in August 2001. When the Smiths file their 2001 Iowa return, they must report an aggregate federal income tax refund of \$1,700. This is \$1,200 from the refund from their 2000 federal return and \$500 from the refund from their amended 1999 federal return. However, the Smiths are not to include as part of the federal income tax refund shown on their 2001 Iowa return the \$600 federal rebate they received in August 2001.

**41.3(6)** *Federal rate reduction credit and the federal income tax deduction for the 2002 tax year.* For tax years beginning in the 2002 calendar year, the tax reduction credit or the advanced refund of federal income tax provided to certain individuals pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is not to be included as part of an individual's federal income tax refund for Iowa individual income tax purposes. The tax reduction credit was also referred to as the federal rebate when it was refunded to some taxpayers during the 2001 calendar year. This subrule does not apply to those taxpayers who received the federal rebate in the 2001 calendar year.

EXAMPLE. When Joe and Donna Brown completed their 2001 federal income tax return, they received the benefit of a rate reduction credit of \$600 which resulted in the Browns' receiving a federal income tax refund of \$400 in May 2002. Because the entire federal income tax refund was attributable to the rate reduction credit of \$600, the Browns do not need to report the \$400 refund of federal income tax when they complete their Iowa income tax return for 2002.

**41.3(7)** *Federal rebate received in 2008.* For tax years beginning in the 2008 calendar year, the federal tax rebate or advanced refund of federal income tax provided to certain individuals in 2008 pursuant to the federal Economic Stimulus Act of 2008 is not to be included as part of an individual's federal income tax refund for the individual's federal tax deduction for Iowa individual income tax purposes.

EXAMPLE. Frank and Jane Casey received a federal refund of \$1,300 in March 2008 from federal income tax that had been deducted on their 2007 Iowa individual income tax return. Frank and Jane also received a \$1,200 federal rebate in June 2008. When Frank and Jane file their 2008 Iowa return, they must report a federal income tax refund of \$1,300. However, they are not required to include as part of the federal income tax refund shown on their 2008 Iowa return the \$1,200 federal rebate they received in June 2008.

**41.3(8)** *Federal rate reduction credit and the federal income tax deduction for the 2009 tax year.* For tax years beginning in the 2009 calendar year, the tax reduction credit or the advanced refund of federal income tax provided to certain individuals pursuant to the federal Economic Stimulus Act of 2008 is to be included as part of an individual's federal income tax refund for Iowa individual income tax purposes. The tax reduction credit was also referred to as the federal rebate when it was refunded to some taxpayers

during the 2008 calendar year. This subrule does not apply to those taxpayers who received the federal rebate in the 2008 calendar year.

EXAMPLE: When Fred and Barbara Jones completed their 2008 federal income tax return, they received the benefit of a rate reduction credit of \$1,200, which resulted in the Browns' receiving a federal income tax refund of \$1,300 in May 2009. Fred and Barbara need to report the entire \$1,300 refund of federal income tax when they complete their Iowa income tax return for 2009.

This rule is intended to implement Iowa Code section 422.9 as amended by 2008 Iowa Acts, House File 2417.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—41.4(422) Optional standard deduction.** An optional standard deduction is provided on the Iowa individual income tax return for both residents and nonresidents. In the case of married taxpayers filing separate returns or separately on the combined return, if one spouse takes the optional standard deduction, the other spouse must also take the optional standard deduction. The standard deduction claimed by the taxpayer may not exceed the taxpayer's income before the standard deduction.

A taxpayer has the option of itemizing deductions or of using the optional standard deduction on the Iowa return, regardless of the deduction method used on the federal return.

For tax years beginning on or after January 1, 1990, the optional standard deduction amounts are indexed or increased for inflation by the cumulative standard deduction factor. The cumulative standard deduction factor is described in rule 701—38.12(422).

**41.4(1)** *Direct charitable contribution for individuals claiming the optional standard deduction.* Rescinded IAB 3/26/08, effective 4/30/08.

**41.4(2)** Reserved.

This rule is intended to implement Iowa Code sections 422.4 and 422.9.

**701—41.5(422) Itemized deductions.** Deductions may be itemized on the Iowa return to the same extent that they are allowable on the federal return with the following exceptions:

**41.5(1)** To the extent that Iowa income taxes were included in itemized deductions allowable for federal income tax purposes, they must be subtracted from the itemized deductions to be deducted on the Iowa return.

**41.5(2)** For the tax years beginning on or after January 1, 2004, and before January 1, 2008, and for tax years beginning on or after January 1, 2010, but before January 1, 2012, the itemized deduction for state sales and use taxes is allowed on the Iowa return only if the taxpayer elected to deduct state sales and use taxes as an itemized deduction in lieu of the deduction for state income taxes on the federal return under Section 164 of the Internal Revenue Code.

If the taxpayer elected to deduct state income taxes as an itemized deduction on the federal return, taxpayer cannot claim an itemized deduction for state sales and use taxes on the Iowa return. In addition, if taxpayer claimed the standard deduction in accordance with Section 63 of the Internal Revenue Code on the federal return, taxpayer cannot claim an itemized deduction for state sales and use taxes on the Iowa return.

If the taxpayer is allowed to deduct state sales and use taxes as an itemized deduction on the Iowa return, taxpayer cannot claim an itemized deduction on the Iowa return for either the school district surtax imposed under Iowa Code section 257.21 or the emergency medical services income surtax imposed under Iowa Code chapter 422D.

**41.5(3)** Adoption expense deduction. Unreimbursed amounts paid by the taxpayer in the adoption of a child if placed by a licensed agency under Iowa Code chapter 238, by an agency that meets the provisions of the interstate compact in Iowa Code section 232.158 or by a person making an independent placement under Iowa Code chapter 600, which exceed 3 percent of the taxpayer's net income, or the combined net income of a husband and wife in the case of married taxpayers filing a joint return, will be allowed as a deduction in the year paid. Qualifying expenses include all medical, hospital, legal fees, welfare agency fees, and all other costs relating to the adoption of a child. Those expenses claimed for adoption purposes may not be claimed elsewhere on the individual income tax return.

**41.5(4)** Deduction for expenses for the care of certain disabled relatives.

*a.* For tax years beginning on or after January 1, 1983, a deduction from net income may be taken for expenses incurred by a taxpayer for care of a disabled person who is unable to live independently. Such care must be provided in the home in which the taxpayer resides throughout the year. A person is considered to be incapable of living independently if as a result of a physical or mental defect the person is incapable of caring for the person's hygienical or nutritional needs or requires the full-time attention of another person for personal safety or the safety of others. The fact that an individual, by reason of a physical or mental defect, is unable to engage in any substantial gainful activity, or is unable to perform the normal household functions of a homemaker or to care for minor children, does not of itself establish that the individual is physically or mentally incapable of self-care. An individual who is physically handicapped or is mentally defective, and for such reason requires the constant attention of another person, is considered to be physically or mentally incapable of self-care.

To qualify for the deduction, in addition to being disabled, the person must be the grandchild, child, parent or grandparent of the taxpayer or the taxpayer's spouse, and

- (1) Be receiving medical assistance benefits under Iowa Code chapter 249A; or
- (2) Be eligible to receive such benefits under the income and resource levels established in Iowa Code chapter 239B; or
- (3) Would be eligible to receive such benefits if living in a health-care facility licensed under Iowa Code chapter 135C.

Expenses incurred for a taxpayer's disabled spouse do not qualify for the deduction.

*b.* The deductible amount is limited to \$5,000 for each disabled person cared for in the taxpayer's home and the expenses must not be otherwise deductible as a deduction from net income under Iowa Code section 422.9.

*c.* Qualifying expenses include a proportionate share of food expenses as well as amounts spent directly on the disabled person for such items as clothing, medical care, dental care and transportation.

Medical expenses incurred for a disabled relative, which are eliminated from federal itemized deductions because of the federal adjusted gross income percentage limitation, may be included in the deduction for expenses incurred for the care of the disabled relative providing the other requirements are met. Following are examples to illustrate the portion of medical expenses incurred which would be deductible.

EXAMPLE 1. Mr. and Mrs. Smith care for Mrs. Smith's mother in their home. Mrs. Smith's mother is physically unable to live independently and qualifies for medical assistance benefits under Iowa Code chapter 249A. Mr. and Mrs. Smith paid medical expenses of \$1,500 for themselves and \$500 for Mrs. Smith's mother. The medical expenses for Mrs. Smith's mother are includable as federal itemized deductions. Mr. and Mrs. Smith's federal adjusted gross income is \$20,000. For 1983, the federal deduction for medical expenses would be \$1,000 (\$2,000 minus 5 percent of \$20,000 or \$1,000). Since the deductible amount for federal tax purposes is \$1,000 or 50 percent of the total medical expenses of Mr. and Mrs. Smith and Mrs. Smith's mother, there remains 50 percent of the \$500 expense for Mrs. Smith's mother (or \$250) which can be included in the Iowa deduction for a disabled relative.

EXAMPLE 2. Mr. and Mrs. Smith's medical expenses were \$400 and Mrs. Smith's mother's expenses were \$200. None of the \$600 in expenses would be deductible as a federal itemized deduction but the mother's \$200 in expenses would be includable in the Iowa deduction for expenses incurred for a disabled relative.

*d.* Expenses not directly related to care of a disabled relative are not deductible. This category includes rent, mortgage interest, utilities, house insurance and taxes. Such expenses would be incurred without the disabled relative in the home and unless an expense can be directly attributed to the disabled relative, it may not be deducted.

*e.* In the event that the person being cared for is receiving assistance benefits under Iowa Code chapter 239B, the expenses qualifying for deduction shall be the net difference between the expenses actually incurred in caring for the person which are not otherwise deductible as a deduction to net income and the assistance benefits under Iowa Code chapter 239B. Iowa Code chapter 239B covers family investment program payments.

*f.* In order to claim a deduction for expenses for care of a disabled relative, a schedule of qualifying expenses must be provided with the tax return as well as a statement from a qualified physician certifying that the disabled individual is unable to live independently. Such certification must be filed with the tax return in the initial year for the deduction and every third year thereafter.

**41.5(5)** Rescinded IAB 5/6/09, effective 6/10/09.

**41.5(6)** Rescinded IAB 11/24/04, effective 12/29/04.

**41.5(7)** Deduction of multipurpose vehicle registration fee. For tax years beginning on or after January 1, 1992, and before January 1, 2005, individuals who itemize deductions for Iowa income tax purposes may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph “h.” “Multipurpose vehicle” means a motor vehicle designed to carry not more than ten people and constructed either on a truck chassis or with special features for occasional off-road operation. The registration certificate for a multipurpose vehicle has the letters “MV” printed next to the word “style” on the certificate.

This subrule applies only to model year 1992 and older model year multipurpose vehicles. The registration fees for multipurpose vehicles for the 1993 model year and for model years after 1993 are the same as for other motor vehicles where the fees for newer model year vehicles are based on the value and weight of the vehicle. In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an itemized deduction under Section 164 of the Internal Revenue Code or as an ordinary and necessary business expense.

See also subrule 41.5(9), which provides for the deduction for registration fees for older motor vehicles. Subrule 41.5(7) also applies to multipurpose vehicles to the extent those vehicles are for the 1993 model year or for model years after 1993.

For tax years beginning on or after January 1, 2005, the itemized deduction for Iowa income tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

**41.5(8)** Medical expense deduction limitation. For tax years beginning on or after January 1, 1996, to the extent that a taxpayer has a medical care expense deduction on the federal return under Section 213 of the Internal Revenue Code, the taxpayer must compute the medical care expense deduction on the Iowa return by excluding those health insurance premiums deducted in computing net income in accordance with Iowa Code subsection 422.7(29) and rule 701—40.48(422).

**41.5(9)** Deduction of older motor vehicle registration fee. For tax years beginning on or after January 1, 2002, and before January 1, 2005, individuals who itemize deductions for Iowa income tax purposes may claim a deduction for 60 percent of the annual registration fee paid for certain older motor vehicles. This deduction applies to a 1994 model year vehicle or a newer model year vehicle that is nine model years old or older. This deduction also applies to a 1993 or older motor vehicle which has been transferred to a new owner or to a 1993 or older model vehicle that was brought into Iowa on or after January 1, 2002. However, the deduction otherwise allowed pursuant to this subrule is not allowed to the extent that the vehicle was used in the taxpayer’s trade or business so that the deduction for the registration of the vehicle has already been allowed in the computation of Iowa net income.

For tax years beginning on or after January 1, 2005, the itemized deduction for Iowa income tax for older motor vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

**41.5(10)** Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, any federal itemized deductions that are determined based on a percentage of a taxpayer’s federal adjusted gross income may have to be adjusted for Iowa tax purposes. These itemized deductions for Iowa individual tax purposes are based on federal adjusted gross income as adjusted by the disallowance of the additional first-year depreciation allowance authorized in Section 168(k) of the Internal Revenue Code as described in rule 701—40.60(422).

EXAMPLE: Mr. and Mrs. Jones reported \$50,000 in federal adjusted gross income on their 2002 federal income tax return. Mr. and Mrs. Jones paid medical expenses of \$5,000 for 2002, but could only claim an itemized deduction for medical expenses for federal tax purposes equal to \$1,250, or to the extent the medical expenses exceeded 7.5 percent of their federal adjusted gross income (\$50,000 times

7.5% = \$3,750. \$5,000 - \$3,750 = \$1,250). Mr. and Mrs. Jones reported a \$5,000 increase in Iowa adjusted gross income due to the disallowance of additional first-year depreciation on their Iowa return for 2002. Mr. and Mrs. Jones can claim an itemized deduction on the 2002 Iowa return for medical expenses of \$875, or to the extent the medical expenses exceeded 7.5 percent of their adjusted gross income for Iowa purposes of \$55,000 (\$55,000 times 7.5% = \$4,125. \$5,000 - \$4,125 = \$875).

**41.5(11)** Charitable contributions made in January 2005 for relief of victims of the Indian Ocean tsunami. For cash contributions made after December 31, 2004, and before February 1, 2005, to charitable organizations for the purpose of helping victims of the Indian Ocean tsunami, the taxpayer may claim this contribution as an itemized deduction on the 2004 Iowa income tax return if the taxpayer elected to claim this contribution as an itemized deduction on the 2004 federal tax return. If the taxpayer elected to claim the cash contribution made in January 2005 as an itemized deduction on the 2005 federal tax return, then it must be claimed as an itemized deduction on the 2005 Iowa return.

**41.5(12)** Medical expense deduction for certain unreimbursed expenses relating to a human organ transplant. For tax years beginning on or after January 1, 2005, a taxpayer who claims a deduction for unreimbursed travel and lodging expenses relating to a human organ transplant in accordance with rule 701—40.66(422) cannot claim an itemized deduction for medical expenses under Section 213(d) of the Internal Revenue Code for these same expenses for Iowa tax purposes.

**41.5(13)** Charitable contributions relating to the injured veterans grant program. For tax years beginning on or after January 1, 2006, a taxpayer who claims a deduction for contributions to the injured veterans grant program in accordance with 701—subrule 40.68(2) cannot claim an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for the same contribution for Iowa tax purposes.

**41.5(14)** Charitable contributions relating to school tuition organizations. For tax years beginning on or after January 1, 2006, a taxpayer who claims a school tuition organization tax credit in accordance with rule 701—42.32(422) cannot claim an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution to the school tuition organization for Iowa tax purposes.

**41.5(15)** Charitable contributions relating to the charitable conservation contribution tax credit. For tax years beginning on or after January 1, 2008, a taxpayer who claims a charitable conservation contribution tax credit in accordance with rule 701—42.40(422) cannot claim an itemized deduction for charitable contributions for the amount of the contribution for which the tax credit is claimed. See 701—subrule 42.40(2) for examples illustrating how this subrule is applied.

**41.5(16)** Charitable contributions relating to the endow Iowa tax credit. For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—42.24(151,422) cannot claim an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 512.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; **ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9820B**, IAB 11/2/11, effective 12/7/11]

**701—41.6(422) Itemized deductions—separate returns by spouses.** Where both spouses itemize deductions, the deductions must be divided between them in the ratio that each spouse's separate Iowa net income bears to the total Iowa net income of both spouses unless each spouse can show that the spouse paid for or is entitled to accrue the deductions. It will be presumed that the deductions are paid by both spouses and must be prorated if the deductions were paid from a joint checking account of both spouses. In any event, all itemized deductions must either be prorated between spouses or must be specifically deducted by the spouse that paid for the deductions. No combinations of the two methods will be permitted.

This rule is intended to implement Iowa Code section 422.9.

**701—41.7(422) Itemized deductions—part-year residents.**

**41.7(1)** Rescinded IAB 3/26/08, effective 4/30/08.

**41.7(2)** For tax years beginning on or after January 1, 1982, itemized deductions attributable to Iowa by part-year residents shall be the itemized deductions allowable for resident taxpayers.

This rule is intended to implement Iowa Code sections 422.7, 422.8 and 422.9.

**701—41.8(422) Itemized deductions—nonresidents.**

**41.8(1)** Rescinded IAB 3/26/08, effective 4/30/08.

**41.8(2)** For tax years beginning on or after January 1, 1982, itemized deductions attributable to Iowa by nonresidents shall be the itemized deductions available for resident taxpayers.

This rule is intended to implement Iowa Code sections 422.5, 422.7 and 422.9.

**701—41.9(422) Annualizing income.** Where a taxpayer is required to annualize income for federal income tax purposes the taxpayer must also annualize on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.

**701—41.10(422) Income tax averaging.** There is no provision in the Iowa Code which allows income tax averaging.

This rule is intended to implement Iowa Code sections 422.7 and 422.5.

**701—41.11(422) Reduction in state itemized deductions for certain high-income taxpayers.** For tax years beginning after December 31, 1990, the itemized deductions for certain high-income taxpayers are reduced for federal income tax purposes by the lesser of 3 percent of the excess of adjusted gross income (AGI) over the applicable amount, or 80 percent of the amount of itemized deductions otherwise allowable for the taxable year. For 1991, the applicable amount is \$100,000 (\$50,000 in the case of a married person filing a separate federal return). The applicable amount is to be increased each tax year to reflect inflation in the taxable years after 1991. For example, for 1995 the applicable amount is \$114,700 (\$57,350 in the case of a married person filing a separate return). This reduction in itemized deductions for certain high-income taxpayers applies for Iowa individual income tax purposes for the same tax years that the provision applies for federal income tax purposes. The following subrules clarify how the reduction in itemized deductions is to be determined on the Iowa individual income tax return:

**41.11(1) Itemized deduction worksheet (Form 41-104).** High-income taxpayers who are itemizing deductions on the Iowa income tax return and whose itemized deductions for federal income tax purposes were subject to reduction because their federal adjusted gross incomes exceeded certain amounts (the amounts for 1996 were \$117,950 for all taxpayers except married taxpayers who filed separate federal returns and \$58,975 for married individuals who filed separate federal returns) must complete Itemized Deduction Worksheet (Form 41-104) to determine the amount of federal itemized deductions that can be claimed on the Iowa income tax return. This worksheet must also be used to compute the itemized deductions allowable on the Iowa return for taxpayers who claimed the standard deduction on their federal individual income tax return, but are itemizing deductions for Iowa income tax purposes and whose deductions would have been subject to reduction, if they had itemized deductions on their federal income tax return. These taxpayers must complete the worksheet (Form 41-104) as if they had itemized deductions on their federal returns. Generally, the itemized deductions allowed on the federal income tax return for high-income taxpayers are also allowed for Iowa individual income tax purposes, except that the Iowa income tax that was allowable as a deduction on the federal Schedule A is not allowed as an Iowa itemized deduction. In addition, the deduction for medical expenses claimed as an itemized deduction on the federal income tax return should be reduced by the amount of health insurance premiums claimed as a deduction on line 18 of the IA 1040. The line references on Form 41-104 are to the federal 1040 and to the federal Schedule A for 1996 and to the IA 1040 for the 1996 tax year. Similar line references will apply on Form 41-104 and to IA 1040 for any later tax year when the taxpayer's federal itemized deductions were subject to reduction because the taxpayer's federal adjusted gross income exceeded the threshold amount for that year and the taxpayer itemized deductions on the Iowa income tax return. Note

that if a taxpayer's itemized deductions are less than the Iowa standard deduction amount, the taxpayer may elect to claim the Iowa standard deduction.

Form 41-104 follows:

|  |            |
|--|------------|
| 1. Enter the allowable federal itemized deductions as shown on line 34 of the 1040.  | 1. _____   |
| 2. Add the amounts on federal Schedule A, lines *4, 13, 19 plus any gambling losses including on line 27 and enter the total here. | 2. _____   |
| 3. Subtract line 2 amount from line 1 amount.  | 3. _____   |
| 4. Add the amounts on federal Schedule A, lines *4, 9, 14, 18, 19, 26, and 27 and enter the total here.                            | 4. _____   |
| 5. Subtract line 2 amount from line 4 amount.  | 5. _____   |
| 6. Divide line 3 by line 5 and enter percentage here.  | 6. _____ % |
| 7. Enter the amount of Iowa income tax that is included in line 5 of the federal Schedule A.                                       | 7. _____   |
| 8. Multiply line 7 by the percentage on line 6.  | 8. _____   |
| 9. Subtract line 8 from line 1. Enter this amount here and on line 39 of the IA 1040.  | 9. _____   |

\*The deduction for medical expenses from line 4 of federal Schedule A must be reduced by the amount of any health insurance premiums that were deducted on line 18 of Form IA 1040 in computing the taxpayer's net income for the tax year.

**41.11(2)** *Possible problem with itemized deduction worksheets for 1992, 1993, and 1994 returns.* Rescinded IAB 3/26/08, effective 4/30/08.

This rule is intended to implement Iowa Code sections 422.3 and 422.9.

**701—41.12(422) Deduction for home mortgage interest for taxpayers with mortgage interest credit.** For tax years beginning on or after January 1, 1996, any taxpayer who had the mortgage interest credit on the federal return can claim a deduction on the Schedule A of the IA 1040 for all the mortgage interest paid in the tax year, including the mortgage interest that was not deducted on the federal return due to the mortgage interest credit.

This rule is intended to implement Iowa Code sections 422.3 and 422.9.

**701—41.13(422) Iowa income taxes and Iowa tax refund.** As provided in subrule 41.5(1), Iowa individual income taxes paid or accrued are allowable itemized deductions for federal income tax purposes, but are not allowable itemized deductions for Iowa income tax purposes. To the extent Iowa income taxes were deducted as itemized deductions for federal tax purposes, they shall be disallowed as an itemized deduction for Iowa income tax purposes.

Refunds of Iowa income taxes to the extent that the refunds were included in the determination of federal adjusted gross income shall be allowed as a reduction to Iowa adjusted gross income, only to the extent that an itemized deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa income tax refunds resulting from Iowa refundable income tax credits are not allowed as a reduction for Iowa income tax purposes.

EXAMPLE: Individual A made Iowa estimated payments of \$2,000 during the 2003 tax year. The \$2,000 of estimated payments was claimed as an itemized deduction for federal tax purposes, but was not allowed as an itemized deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of \$1,600. Individual A had \$2,000 of Iowa estimated payments and a \$500 ethanol blended gasoline tax credit, and received a \$900 Iowa tax refund in 2004. Of the \$900 refund reported as income on the federal return, Individual A will be allowed a \$400 (\$2,000 - \$1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.9.

[Filed 12/12/74]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed 10/28/77, Notice 9/21/77—published 11/16/77, effective 12/21/77]

[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]

[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]

[Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]

[Filed 8/25/83, Notice 7/20/83—published 9/14/83, effective 10/19/83]

[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]

[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]

[Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]

[Filed 12/23/87, Notice 11/18/87—published 1/13/88, effective 2/17/88]

[Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]

[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]

[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]

[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]<sup>◇</sup>

[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]

[Filed 3/26/93, Notice 2/17/93—published 4/14/93, effective 5/19/93]

[Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]

[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]

[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]

[Filed 6/14/96, Notice 5/8/96—published 7/3/96, effective 8/7/96]

[Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]

[Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]

[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]

[Filed 2/20/98, Notice 1/14/98—published 3/11/98, effective 4/15/98]

[Filed 5/15/98, Notice 4/8/98—published 6/3/98, effective 7/8/98]

[Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]

[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]

[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]

[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]

[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]<sup>◇</sup>

[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]

[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]

[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]

[Filed 11/1/06, Notice 8/16/06—published 11/22/06, effective 12/27/06]

[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]

[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]<sup>◇</sup>

[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]

[Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]

[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]

[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

<sup>◇</sup> Two or more ARCs



CHAPTER 42  
ADJUSTMENTS TO COMPUTED TAX AND TAX CREDITS  
[Prior to 12/17/86, Revenue Department[730]]

**701—42.1(257,422) School district surtax.** Iowa law provides for the implementation of an income surtax for increasing local school district budgets. The surtax must be approved by the voters of a school district in a special election or by a resolution of the board of directors of a school district. The surtax rate is determined by the department of management on the basis of the revenue to be raised by the surtax for the particular school district with the surtax.

The school district surtax is imposed on the income tax liabilities of all taxpayers residing in the school district on the last day of the taxpayers' tax years. For purposes of the school district surtax, income tax liability is the tax computed under Iowa Code section 422.5, less the nonrefundable credits against computed tax which are authorized in Iowa Code chapter 422, division II.

In a situation where an individual is residing in a school district with a surtax and the individual dies during the tax year, the individual will be considered to be subject to the surtax, since the individual was residing in the school district on the last day of the individual's tax year.

An individual serving in the Armed Forces of the United States who maintains permanent residence in an Iowa school district with a surtax is subject to the surtax regardless of whether the individual is physically residing in the school district on the last day of the tax year.

A person who is present in the school district on the last day of the tax year on a temporary basis due to annual leave or in transit between duty stations is not subject to the surtax.

This rule is intended to implement Iowa Code sections 257.21, 257.29, and 422.15.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.2(422D) Emergency medical services income surtax.** Effective July 1, 1992, a county board of supervisors may offer for voter approval a local option income surtax, an ad valorem property tax, or a combination of the two taxes to generate revenues for emergency medical services. However, this rule pertains only to the local option income surtax for emergency medical services. If a majority of those voting in the election approve the emergency medical services income surtax, the income surtax will be imposed for tax years beginning on or after January 1 of the fiscal year in which the election is held. Thus, if an election is held in the 2007-2008 fiscal year (July 1, 2007, through June 30, 2008) and the income surtax is approved in the election, the income surtax will be imposed on 2008 returns for individuals filing on a calendar-year basis. In the case of individuals filing on a fiscal-year basis, the income surtax will be imposed on returns for tax years beginning in the 2008 fiscal year. If an emergency medical services income surtax is imposed for a county, it can be imposed only for a maximum period of five years. When the emergency medical income surtax is repealed because the five-year imposition has expired, the income surtax is repealed as of December 31 for tax years beginning on or after that date.

**42.2(1) *The rate of the income surtax imposed for emergency medical services.*** After the income surtax is approved by an election of county voters, the board of supervisors will set the rate of tax to be imposed, which can be expressed in tenths of 1 percent or hundredths of 1 percent but cannot exceed 1 percent. In addition, because the cumulative total of the percents of income surtax imposed on any taxpayer in the county cannot exceed 20 percent, the rate of an emergency medical services income surtax may be limited, if a school district income surtax has been approved previously by a school district in the county and the surtax rate exceeds 19 percent. Therefore, assuming that a school district in the county had previously approved an income surtax rate of 19.4 percent, the medical emergency income surtax rate would be limited to six-tenths of 1 percent. If a school district income surtax and emergency medical income surtax are approved on or about the same date and the cumulative total of the income surtaxes is greater than 20 percent, the income surtax approved on the earlier of the two dates will be allowed at the rate approved and the second income surtax approved will be limited accordingly so that the cumulative rate will not exceed 20 percent. If a school district income surtax and an emergency medical income surtax are approved on the same date with a proposed cumulative rate that exceeds 20 percent, each of the surtaxes will be reduced equally so that the cumulative surtax rate will not exceed 20 percent. Assuming that a school district in a particular county approves an income surtax of 20 percent

on November 4, 2008, and an emergency medical income surtax of 1 percent is approved on the same date, both surtaxes will be reduced by five-tenths of 1 percent so that the cumulative rate of the two income surtaxes does not exceed 20 percent. The department of management can provide information about any income surtaxes that have been approved for the school districts in the county.

**42.2(2) *Imposing the emergency medical income surtax.*** The emergency medical income surtax will be imposed on the state income tax liability on each individual residing in the county at the end of the individual's tax year, whether the individual's tax year ends at the end of the calendar year or fiscal year. For purposes of the emergency medical income surtax, an individual's income tax liability is the aggregate of the state income taxes determined in Iowa Code section 422.5 less the nonrefundable credits against computed income tax which are authorized in Iowa Code chapter 422, division II.

**42.2(3) *Administering the emergency medical income surtax.*** The director of revenue shall administer the emergency medical income surtax in the same way as other state individual tax laws are administered. All powers and requirements related to administering the state income tax law apply to the administration of the emergency medical income surtax including, but not limited to, the provisions of Iowa Code sections 422.4, 422.20 to 422.31, 422.68, 422.70, and 422.72 to 422.75. The county board of supervisors and county officials shall confer with the director for assistance in drafting the ordinance imposing the emergency medical income surtax. Certified copies of the ordinance shall be filed with the department of revenue and the department of management within 30 days after the emergency medical income surtax is approved.

**42.2(4) *Accounting for the emergency medical income surtax and paying the surtax.*** The department shall account for the emergency medical income surtax and any interest and penalties on the surtax so that there is a separate accounting for each county where the income surtax is imposed. The accounting shall be applicable to those individual income tax returns filed on or before November 1 of the calendar year following the tax year for which the tax is imposed. The emergency medical income surtax and any penalties and interest should be credited to a "local income surtax fund" established in the office of the state treasurer. On or before December 15 of the year after the tax year, the director of revenue shall certify to the state treasurer the income surtax and any interest and penalties collected from returns filed on or before November 1.

This rule is intended to implement Iowa Code chapter 422D.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

#### **701—42.3(422) Exemption credits.**

**42.3(1)** A single person shall deduct from the computed tax a personal exemption credit of \$40. A single person is defined in 701—subrule 39.4(1).

**42.3(2)** A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, shall, if a joint return is filed, deduct from the computed tax a personal exemption of \$80. Where such spouse files a separate return, each spouse is entitled to deduct from the computed tax a personal exemption of \$40. The personal exemption may not be divided between the spouses in any other proportion.

**42.3(3)** A taxpayer shall deduct from computed tax an exemption of \$40 for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code, and the same dependents shall be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished 50 percent of the support, the spouses must elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to the number of dependents and not to the credit amount for a particular dependent.

**42.3(4)** A head of household as defined in 701—subrule 39.4(7) is allowed a personal exemption credit of \$80.

**42.3(5)** A taxpayer who is 65 years of age on or before the first day following the end of the tax year is allowed an additional personal exemption credit of \$20 in addition to any other credits allowed by this rule.

**42.3(6)** A taxpayer who is blind, as defined in Iowa Code section 422.12(1) "e," is allowed a personal exemption credit of \$20 in addition to any other credits allowed by this rule.

**42.3(7)** A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if the nonresident taxpayer or part-year taxpayer was a resident for the entire year.

This rule is intended to implement Iowa Code section 422.12.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.4(422) Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa.** Effective for tax years beginning on or after January 1, 1998, taxpayers who pay tuition and textbook expenses of dependents who attend grades kindergarten through 12 in an Iowa school may receive a tax credit of 25 percent of up to \$1,000 of qualifying expenses for each dependent attending an elementary or secondary school located in Iowa. In order for the taxpayer to qualify for the tax credit for tuition and textbooks, the elementary school or secondary school that the dependent is attending must meet the standards for accreditation of public and nonpublic schools in Iowa provided in Iowa Code section 256.11. In addition, the school the dependent is attending must not be operated for profit and must adhere to the provisions of the United States Civil Rights Act of 1964, and the provisions of Iowa Code chapter 216, which is known as the Iowa civil rights Act of 1965. The following definitions and criteria apply to the determination of the tax credit for amounts paid by the taxpayer for tuition and textbooks for a dependent attending an elementary or secondary school in Iowa:

**42.4(1) Tuition.** For purposes of the tuition and textbook tax credit, “tuition” means any charge made by an elementary or secondary school for the expense of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching of only those subjects that are legally and commonly taught in public elementary or secondary schools in Iowa. “Tuition” includes charges by a qualified school for summer school classes or for private instruction of a child who is physically unable to attend classes at the site of the elementary or secondary school.

“Tuition” does not include charges or fees which relate to the teaching of religious tenets, doctrines, or worship in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship. In addition, “tuition” does not include amounts paid to an individual or other entity for private instruction of a dependent who attends an elementary or secondary school in Iowa. Amounts paid to a school for meals, lodging, or clothing for a dependent do not qualify for the tax credit for tuition.

Amounts paid to an individual or organization for home schooling of a dependent or the teaching of a dependent outside of an elementary or secondary school may not be claimed for purposes of the tuition and textbook tax credit.

**42.4(2) Textbooks.** For purposes of the tuition and textbook tax credit, “textbooks” means books and other instructional materials used in elementary and secondary schools in Iowa to teach only those subjects legally and commonly taught in public elementary and secondary schools in Iowa. “Textbooks” includes fees or charges by the elementary or secondary school for required supplies or materials for classes in art, home economics, shop or similar courses. “Textbooks” also includes books and materials used for extracurricular activities, such as sporting events, musical events, dramatic events, speech activities, driver’s education, or programs of a similar nature.

“Textbooks” does not include amounts paid for books or other instructional materials used in the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrine, or worship. “Textbooks” also does not include amounts paid for books or other instructional materials used in teaching a dependent subjects in the home or outside of an elementary or secondary school.

**42.4(3) Extracurricular activities.** For purposes of the tuition and textbook tax credit, amounts paid for dependents to participate in or to attend extracurricular activities may be claimed as part of the tuition and textbook tax credit. “Extracurricular activities” includes sporting events, musical events, dramatic events, speech activities, driver’s education if provided at a school, and programs of a similar nature.

*a.* The following are specific examples of expenditures related to a dependent’s participation in or attendance at extracurricular activities that may qualify for the tuition and textbook tax credit:

- (1) Fees for participation in school sports activities.
- (2) Fees for field trips.

(3) Rental fees for instruments for school bands or orchestras but not rental fees in rent-to-own contracts.

(4) Driver's education fees, if paid to a school.

(5) Cost of activity tickets or admission tickets to school sporting, music and dramatic events.

(6) Fees for events such as homecoming, winter formal, prom, or similar events.

(7) Rental of costumes for school plays.

(8) Purchase of costumes for school plays if the costumes are not suitable for street wear.

(9) Purchase of track shoes, football shoes, or other athletic shoes with cleats, spikes, or other features that are not suitable for street wear.

(10) Costs of tickets or other admission fees to attend banquets or buffets for school academic or athletic awards.

(11) Trumpet grease, woodwind reeds, guitar picks, violin strings and similar types of items for maintenance of instruments used in school bands or orchestras.

(12) Band booster club or athletic booster club dues, but only if dues are for the dependent attending the school and not the parent or adult.

(13) Rental of formal gown or tuxedo for school dance or other school event.

(14) Dues paid to school clubs or school-sponsored organizations such as chess club, photography club, debate club, or similar organizations.

(15) Amounts paid for music that will be used in school music programs, including vocal music programs.

(16) Fees paid for general materials for shop class, agriculture class, home economics class, or auto repair class and general fees for equivalent classes.

(17) Fees for a dependent's bus trips to attend school if paid to the school.

*b.* The following are specific examples of expenditures related to a dependent's participation in or attendance at extracurricular activities that will not qualify for the tuition and textbook credit.

(1) Purchase of a musical instrument used in a school band or orchestra.

(2) Purchase of basketball shoes or other athletic shoes that are readily adaptable to street wear.

(3) Amounts paid for special testing such as SAT or PSAT, and for Iowa talent search tests.

(4) Payments for senior trips, band trips, and other overnight school activity trips which involve payment for meals and lodging.

(5) Fees paid to K-12 schools for courses for college credit.

(6) Amounts paid for T-shirts, sweatshirts and similar clothing that is appropriate for street wear.

(7) Amounts paid for special programs at universities and colleges for high school students.

(8) Payment for private instrumental lessons, voice lessons or similar lessons.

(9) Amounts paid for a school yearbook, annual or class ring.

(10) Fees for special materials paid for shop class, agriculture class, auto repair class, home economics class and similar classes. For purposes of this paragraph, "special materials" means materials used for personal projects of the dependents, such as materials to make furniture for personal use, automobile parts for family automobiles and other materials for projects for personal or family benefit.

**42.4(4) Claiming the credit.** The credit can only be claimed by the spouse who claims the dependent credit on the Iowa tax return as described in subrule 42.3(3). For example, for divorced or separated parents, only the spouse who claims the dependent credit on the Iowa return can claim the tuition and textbook credit for tuition and textbook expenses for that dependent.

In cases where married taxpayers file separately on a combined return form, the tuition and textbook credit shall be allocated between the spouses in the ratio in which the dependent credit was claimed between the spouses.

**EXAMPLE:** A married couple has two dependent children and claimed a tuition and textbook credit of \$500 related to both children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed both of the dependent credits on the Iowa return. The \$500 tuition and textbook credit will be claimed by the spouse who claimed the dependent credits on the Iowa return.

EXAMPLE: A married couple has three dependent children and claimed a tuition and textbook credit of \$600 related to all three children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed one dependent credit, and the other spouse claimed two dependent credits on the Iowa return. The spouse who claimed one dependent credit will claim \$200 of the tuition and textbook credit, while the spouse who claimed two dependent credits will claim \$400 of the tuition and textbook credit.

This rule is intended to implement Iowa Code section 422.12.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—42.5(422) Nonresident and part-year resident credit.** For tax years beginning on or after January 1, 1982, an individual who is a nonresident of Iowa for the entire tax year, or an individual who is an Iowa resident for a portion of the tax year, is allowed a credit against the individual's Iowa income tax liability for the Iowa income tax on the portion of the individual's income which was earned outside Iowa while the person was a nonresident of Iowa. This credit is computed on Schedule IA 126, which is included in the Iowa individual income tax booklet. The following subrules clarify how the nonresident and part-year resident credit is computed for nonresidents of Iowa and taxpayers who are part-year residents of Iowa during the tax year.

**42.5(1) Nonresident/part-year resident credit for nonresidents of Iowa.** A nonresident of Iowa shall complete the Iowa individual return in the same way an Iowa resident completes the form by reporting the individual's total net income, including income earned outside Iowa, on the front of the IA 1040 return form. A nonresident individual is allowed the same deduction for federal income tax and the same itemized deductions as an Iowa resident taxpayer with identical deductions for these expenditures. Thus, a nonresident with a taxable income of \$40,000 would have the same initial Iowa income tax liability as a resident taxpayer with a taxable income of \$40,000 before the nonresident/part-year resident credit is computed.

The nonresident/part-year resident credit is computed on Schedule IA 126. The lines referred to in this subrule are from Schedule IA 126 and Form IA 1040 for the 2008 tax year. Similar lines on the schedule and form may apply for subsequent tax years. The individual's Iowa source net income from lines 1 through 25 of the schedule is totaled on line 26 of the schedule. If the nonresident's Iowa source net income is less than \$1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa income tax return for the tax year. However, if the Iowa source net income amount is \$1,000 or more, the Iowa source net income is then divided by the person's all source net income on line 27 of Schedule IA 126 to determine the percentage of the Iowa net income to all source net income. This Iowa income percentage is inserted on line 28 of the schedule, and this percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage or the percentage of the individual's total income which was earned outside Iowa. The nonresident/part-year resident credit percentage is entered on line 29 of Schedule IA 126. The Iowa income tax on total income from line 43 of the IA 1040 is entered on line 30 of Schedule IA 126. The total of nonrefundable credits from line 49 of the IA 1040 is then shown on line 31 of Schedule IA 126. The amount on line 31 is subtracted from the amount on line 30 which results in the Iowa total tax after nonrefundable credits which is entered on line 32. This Iowa tax-after-credits amount is multiplied by the nonresident/part-year resident credit percentage from line 29 to compute the nonresident/part-year resident credit. The amount of the credit is inserted on line 33 of Schedule IA 126 and on line 51 of the IA 1040.

EXAMPLE A. A single resident of Nebraska had Iowa source net income of \$15,000 in 2008 from wages earned from employment in Iowa. The rest of this person's income was attributable to sources outside Iowa. This nonresident of Iowa had an all source net income of \$40,000 and a taxable income of \$30,000 due to a federal tax deduction of \$7,000 and itemized deductions of \$3,000. The Iowa income percentage is computed by dividing the Iowa source net income of \$15,000 by the taxpayer's all source net income of \$40,000, which results in a percentage of 37.5. This percentage is subtracted from 100 percent which leaves a nonresident/part-year resident credit percentage of 62.5.

The Iowa tax from line 43 of the IA 1040 is \$1,508. The total nonrefundable credit from line 49 is \$40, which leaves a tax amount of \$1,468 when the credit is subtracted from \$1,508. When \$1,468 is

multiplied by the nonresident/part-year resident credit percentage of 62.5, a nonresident credit of \$918 is computed which is entered on line 33 of Schedule IA 126 as well as on line 51 of the IA 1040 for 2008.

EXAMPLE B. A California resident, who was married, had \$20,000 of Iowa source income in 2008 from an Iowa farm. This individual had an additional \$80,000 in income that was attributable to sources outside Iowa, but the individual's spouse had no income. The taxpayers had paid \$18,000 in federal income tax in 2008 and had itemized deductions of \$12,000 in 2008.

The taxpayers' taxable income on their joint Iowa return was \$70,000. The taxpayers had an Iowa income tax liability of \$4,583 after application of the personal exemption credits of \$80. The taxpayers had an Iowa source income of \$20,000 and an all source net income of \$100,000. Therefore, the Iowa income percentage was 20. Subtracting the Iowa income percentage of 20 percent from 100 percent leaves a nonresident/part-year resident credit percentage of 80.

When the Iowa income tax liability of \$4,583 is multiplied by 80 percent, this results in a nonresident/part-year resident credit of \$3,666. This credit amount is entered on line 33 of the Schedule IA 126 and on line 51 of Form IA 1040.

**42.5(2) *Nonresident/part-year resident credit for part-year residents of Iowa.*** An individual who is a resident of Iowa for part of the tax year shall complete the front of the IA 1040 income tax return form as a resident taxpayer by showing the taxpayer's total income, including income earned outside Iowa, on the front of the IA 1040 return form. A part-year resident of Iowa is allowed the same federal tax deduction and itemized deductions as a resident taxpayer who has paid the same amount of federal income tax and has paid for the same deductions that can be claimed on Schedule A in the tax year. Therefore, a part-year resident would have the same initial Iowa income tax liability as an Iowa resident with the same taxable income before computation of the nonresident/part-year resident credit.

The nonresident/part-year resident credit for a part-year resident is computed on Schedule IA 126. The lines referred to in this subrule are from the IA 1040 income tax return form and the Schedule IA 126 for 2008. Similar lines may apply for tax years after 2008. The individual's Iowa source income is totaled on line 26 of Schedule IA 126 and includes all the individual's income received while the taxpayer was a resident of Iowa and all the Iowa source income received during the period of the tax year when the individual was a resident of a state other than Iowa. Iowa source income includes, but is not limited to, wages earned in Iowa while a resident of another state as well as income from Iowa farms and other Iowa businesses that was earned during the portion of the year that the taxpayer was a nonresident of Iowa. In the case of interest from a part-year resident's account at an Iowa financial institution, only interest earned during the period of the individual's Iowa residence is Iowa source income unless the account is for an Iowa business. If the part-year resident's account at a financial institution is for an Iowa business, all interest earned in the year by the part-year resident from the account is taxable to Iowa.

Income earned outside Iowa by the part-year resident during the portion of the year the individual was an Iowa resident is taxable to Iowa and is part of the individual's Iowa source income. To compute the nonresident/part-year resident credit for a part-year resident, the taxpayer's Iowa source income on Schedule IA 126 is totaled. If the Iowa source income is less than \$1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa return. If the Iowa source income is \$1,000 or more, it is divided by the taxpayer's all source net income on line 27 of Schedule IA 126. The percentage computed by this procedure is the Iowa income percentage and is entered on line 28 of the Schedule IA 126. The Iowa income percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage which is entered on line 29 of Schedule IA 126. The Iowa tax from line 43 of the IA 1040 is then shown on line 30 of Schedule IA 126. The total of the Iowa nonrefundable credits from line 49 of the IA 1040 is entered on line 31 of Schedule IA 126 and is subtracted from the Iowa tax amount on line 30. The tax-after-credits amount on line 32 is next multiplied by the nonresident/part-year resident credit percentage from line 28. The amount calculated from this procedure is the nonresident/part-year resident credit which is shown on line 33 of Schedule IA 126 and on line 51 of Form IA 1040.

EXAMPLE A. A single individual was a resident of Nebraska for the first half of 2008 and moved to Iowa on July 1, 2008, to accept a job in Des Moines. This individual earned \$20,000 from wages, \$200 from interest, and \$4,000 from a ranch in Nebraska from January 1, 2008, through June 30, 2008. In

the last half of 2008, this person had wages of \$30,000, interest income of \$300, and \$4,000 from the Nebraska ranch. This part-year resident had federal income tax paid in 2008 of \$11,000 and had itemized deductions of \$3,000.

The part-year resident's all source net income was \$58,500 and the Iowa source net income was \$34,300, which includes the Iowa wages, the Nebraska ranch income of \$4,000 earned during the individual's period of Iowa residence, as well as the interest income of \$300 earned during that time of the tax year. The Iowa taxable income for the part-year resident for 2008 was \$44,500, which included the federal income tax deduction of \$11,000 and itemized deductions of \$3,000. The individual's Iowa income percentage was 58.6 which was determined by dividing the Iowa source income of \$34,300 by the all source income of \$58,500. Subtracting the Iowa income percentage of 58.6 from 100 percent results in a nonresident/part-year resident credit percentage of 41.4. The Iowa tax on total income was \$2,529 which was reduced to \$2,489 after subtraction of the personal exemption credit of \$40.

When \$2,489 is multiplied by the nonresident/part-year resident percentage of 41.4, a nonresident/part-year resident credit of \$1,030 is computed for this part-year resident.

**EXAMPLE B.** A single individual moved from Minnesota to Iowa on July 1, 2008. This person had received \$5,000 in income from an Iowa farm in March of the tax year and another \$10,000 from this farm in September of 2008. This person had \$10,000 in wages from employment in Minnesota in the first half of the year and another \$15,000 in wages from employment in Iowa in the last half of 2008. This person had \$2,000 in interest from a Minnesota bank in the first half of the year and \$2,000 in interest from an Iowa bank in the last six months of 2008. This taxpayer had \$8,000 in federal income tax withheld from wages in 2008 and claimed the standard deduction on both the Iowa and federal income tax returns.

The part-year resident's all source income was \$44,000 and the Iowa source income was \$32,000 which consisted of \$15,000 in wages, \$2,000 in interest income, and \$15,000 in income from the Iowa farm. Since the farm was in Iowa, the farm income received in the first half of 2008 was taxable to Iowa as well as the farm income received while the individual was an Iowa resident. The individual's Iowa taxable income was \$34,250 which was computed after subtracting the federal income tax deduction of \$8,000 and a standard deduction of \$1,750. The taxpayer's Iowa income tax liability was \$1,757 after subtraction of a personal exemption credit of \$40.

The taxpayer's Iowa income percentage was 72.7 which was computed by dividing the Iowa source income of \$32,000 by the all source income of \$44,000. The nonresident/part-year resident credit percentage was 27.3 which was arrived at by subtracting the Iowa income percentage of 72.7 from 100 percent. The taxpayer's nonresident/part-year resident credit is \$480. This was determined by multiplying the Iowa income tax liability after personal exemption credit amount of \$1,757 by the nonresident/part-year resident percentage of 27.3.

This rule is intended to implement Iowa Code section 422.5.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

## **701—42.6(422) Out-of-state tax credits.**

**42.6(1) General rule.** Iowa residents are allowed an out-of-state tax credit for taxes paid to another state or foreign country on income which is also reported on the taxpayer's Iowa return. The out-of-state tax credit is allowable only if the taxpayer files an Iowa resident income tax return.

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the income tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.6(2).

However, if the partnership, S corporation, limited liability company or trust is directly subject to tax in another state and the tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation

election for state purposes and a corporation income tax is imposed directly on the S corporation, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax paid to the other state.

**42.6(2) *Limitation of out-of-state tax credit.*** If an Iowa resident taxpayer pays income tax to another state or foreign country on any of the taxpayer's income, the taxpayer is entitled to a net tax credit; that is, the taxpayer may deduct from the taxpayer's Iowa net tax (not from gross income) the amount of income tax actually paid to the other state or country, provided the amount deducted as a credit does not exceed the amount of Iowa net income tax on the same income which was taxed by the other state or foreign country.

**42.6(3) *Computation of tax credit.***

*a.* The limitation on the tax credit must be computed according to the following formula: Gross income taxed by another state or foreign country that is also taxed by Iowa shall be divided by the total gross income of the Iowa resident taxpayer. This quotient, multiplied by the net Iowa tax as determined on the total gross income of the taxpayer as if entirely earned in Iowa, shall be the maximum tax credit against the Iowa net tax. This quotient shall be computed as a percentage with a minimum of one decimal place. However, if the income tax paid to the other state or foreign country on the gross income taxed by the other state or foreign country is less than the maximum tax credit against the Iowa tax, the out-of-state credit allowed against the Iowa tax may not exceed the income tax paid to the other state or foreign country. The income tax paid to the other state or foreign country is the net state or foreign income tax actually paid for the tax year on the income taxed by the other state or foreign country and not the state or foreign income tax paid during the tax year, such as state income tax or foreign income tax withheld from the income taxed by the other state or foreign country.

*b.* Out-of-state tax credit examples. An individual who is an Iowa resident for the entire tax year can claim an out-of-state tax credit against the person's Iowa income tax liability for any income tax paid to another state or foreign country for the tax year on any gross income received by the individual for the year which was derived from sources outside of Iowa to the extent this gross income is also subject to Iowa income tax.

However, in the case of an individual who is a part-year resident of Iowa for the tax year, that individual can only claim an out-of-state tax credit against the person's Iowa income tax liability for income tax paid to another state or foreign country on gross income derived from sources outside of Iowa during the period of the tax year that the individual was an Iowa resident and only to the extent this gross income derived from sources outside of Iowa was also subject to Iowa income tax.

The taxpayer's out-of-state credit is computed on Schedule IA 130 which is to be filed with the taxpayer's Iowa individual income tax return. The taxpayer's income tax return or other document of the other state or foreign country supporting the income tax paid to the other state or foreign country shall be filed with the individual's Iowa income tax return to support the out-of-state tax credit claimed.

**EXAMPLE 1.** Gene Miller was an Iowa resident for the entire year 2008. Mr. Miller lived in Council Bluffs and worked the entire year for a company in Omaha, Nebraska. Mr. Miller had wages of \$30,000 and Nebraska income tax withheld of \$1,000. He also had income of \$10,000 from rental of an Iowa farm and another \$10,000 in interest income from a personal savings account in an Iowa bank. The amount of Mr. Miller's gross income that was taxed by Nebraska (the other state or foreign country) was \$30,000. His total gross income in 2008 was \$50,000. Thus, 60 percent of his income was earned in Nebraska. Mr. Miller's Iowa tax on line 54 of Form IA 1040 was \$917, which resulted in a potential out-of-state credit of 60 percent of the Iowa tax or \$550 because 60 percent of Mr. Miller's income was earned outside Iowa and was taxed by Nebraska. However, Mr. Miller's income tax liability on the Nebraska income tax return was only \$500. Thus, the out-of-state tax credit allowed was \$500, because that was less than the potential out-of-state tax credit of \$550.

**EXAMPLE 2.** Ben Smith was a part-year Iowa resident in 2008. He resided in Missouri for the first six months of the year until he moved to Keokuk, Iowa, on July 1. Mr. Smith was employed in Missouri for the entire year and had wages of \$30,000 and had Missouri income tax liability of \$1,000. Half of Mr. Smith's wages or \$15,000 of the wages was earned during the time Mr. Smith was an Iowa resident. Mr. Smith also had \$10,000 in farm rental income from farmland located in Iowa. The amount of gross

income taxed by Missouri while Mr. Smith was an Iowa resident was \$15,000. Mr. Smith's gross income earned while an Iowa resident for the year was \$25,000. Thus, 60 percent of the gross income was earned in the other state while Mr. Smith was an Iowa resident. Mr. Smith's Iowa income tax on line 54 of the IA 1040 was \$1,292. This resulted in a potential out-of-state credit of \$775 because 60 percent of the gross income was earned in Missouri during the period Mr. Smith was an Iowa resident. However, since 50 percent of the income earned in Missouri was earned while Mr. Smith was a resident of Iowa and the Missouri income tax liability for the year was \$1,000, the out-of-state credit was \$500 or 50 percent of the Missouri income tax liability. The out-of-state credit allowed was \$500, because this was less than the Iowa income tax of \$775 that was applicable to the gross income earned in Missouri during the period Mr. Smith was an Iowa resident.

**42.6(4) Proof of claim for tax credit.** The credit may be deducted from Iowa net income tax if written proof of such payment to another state or foreign country is furnished to the department. The department will accept any one of the following as proof of such payment:

*a.* A photocopy, or other similar reproduction, of either:

- (1) The receipt issued by the other state or foreign country for payment of the tax, or
- (2) The canceled check (both sides) with which the tax was paid to the other state or foreign country together with a statement of the amount and kind (whether wages, salaries, property or business) of total income on which such tax was paid.

*b.* A copy of the income tax return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and showing thereon that the income tax assessed has been paid to them.

This rule is intended to implement Iowa Code section 422.8.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

#### **701—42.7(422) Out-of-state tax credit for minimum tax.**

**42.7(1) General rule.** Iowa residents are allowed an out-of-state tax credit for minimum taxes or income taxes paid to another state or foreign country on preference items derived from sources outside of Iowa. Part-year residents who pay minimum tax to another state or foreign country on preference items derived from sources outside Iowa will be allowed an out-of-state tax credit only to the extent that the minimum tax paid to the other state or foreign country relates to preference items that occurred during the period the taxpayer was an Iowa resident. Taxpayers who were nonresidents of Iowa for the entire tax year are not eligible for an out-of-state tax credit on their Iowa returns for minimum taxes paid to another state or foreign country on preference items.

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return and pays minimum tax in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the minimum tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.7(2).

However, if the partnership, S corporation, limited liability company, or trust is directly subject to minimum tax in another state and the minimum tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the minimum tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state tax purposes and a corporation income tax is imposed directly on the S corporation which includes minimum tax, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax, including minimum tax, paid to the other state.

**42.7(2) Limitation of out-of-state tax credit for minimum tax.** The limitation on the out-of-state tax credit for minimum tax is that the credit shall not exceed the Iowa minimum tax that would have been computed on the same preference items which were taxed by the other state or foreign country. The limitation may be determined according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of

preference items of the resident taxpayer. This quotient, multiplied by the state minimum tax on the total of preference items as if entirely earned in Iowa, shall be the maximum credit against the Iowa minimum tax. However, if the minimum tax imposed by the other state or foreign country is less than the minimum tax computed under the limitation formula, the out-of-state credit for minimum tax will not exceed the minimum tax imposed by the other state or foreign country.

No out-of-state credit will be allowed on the Iowa return for minimum tax paid to another state or foreign country to the extent that the minimum tax of the other state or foreign country is imposed on items of tax preference not subject to the Iowa minimum tax. In addition, no out-of-state credit will be allowed for minimum tax paid to another state or foreign country of capital gains or losses from distressed sales which are excluded from the Iowa minimum tax. Capital gains or losses from distressed sales are described in rule 701—40.27(422).

**42.7(3) Proof of claim for out-of-state tax credit for minimum tax.** The out-of-state credit for minimum tax may be claimed on the return of a taxpayer if proof of payment of minimum tax to the state or foreign country is included with the return. Documents needed for proof of payment are a photocopy of the minimum tax form of the state or country to which minimum tax was paid as well as instructions from the minimum tax form or other information which specifies how the minimum tax is imposed and what preference items are subject to the minimum tax of that state or foreign country.

In the case of audit by the department of a taxpayer claiming an out-of-state tax credit for minimum tax paid, the department may require additional proof of payment of the out-of-state tax credit. The department will accept any of the following documents as verification of payment of the minimum tax:

*a.* A photocopy, or other similar reproduction, of either:

(1) The receipt issued by the other state or foreign country for payment of the tax, including the minimum tax, or

(2) The canceled check (both sides) which was used for payment of the minimum tax to the other state or foreign country.

*b.* A copy of the return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and which shows that the income tax, including the minimum tax, has been paid.

This rule is intended to implement Iowa Code section 422.8.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.8(422) Withholding and estimated tax credits.** An employee from whose wages tax is withheld shall claim credit for the tax withheld on the employee's income tax return for the year during which the tax was withheld. Credit will be allowed only if a copy of the withholding statement is attached to the return. Taxpayers who have made estimated income tax payments shall claim credit for the estimated tax paid for the taxable year.

This rule is intended to implement Iowa Code section 422.16.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.9(422) Motor fuel credit.** An individual, partnership, limited liability company, or S corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. An individual, partnership, limited liability company, or S corporation which holds a motor fuel tax refund permit under Iowa Code section 452A.18 when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The motor fuel income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

The motor fuel tax credits for fuel taxes paid by partnerships, limited liability companies, and S corporations are not claimed on returns filed for the partnerships, limited liability companies, and S corporations. Instead, the pro-rata shares of the motor fuel tax credits are allocated to the partners, members, and shareholders in the same ratio as incomes are allocated to the partners, members, and shareholders. A schedule must be attached to the individual's returns showing the distribution of gallons and the amount of credit claimed by each partner, member, or shareholder.

The partnership, limited liability company, or S corporation must attach to its return a schedule showing the allocation to each partner, member, or shareholder of the motor fuel purchased by the partnership, limited liability company, or S corporation which qualifies for the credit.

This rule is intended to implement Iowa Code sections 422.110 and 422.111.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.10(422) Alternative minimum tax credit for minimum tax paid in a prior tax year.** Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used against the regular tax for a tax year, the remaining credit is carried over to the following tax year to be applied against the regular income tax liability for that period. The minimum tax credit is computed on Form IA 8801.

**42.10(1) Examples of computation of the minimum tax credit and carryover of the credit.**

EXAMPLE 1. The taxpayers reported \$5,000 of minimum tax for 2007. For 2008, the taxpayers reported regular tax less credits of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayers had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. The taxpayers reported \$2,500 of minimum tax for 2007. For 2008, the taxpayers reported regular tax less credits of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax less credits exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

**42.10(2) Minimum tax credit for nonresidents and part-year residents.** Nonresident and part-year resident taxpayers who paid Iowa minimum tax in tax years beginning on or after January 1, 1987, are eligible for the minimum tax credit to the extent that the minimum tax they paid was attributable to tax preferences and adjustments. Therefore, if a nonresident or part-year resident taxpayer had Iowa source tax preferences or adjustments, then all the minimum tax that was paid would qualify for the minimum tax credit.

The minimum tax credit for a tax year as computed above applies to the regular income tax liability less credits including the nonresident part-year credit to the extent this regular tax amount exceeds the minimum tax for the tax year. To the extent the credit is not used, the credit can be carried over to the next tax year.

This rule is intended to implement Iowa Code section 422.11B.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.11(15,422) Research activities credit.** Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a credit equal to 6½ percent of the state's apportioned share of qualified expenditures for increasing research activities. Effective for tax years beginning on or after January 1, 1991, the Iowa research activities credit will be computed on the basis of the qualifying expenditures for increasing research activities as allowable under Section 41 of the Internal Revenue Code in effect on January 1, 1999. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in Iowa to the total qualified research expenditures. The Iowa research activities credit is made permanent for tax years beginning

on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes.

**42.11(1)** Qualified expenditures in Iowa are:

- a. Wages for qualified research services performed in Iowa.
- b. Cost of supplies used in conducting qualified research in Iowa.
- c. Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.
- d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.

**42.11(2)** Total qualified expenditures are:

- a. Wages paid for qualified research services performed everywhere.
- b. Cost of supplies used in conducting qualified research everywhere.
- c. Rental or lease cost of personal property used in conducting qualified research everywhere.
- d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.

“Qualifying expenditures for increasing research activities” is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

A taxpayer may claim on the taxpayer’s individual income tax return the pro-rata share of the credit for qualifying research expenditures incurred in Iowa by a partnership, subchapter S corporation, or estate or trust. The portion of the credit claimed by the individual must be in the same ratio as the individual’s pro-rata share of the earnings of the partnership, subchapter S corporation, or estate or trust.

Any research credit in excess of the individual’s tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the taxpayer or may be credited to the estimated tax of the taxpayer for the following year.

**42.11(3)** Research activities credit for tax years beginning in 2000. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for individual income tax purposes will be reduced by a tax credit for increasing research activities in this state.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities. The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research activities.

b. In lieu of the credit computed under paragraph 42.11(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer’s federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

c. In lieu of the credit computed under paragraph 42.11(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years

beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.

*d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 42.11(3)"*b*" and the alternative simplified credit described in paragraph 42.11(3)"*c*," such amounts are limited to research activities conducted within this state. For purposes of this subrule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

*e.* An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity shall be based upon the pro-rata share of the individual's earnings from a partnership, S corporation, estate or trust. Any research credit in excess of the individual's tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the individual or may be credited to the individual's tax liability for the following tax year.

*f.* An eligible business approved under the new jobs and income program prior to July 1, 2005, is eligible for an additional research activities credit as described in 701—subrule 52.7(4). An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in 701—subrules 52.7(5) and 52.7(6).

*g.* Tax years ending on or after July 1, 2005, but before July 1, 2009. For eligible businesses approved under the enterprise zone program and the high quality job creation program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. These expenses are not eligible for the federal credit for increasing research activities. These innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program shall not exceed \$1 million in the aggregate.

These expenses are available only for the additional research activities credit set forth in subrule 42.11(3), paragraph "*f*," for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.29(1) for businesses approved under the high quality job creation program. These expenses are not available for the research activities credit set forth in subrule 42.11(3), paragraphs "*a*," "*b*" and "*c*."

*h.* Tax years ending on or after July 1, 2009. For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities.

(1) For purposes of this paragraph, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity.

(2) The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality jobs program described in subrule 42.42(1) shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

(3) These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule

42.11(3), paragraph “f,” for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.42(1) for businesses approved under the high quality jobs program, and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs “a,” “b” and “c.”

**42.11(4)** Reporting of research activities credit claims. Beginning with research activities credit claims filed on or after July 1, 2009, the department shall issue an annual report to the general assembly of all research activities credit claims in excess of \$500,000. The report, which is due by February 15 of each year, will contain the name of each claimant and the amount of the research activities credit for all claims filed during the previous calendar year in excess of \$500,000.

This rule is intended to implement Iowa Code sections 15.335 and 422.10 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—42.12(422) New jobs credit.** A tax credit is available to an individual who has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

**42.12(1) Definitions.**

a. The term “new jobs” means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa industrial new jobs training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in this state.

b. The term “jobs directly related to new jobs” means those jobs which directly support the new jobs but do not include in-state employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee’s vacant position is filled by a new employee. The burden of proof that a job is directly related to new jobs is on the taxpayer.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line, transfers an in-state employee to be foreman of the new product line but does not fill the transferred employee’s position. The new foreman’s position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee’s old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be foreman of the new product line and fills the transferred employee’s position with a new employee. The new foreman’s position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee’s old position was filled by a new employee.

c. The term “taxable wages” means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code subsection 96.19(37) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal year taxpayers, “taxable wages” shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer’s fiscal year begins.

d. The term “agreement” means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term “agreement” also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitments relating to training programs and new jobs.

e. The term “base employment level” means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under Iowa Code chapter 260E on the date of the agreement.

f. The term “project” means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

g. The term “industry” means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, and professional services. “Industry” does not include a business which closes or substantially reduces its operations in one area

of the state and relocates substantially the same operation in another area of the state. “Industry” is a business engaged in the above-listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

*h.* The term “new employees” means the same as new jobs or jobs directly related to new jobs.

*i.* The term “full-time job” means any of the following:

- (1) An employment position requiring an average work week of 35 or more hours;
- (2) An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
- (3) An aggregation of any number of part-time or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule, each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

| Average Number of Weekly Hours | Category      |
|--------------------------------|---------------|
| More than 0 but less than 15   | ¼             |
| 15 or more but less than 25    | ½             |
| 25 or more but less than 35    | ¾             |
| 35 or more                     | 1 (full-time) |

**42.12(2) How to compute the credit.** The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

**EXAMPLE 1.** A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer’s base employment level of 100 employees. In year one of the agreement, the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement, only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement, the taxpayer hires two additional new employees under the agreement to replace the two employees that left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement, three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

**EXAMPLE 2.** A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer’s plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement, 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

**42.12(3) When the credit can be taken.** The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

**EXAMPLE:** A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement, the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement, two of the new employees leave employment. The taxpayer elects

to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three, the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the 7 new employees.

A taxpayer may claim on the taxpayer's individual income tax return the pro-rata share of the Iowa new jobs credit from a partnership, subchapter S corporation, estate or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro-rata share of the earnings of the partnership, subchapter S corporation, or estate or trust. All partners in a partnership, shareholders in a subchapter S corporation and beneficiaries in an estate or trust shall elect to take the Iowa new jobs credit the same year.

For tax years beginning prior to January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code sections 422.12 and 422.12B may be carried forward for ten years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for ten years or until it is used, whichever is the earlier.

This rule is intended to implement Iowa Code section 422.11A.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

#### **701—42.13(422) Earned income credit.**

**42.13(1)** *Tax years beginning before January 1, 2007.* Effective for tax years beginning on or after January 1, 1990, an individual is allowed an Iowa earned income credit equal to a percentage of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The Iowa earned income credit is nonrefundable; therefore, the credit may not exceed the remaining income tax liability of the taxpayer after the personal exemption credits and the other nonrefundable credits are deducted. The percentage of the earned income credit for tax years beginning in the 1990 calendar year is 5 percent. The percentage of the earned income credit for tax years beginning on or after January 1, 1991, is 6.5 percent.

For federal income tax purposes, the earned income credit is available for a low-income worker who maintains a household in the United States that is the principal place of abode of the worker and a child or children for more than one-half of the tax year or the worker must have provided a home for the entire tax year for a dependent parent. In addition, the worker must be (1) a married person who files a joint return and is entitled to a dependency exemption for a son or daughter, adopted child or stepchild; (2) a surviving spouse; or (3) an individual who qualifies as a head of household as described in Section 2(b) of the Internal Revenue Code. The federal earned income credit for a taxpayer is determined by computing the taxpayer's earned income on a worksheet provided in the federal income tax return instructions and determining the allowable credit from a table included in the instructions for the 1040 or 1040A. For purposes of the credit, a taxpayer's earned income includes wages, salaries, tips, or other compensation plus net income from self-employment.

In the case of married taxpayers who filed a joint federal return and who elected to file separate state returns or separately on the combined return form, the Iowa earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents and part-year residents of Iowa are allowed the same earned income credits as resident taxpayers.

**42.13(2)** *Tax years beginning on or after January 1, 2007.* Effective for tax years beginning on or after January 1, 2007, an individual is allowed an Iowa earned income credit equal to 7 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The Iowa earned income credit is refundable; therefore, the credit may exceed the remaining income tax liability of the taxpayer after the personal exemption credits and other nonrefundable credits are deducted.

In the case of married taxpayers who filed a joint federal return and who elected to file separate state returns or separately on the combined return form, the Iowa earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents or part-year residents of Iowa must determine the Iowa earned income tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or separately on the combined return form, the Iowa earned income credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

EXAMPLE: A married couple lives in Omaha, Nebraska. One spouse worked in Iowa in 2007 and had wages and other income from Iowa sources of \$12,000. That spouse had a federal adjusted gross income from all sources of \$15,000. The other spouse had no Iowa source net income and had a federal adjusted gross income from all sources of \$10,000. The taxpayers had a federal earned income credit of \$2,800.

The federal earned income credit of \$2,800 multiplied by 7 percent equals \$196. The ratio of Iowa source net income of \$12,000 divided by total source net income of \$25,000 equals 48 percent. The Iowa earned income tax credit equals \$196 multiplied by 48 percent, or \$94.

This rule is intended to implement Iowa Code section 422.12B.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

### **701—42.14(15) Investment tax credit—new jobs and income program and enterprise zone program.**

**42.14(1) General rule.** An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available for businesses approved by the Iowa department of economic development under the new jobs and income program and the enterprise zone program. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.29(15) for information on the investment tax credit under the high quality job creation program. Any investment tax credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid and can be claimed on tax returns filed after July 1, 2005. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit shall be taken in the year the qualifying asset is placed in service. For business applications received by the Iowa department of economic development on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 42.29(2).

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**42.14(2) Investment tax credit—value-added agricultural products or biotechnology-related processes.** For tax years beginning on or after July 1, 2001, an eligible business whose project primarily

involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit.

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year for this program and eligible businesses described in subrule 42.29(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects, for a cooperative that is not required to file an Iowa income tax return because it is exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See 701—subrule 52.10(4) for examples illustrating how this subrule is applied.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed.

**42.14(3) *Repayment of credits.*** If an eligible business fails to maintain the requirements of the new jobs and income program or the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program or the enterprise zone program because this repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed

under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement Iowa Code section 15.333 as amended by 2010 Iowa Acts, Senate File 2380.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.15(422) Child and dependent care credit.** Effective for tax years beginning on or after January 1, 1990, there is a child and dependent care credit which is refundable to the extent the amount of the credit exceeds the taxpayer's income tax liability less other applicable income tax credits.

**42.15(1) Computation of the Iowa child and dependent care credit.** The Iowa child and dependent care credit is computed as a percentage of the child and dependent care credit which is allowed for federal income tax purposes under Section 21 of the Internal Revenue Code. The credit is computed so that taxpayers with lower adjusted gross incomes (net incomes in tax years beginning on or after January 1, 1991) are allowed higher percentages of their federal child care credit than taxpayers with higher adjusted gross incomes (net incomes). The following is a schedule showing the percentages of federal child and dependent care credits allowed on the taxpayers' Iowa returns on the basis of the federal adjusted gross incomes (or net incomes) of the taxpayers for tax years beginning on or after January 1, 1993.

| *Federal Adjusted Gross Income<br>(Net Income for Tax Years Beginning<br>on or after January 1, 1993) | Percentage of Federal Child<br>and Dependent Care Credit<br>Allowed for 1993 through<br>2005 Iowa Returns | Percentage of Federal<br>Credit Allowed for 2006<br>and Later Tax Years |
|---|---|---|
| Less than \$10,000  | 75%   | 75%   |
| \$10,000 or more but less than \$20,000   | 65%   | 65%   |
| \$20,000 or more but less than \$25,000   | 55%   | 55%   |
| \$25,000 or more but less than \$35,000   | 50%   | 50%   |
| \$35,000 or more but less than \$40,000   | 40%   | 40%   |
| \$40,000 or more but less than \$45,000   | No Credit   | 30%   |
| \$45,000 or more  | No Credit   | No Credit   |

\*Note that in the case of married taxpayers who have filed joint federal returns and elect to file separate returns or separately on the combined return form, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of the combined federal adjusted gross income of the taxpayers or their combined net income for tax years beginning on or after January 1, 1991. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's federal adjusted gross income relates to the combined federal adjusted gross income of the taxpayers or in the proportion that each spouse's net income relates to the combined net income of the taxpayers in the case of tax years beginning on or after January 1, 1991.

**42.15(2) Examples of computation of the Iowa child and dependent care credit.** The following are examples of computation of the child and dependent care credit and the allocation of the credit between spouses in situations where married taxpayers have filed joint federal returns and are filing separate Iowa

returns or separately on the combined return form. For tax years beginning on or after January 1, 1991, the taxpayers' net incomes are used to compute the Iowa child and dependent care credit and allocate the credit between spouses in situations where the taxpayers file separate Iowa returns or separately on the combined return form.

EXAMPLE A. A married couple has filed a joint federal return on which they showed a federal adjusted gross income of \$40,000 or a combined net income of \$40,000 on their state return for the tax year beginning January 1, 2007. Both spouses were employed. They had a federal child and dependent care credit of \$600 which related to expenses incurred for care of their two small children. One of the spouses had a federal adjusted gross income of \$30,000 or a net income of \$30,000 and the second spouse had a federal adjusted gross income of \$10,000 or a net income of \$10,000.

The taxpayers' Iowa child and dependent care credit was \$180 since they were entitled to an Iowa child and dependent care credit of 30 percent of their federal credit of \$600. If the taxpayers elect to file separate Iowa returns, the \$180 credit would be allocated between the spouses on the basis of each spouse's net income to the combined net income of both spouses as shown below:

$$\begin{aligned} \$180 \times \frac{\$30,000}{\$40,000} &= \$135 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$30,000 net income for 2007} \\ \\ \$180 \times \frac{\$10,000}{\$40,000} &= \$45 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$10,000 net income for 2007} \end{aligned}$$

EXAMPLE B. A married couple filed a joint federal return for 2007 and filed their 2007 Iowa return using the married filing separately on the combined return form filing status. Both spouses were employed. They had a federal child and dependent care credit of \$800 which related to expenses incurred for care of their children. One spouse had a net income of \$25,000 and the other spouse had a net income of \$12,500.

The taxpayers' Iowa child and dependent care credit was \$320, since they were entitled to an Iowa credit of 40 percent of their federal credit of \$800. The \$320 credit is allocated between the spouses on the basis of each spouse's net income as it relates to the combined net income of both spouses as shown below:

$$\begin{aligned} \$320 \times \frac{\$25,000}{\$37,500} &= \$213 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$25,000 net income for 2007} \\ \\ \$320 \times \frac{\$12,500}{\$37,500} &= \$107 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$12,500 net income for 2007} \end{aligned}$$

**42.15(3) Computation of the Iowa child and dependent care credit for nonresidents and part-year residents.** Nonresidents and part-year residents who have incomes from Iowa sources in the tax year may claim child and dependent care credits on their Iowa returns. To compute the amount of child and dependent care credit that can be claimed on the Iowa return by a nonresident or part-year resident, the following formula shall be used:

|  |   |  |   |   |
|--|---|--|---|---|
| Federal child and<br>dependent care credit | × | Percentage of federal<br>child and dependent<br>credit allowed on Iowa<br>return from table in<br>subrule 42.15(1) | × | <u>*Iowa net income</u><br>Federal adjusted gross<br>income or all source net<br>income |
|--|---|--|---|---|

\*Iowa net income for purposes of determining the child care credit that can be claimed on the Iowa return by a nonresident or part-year resident taxpayer is the total of the Iowa source incomes less the Iowa source adjustments to income on line 26 of the Form IA 126.

In cases where married taxpayers are nonresidents or part-year residents of Iowa and are filing separate Iowa returns or separately on the combined return form, the child and dependent care credit allowable on the Iowa return should be allocated between the spouses in the ratio of the Iowa net income of each spouse to the combined Iowa net income of the taxpayers.

**42.15(4)** *Example of computation of the Iowa child and dependent care credit for nonresidents and part-year residents.* The following is an example of the computation of the Iowa child and dependent care credit for nonresidents and part-year residents.

A married couple lives in Omaha, Nebraska. One of the spouses worked in Iowa and had wages and other income from Iowa sources or an Iowa net income of \$15,000. That spouse had an all source net income of \$18,000. The second spouse had an Iowa net income of \$10,000 and an all source net income of \$12,000. The taxpayers had a federal child and dependent care credit of \$800 which related to expenses incurred for the care of their two young children. The taxpayers' Iowa child and dependent care credit is calculated below for the 2007 tax year:

| Federal<br>child and<br>dependent<br>care credit | Percentage<br>of federal<br>child and<br>dependent<br>credit<br>allowed on<br>Iowa<br>return | Iowa net income<br><hr style="width: 100%; border: 0.5px solid black; margin: 0;"/> All source net<br>income |
|--|--|--|
| \$800  | × 50% = \$400  | × $\frac{\$25,000}{\$30,000}$ = \$333  |

The \$333 credit is allocated between the spouses as shown below for the 2007 tax year:

$$\begin{aligned} \$333 \times \frac{\$10,000}{\$25,000} &= \$133 \text{ for spouse with Iowa} \\ &\text{source net income of } \$10,000 \\ \\ \$333 \times \frac{\$15,000}{\$25,000} &= \$200 \text{ for spouse with Iowa} \\ &\text{source net income of } \$15,000 \end{aligned}$$

This rule is intended to implement Iowa Code section 422.12C.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.16(422) Franchise tax credit.** For tax years beginning on or after January 1, 1997, a shareholder in a financial institution, as defined in Section 581 of the Internal Revenue Code, which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

For tax years beginning on or after July 1, 2004, a member of a financial institution organized as a limited liability company that is taxed as a partnership for federal income tax purposes which has elected to have its income taxed directly to its members may take a tax credit equal to the member's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's or member's taxable income by the shareholder's or member's pro-rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. For tax years beginning on or after January 1, 2007, only the credits allowed in Iowa Code section 422.12 are reduced in computing the franchise tax credit.

The resulting amount, not to exceed the shareholder's or member's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder or member.

This rule is intended to implement Iowa Code section 422.11.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.17(15E) Eligible housing business tax credit.** An individual who qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in Iowa Code section 15E.193B.

**42.17(1) Computation of credit.** New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, or hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's individual income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, S corporation, limited liability company, estate, or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro-rata share of the earnings of the partnership, S corporation, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the

housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

For tax years beginning prior to January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.12 and 422.12B, may be carried forward for seven years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, the taxpayer, in order to be an eligible housing business, may be required to repay all or a part of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.17(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.

**42.17(2) *Transfer of the eligible housing business tax credit.*** For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credits shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15E.193B.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.18(422) Assistive device tax credit.** Effective for tax years beginning on or after January 1, 2000, a taxpayer that is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer shall not deduct for Iowa income tax purposes any amount of the cost of an assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

**42.18(1) Submitting applications for the credit.** A small business that wishes to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate of entitlement for the assistive device credit shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved, the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer shall enter the date that the assistive device project was completed. The certificate of entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2007, and completed the assistive device workplace modification project on January 15, 2008, taxpayer A could claim the assistive device credit on taxpayer A's 2008 Iowa return, assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is a partnership, limited liability company, S corporation, estate, or trust, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the owners with a statement showing how the credit is to be allocated among the individual owners of the business entity. An individual owner shall attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

**42.18(2) Definitions.** The following definitions are applicable to this rule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or

transplanted into or attached directly to an individual. “Assistive device” does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of “assistive device” that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

“*Business entity*” means partnership, limited liability company, S corporation, estate, or trust, where the income of the business is taxed to each of the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

“*Disability*” means the same as defined in Iowa Code section 15.102. Therefore, “disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. “Disability” does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.
5. Alcoholism.

“*Employee*” means an individual who is employed by the small business and who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business shall not be considered an employee of the small business for purposes of this rule.

“*Small business*” means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

“*Workplace modifications*” means physical alterations to the office, factory, or other work environment where the disabled employee is working or will work.

**42.18(3) Allocation of assistive tax credit to owners of a business entity.** If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an assistive device credit of \$2,500 for a tax year and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the partnership.

**42.18(4) Repeal of credit.** The assistive device credit is repealed on July 1, 2009.

This rule is intended to implement Iowa Code section 422.11E.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.19(404A,422) Historic preservation and cultural and entertainment district tax credit.** A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer’s Iowa individual income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa. The administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

**42.19(1) Eligible properties for the historic preservation and cultural and entertainment district tax credit.** The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).

b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.

c. Property or district designated as a local landmark by a city or county ordinance.

d. Any barn constructed prior to 1937.

**42.19(2)** *Application and review process for the historic preservation and cultural and entertainment district tax credit.*

a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, \$50 million in historic preservation and cultural and entertainment district tax credits is available. The allocation of the \$50 million of credits for the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, is set forth in rule 223—48.7(303,404A). For fiscal years beginning on or after July 1, 2012, \$45 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.

b. For the state fiscal year beginning on July 1, 2009, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2009, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2010. For the state fiscal year beginning July 1, 2010, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2010, and \$30 million of tax credits may be claimed on tax returns beginning on or after January 1, 2011. For the state fiscal year beginning July 1, 2011, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2011, and \$30 million of tax credits may be claimed on tax returns beginning on or after January 1, 2012.

c. Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

d. The state historic preservation office (SHPO) shall establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process shall not exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO shall be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property.

e. Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

**42.19(3)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax

credit is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs shall not exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project are qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

For example, the basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the building for Iowa income tax purposes would have been \$600,000, since for those tax periods, any qualified rehabilitation expenses used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would be reduced accordingly by the same amount as the reduction required for federal tax purposes.

**42.19(4)** *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must be issued a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation

and cultural and entertainment district tax credit certificate, which shall be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is the later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.19(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate. The tax credit certificate shall be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit shall be computed on the basis of the following table:

| Annual Interest Rate | Five-Year Present Value/Dollar Compounded Annually |
|----------------------|--|
| 5%                   | \$.784   |
| 6%                   | \$.747   |
| 7%                   | \$.713   |
| 8%                   | \$.681   |
| 9%                   | \$.650   |
| 10%                  | \$.621   |
| 11%                  | \$.594   |
| 12%                  | \$.567   |
| 13%                  | \$.543   |
| 14%                  | \$.519   |
| 15%                  | \$.497   |
| 16%                  | \$.476   |
| 17%                  | \$.456   |
| 18%                  | \$.437   |

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. The annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 11 percent of .594 in the table, which results in a refund of \$297,000.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**42.19(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity.* When the taxpayer that has earned a historic preservation and cultural

and entertainment district tax credit is a partnership, limited liability company, S corporation, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit shall be allocated to the individual owners. The business entity shall allocate the historic preservation and cultural and entertainment district tax credit to each individual owner on the same pro-rata basis as the earnings of the business are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a partner of a partnership received 25 percent of the earnings or income of the partnership for the tax year in which the partnership had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to this partner.

For projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro-rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

**42.19(6)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than \$1,000 shall not be transferable.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 42.19(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2010 Iowa Acts, Senate File 2380, and Iowa Code section 422.11D.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.20(422) Ethanol blended gasoline tax credit.** Effective for tax years beginning on or after January 1, 2002, a retail gasoline dealer may claim an ethanol blended gasoline tax credit against that individual's individual income tax liability. The taxpayer must operate at least one retail motor fuel site

at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For taxpayers having a fiscal year ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 43.3(8) has not yet expired.

EXAMPLE 1: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a \$250 credit available.

The credit may be calculated on Form IA 6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit may be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involves ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—42.31(422) for the same tax year for the same ethanol gallons.

EXAMPLE 2: A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this amount constitutes the gallons in excess of 60 percent of the total gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

**42.20(1) Definitions.** The following definitions are applicable to this rule:

“*Ethanol blended gasoline*” means the same as defined in Iowa Code section 214A.1.

“*Gasoline*” means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

“*Motor fuel pump*” means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

“*Retail dealer*” means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

“*Retail motor fuel site*” means a geographic location in Iowa where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

“*Sell*” means to sell on a retail basis.

**42.20(2) Allocation of credit to owners of a business entity.** If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or

trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of \$3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of \$750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

**42.20(3) *Repeal of ethanol blended gasoline tax credit.*** The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer's fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 701—42.37(15,422) is available beginning January 1, 2009, for retail dealers of gasoline.

See 701—subrule 52.19(3) for an example illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.11C.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.21(15E) Eligible development business investment tax credit.** Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business which is not a development business and which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business which is not a development business can claim an investment tax credit only on additional new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.22(15E,422) Venture capital credits.**

**42.22(1) *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.*** See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity

investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund or equity investments made in a qualifying business on or after January 1, 2004, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

**42.22(2)** *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**42.22(3)** *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.43, 15E.66, and 422.11F and sections 15E.51 and 422.11G as amended by 2010 Iowa Acts, Senate File 2380.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.23(15) New capital investment program tax credits.** Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible

to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.29(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid and can be claimed on tax returns filed after July 1, 2005.

**42.23(1) *Research activities credit.*** A business approved under the new capital investment program is eligible for an additional research activities credit as described in 701—subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 42.11(3).

**42.23(2) *Investment tax credit.***

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph “b.” New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer’s cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

*b. Tax credit percentage.* The amount of tax credit claimed shall be based on the number of high quality jobs created as determined by the Iowa department of economic development:

(1) If no high quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

*c. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added

agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 42.14(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

*d. Repayment of benefits.* If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

- (1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- (2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- (3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- (4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- (5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement Iowa Code section 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and sections 15.335 and 15.381 to 15.387.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.24(15E,422) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of

economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 and subsequent calendar years is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2010 Iowa Acts, Senate File 2380, and section 422.11H.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.25(422) Soy-based cutting tool oil tax credit.** Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit:

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11I.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.26(15I,422) Wage-benefits tax credit.** Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

**42.26(1) Definitions.** The following definitions are applicable to this rule:

*“Average county wage”* means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

*“Benefits”* means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

*“Department”* means the Iowa department of revenue.

*“Full-time”* means the equivalent of employment of one person:

1. For 8 hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

*“Grow Iowa values fund”* means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

*“Nonqualified new job”* means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

*“Qualified new job”* or *“job creation”* means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business in Iowa within the previous 12 months.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

*“Retail business”* means a business which sells its product directly to a consumer.

*“Retained qualified new job”* or *“job retention”* means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

*“Service business”* means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside Iowa.

**42.26(2) Calculation of credit.** A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

*a.* If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.

*b.* If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.

*c.* If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**42.26(3) Application for the tax credit; tax credit certificate; amount of tax credit available.**

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

- (1) Name, address and federal identification number of the business.
- (2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa shall be included.
- (3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.
- (4) A computation of the amount of credit being requested.
- (5) The address and state of residence of each new employee.
- (6) The date that the qualified new job was filled.
- (7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.
- (8) The type of tax for which the credit will be applied.
- (9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification numbers of the partners, shareholders, members or beneficiaries, along with their percentage of the pro-rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Upon receipt of the application, the department has 45 days either to approve or deny the application. If the department does not act on the application within 45 days, the application is deemed approved. If the department denies the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of denial.

c. If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate shall contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

d. The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million for the fiscal year ending June 30, 2007, and shall not exceed \$4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the \$4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates received after the \$4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million or \$4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the \$4 million limit for tax credits for the fiscal years ending June 30, 2008, through

June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.26(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first \$4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

*f.* For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first \$4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of \$4 million are issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the \$4 million in wage-benefits tax credits filed applications totaling \$3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first \$3 million of the available \$4 million will be allowed to these same businesses. The remaining \$1 million that is still available for the fiscal year ending June 30, 2008, will be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining \$1 million in tax credits is issued.

*g.* A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

*h.* A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 or moneys from the grow Iowa values fund.

**42.26(4) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is \$11.86 per hour. If the average county wage per hour for Clayton County is \$11.95 for the fourth quarter of 2005, \$12.05 for the first quarter of 2006, and \$12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is \$12.00 per hour. This wage equates to an average annual wage of \$24,960 ( $\$12.00 \times 40 \text{ hours} \times 52 \text{ weeks}$ ). In order for Business D to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$32,448 (130 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order for Business D to qualify for the 10 percent wage-benefits tax credit, the new employee must receive

wages and benefits totaling \$39,936 (160 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is \$13.75 per hour in Grundy County, this wage equates to an average county wage of \$28,600. The wages and benefits for each of these three new employees is \$40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of \$2,000 for each employee ( $\$40,000 \times 5$  percent), for a total wage-benefits tax credit of \$6,000. If Business E files on a calendar-year basis, the \$6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months in a job which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. However, the credit may not be allowed if more than \$4 million of retained job tax credits have been issued for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if more than \$4 million of retained job tax credits have been issued for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

**42.26(5) *Repeal of the wage-benefits tax credit.*** The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June 30, 2011, as provided in subrule 42.26(3), paragraphs “d,” “e,” and “f.” A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I and section 422.11L.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.27(422,476B) Wind energy production tax credit.** Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

**42.27(1) Application and review process for the wind energy production tax credit.** An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, that is located in Iowa, and that is placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate generating capacity of no less than  $\frac{3}{4}$  of a megawatt.

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 150 megawatts. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

**42.27(2) Computation of the credit.** The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation § 1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after

approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.27(1).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**42.27(3) *Transfer of the wind energy production tax credit certificate.*** The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476B as amended by 2009 Iowa Acts, Senate File 456.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.28(422,476C) Renewable energy tax credit.** Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

**42.28(1)** *Application and review process for the renewable energy tax credit.* A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2012.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 330 megawatts. The maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 20 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. A producer of renewable energy who is the person who owns the renewable energy facility cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility.

A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1).

**42.28(2)** *Computation of the credit.* The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents per 1000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility may exceed 12 months.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.28(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.28(1). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, 2021.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**42.28(3)** *Transfer of the renewable energy tax credit certificate.* The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**42.28(4)** *Small wind innovation zones.* Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476C as amended by 2009 Iowa Acts, Senate File 456 and House File 810.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.29(15) High quality job creation program.** Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—42.42(15) for information on the investment tax credit and additional research activities credit under the high quality jobs program. Any investment tax credit and additional research activities credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid and can be claimed on tax returns filed after July 1, 2009.

**42.29(1) Research activities credit.** An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as described in 701—subrule 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate generating capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs “a” and “b.” The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

**42.29(2) Investment tax credit.**

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer’s cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned \$100,000 of investment tax credits for new investment made in 2006. The business can claim \$20,000 of investment tax credits for each of the years from 2006 through 2010. The \$20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the \$20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

*b. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 42.14(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

*c. Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

**42.29(3) Determination of tax credit amounts.** The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

*a.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7) “a” for the amount of tax credits that may be claimed.

*b.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7) “b” for the amount of tax credits that may be claimed.

*c.* An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—42.26(15I,422).

This rule is intended to implement Iowa Code sections 15.326 to 15.337.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.30(15E,422) Economic development region revolving fund tax credit.** Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The tax credit is equal to 20 percent of a taxpayer’s contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.232 and 422.11K as amended by 2010 Iowa Acts, Senate File 2380.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.31(422) Early childhood development tax credit.** Effective for tax years beginning on or after January 1, 2006, taxpayers may claim a tax credit equal to 25 percent of the first \$1,000 of expenses paid to others for early childhood development for each dependent three to five years of age. The credit is available only to taxpayers whose net income is less than \$45,000. If a taxpayer claims the early childhood development tax credit, the taxpayer cannot claim the child and dependent care credit described in rule 701—42.15(422). The early childhood development tax credit is refundable to the extent that the credit exceeds the taxpayer’s income tax liability. For the tax year beginning in the 2006

calendar year only, amounts paid for early childhood development expenses in November and December of 2005 shall be considered paid in 2006 for purposes of computing the credit.

For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined income of the taxpayers must be less than \$45,000 to be eligible for the credit. If the combined income is less than \$45,000, the early childhood development tax credit shall be prorated to each spouse in the proportion that each spouse's respective net income bears to the total combined income.

**42.31(1) Expenses eligible for the credit.** The following expenses qualify for the early childhood development tax credit, to the extent they are paid during the time period that a dependent is either three, four or five years of age:

*a.* Expenses for services provided by a preschool, as defined in Iowa Code section 237A.1. The preschool may only provide services for periods of time not exceeding three hours per day.

*b.* Books that improve child development, including textbooks, music books, art books, teacher editions and reading books.

*c.* Expenses paid for instructional materials required to be used in a child development or educational lesson activity. These materials include, but are not limited to, paper, notebooks, pencils, and art supplies. In addition, software and toys which are directly and primarily used for educational or learning purposes are considered instructional materials.

*d.* Expenses paid for lesson plans and curricula.

*e.* Expenses paid for child development and educational activities outside the home. These activities include, but are not limited to, drama, art, music and museum activities, including the entrance fees for such activities.

**42.31(2) Expenses not eligible for the credit.** The following expenses do not qualify for the early childhood development tax credit:

*a.* Any expenses paid to a preschool once a dependent reaches the age of six.

*b.* Expenses relating to food, lodging, membership fees, or other nonacademic expenses relating to child development and educational activities outside the home.

*c.* Expenses related to services, materials, or activities for the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship.

This rule is intended to implement Iowa Code section 422.12C.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.32(422) School tuition organization tax credit.** Effective for the tax year beginning on or after January 1, 2006, but beginning before January 1, 2007, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2007, the school tuition organization tax credit is available which is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tuition organization tax credit for tax years beginning on or after January 1, 2007.

**42.32(1) Definitions.** The following definitions are applicable to this rule:

*“Certified enrollment”* means the enrollment at schools served by school tuition organizations as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, of the appropriate year.

*“Contribution”* means a voluntary cash or noncash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

*“Eligible student”* means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to three times the most recently

published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

*“Qualified school”* means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, including a prekindergarten program for students who are five years of age by September 15 of the appropriate year, and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

*“School tuition organization”* means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. Allocates at least 90 percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents’ choice.
2. Awards tuition grants only to children who reside in Iowa.
3. Provides tuition grants to students without limiting availability to students of only one school.
4. Provides tuition grants only to eligible students.
5. Prepares an annual financial statement certified by a public accounting firm.

*“Tuition grant”* means a grant to a student to cover all or part of the student’s tuition at a qualified school.

**42.32(2) Initial registration.** In order for contributions to a school tuition organization to qualify for the credit, the school tuition organization must initially register with the department. The following information must be provided with this initial registration:

- a. Verification from the Internal Revenue Service that Section 501(c)(3) status was granted and that the school tuition organization is exempt from federal income tax.
- b. A list of all qualified schools that the school tuition organization serves.
- c. The names and addresses of all the members of the board of directors of the school tuition organization.

Once the school tuition organization is registered with the department, it is not required to subsequently register unless there is a change in the qualified schools that the organization serves. The school tuition organization must notify the department in writing of any changes in the qualified schools it serves.

**42.32(3) Participation forms.** Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by November 1. The following information must be provided with this participation form:

- a. The certified enrollment of the qualified school as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.
- b. The name of the school tuition organization that represents the qualified school.

For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.

**42.32(4) Authorization to issue tax credit certificates.**

a. By December 1 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following tax year. For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only. The total amount of tax credit certificates that may be authorized is \$2.5 million for the 2006 calendar year, \$5 million for the 2007 calendar year, and \$7.5 million for the 2008 and subsequent calendar years.

b. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE: For determining the authorized tax credits for the 2008 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2007, was

37,500, the per-student tax credit would be \$200 (\$7.5 million divided by 37,500). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue \$280,000 (\$200 times 1,400) of tax credit certificates for the 2008 calendar year. The department would notify this school tuition organization by December 1, 2007, of the authorization to issue \$280,000 of tax credit certificates for the 2008 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling \$430,769 (\$280,000 divided by 65%) during the 2008 calendar year which would be eligible for the tax credit.

**42.32(5) Issuance of tax credit certificates.** The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate, which will be designed by the department, will contain the name, address and tax identification number of the taxpayer, the amount and date that the contribution was made, the amount of the credit, the tax year that the credit may be applied, the school tuition organization to which the contribution was made, and the tax credit certificate number.

**42.32(6) Claiming the tax credit.** The taxpayer must attach the tax credit certificate to the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

*a.* The taxpayer may not claim an itemized deduction for charitable contributions for Iowa income tax purposes for the amount of the contribution made to the school tuition organization.

*b.* Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

**42.32(7) Reporting requirements.** Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each tax year, the following information:

*a.* The names and addresses of all the members of the board of directors of the school tuition organization, along with the name of the chairperson of the board.

*b.* The total number and dollar value of contributions received by the school tuition organization for the previous tax year.

*c.* The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous tax year.

*d.* A list of each taxpayer who received a tax credit certificate for the previous tax year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous tax year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

*e.* The total number of children utilizing tuition grants for the school year in progress as of January 12, along with the total dollar value of the tuition grants.

*f.* The name and address of each qualified school represented by the school tuition organization at which tuition grants are being utilized for the school year in progress.

*g.* The number of tuition grant students and the total dollar value of tuition grants being utilized for the school year in progress at each qualified school served by the school tuition organization.

This rule is intended to implement Iowa Code section 422.11S.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.33(422) E-85 gasoline promotion tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code

section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

|                                    |          |
|------------------------------------|----------|
| Calendar years 2006, 2007 and 2008 | 25 cents |
| Calendar years 2009 and 2010       | 20 cents |
| Calendar year 2011                 | 10 cents |
| Calendar years 2012 through 2017   | 16 cents |

A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—42.20(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold on or after January 1, 2009, for the same tax year for the same ethanol gallons.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**EXAMPLE:** A taxpayer operated one retail motor fuel site in 2008 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2008. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2008 tax year.

**42.33(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2017. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

See 701—subrule 52.30(1) for examples illustrating how this subrule is applied.

**42.33(2) Allocation of credit to owners of a business entity.** If a taxpayer claiming the E-85 ethanol promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11O as amended by 2011 Iowa Acts, Senate File 531.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—42.34(422) Biodiesel blended fuel tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, but before January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total

gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. For gallons sold during the 2012 calendar year, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. For gallons sold during the 2013 to 2017 calendar years, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**EXAMPLE:** A taxpayer operated four retail motor fuel sites during 2008 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling \$1,650, which is 55,000 gallons multiplied by three cents.

**EXAMPLE:** A taxpayer operated two retail motor fuel sites during 2008, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel, and the other site sold 10,000 gallons of biodiesel blended fuel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2008 tax year. If the facts in this example had occurred during the 2009 tax year, the taxpayer could claim a biodiesel blended fuel tax credit totaling \$750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

**42.34(1) Fiscal year filers.** Taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2017.

See 701—subrule 52.31(1) for examples illustrating how this subrule is applied.

**42.34(2) Allocation of credit to owners of a business entity.** If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11P as amended by 2011 Iowa Acts, Senate Files 531 and 533.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—42.35(422) Soy-based transformer fluid tax credit.** Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and

replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

**42.35(1) Eligibility requirements for the tax credit.** All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

- a. The costs must be incurred after June 30, 2006, and before January 1, 2009.
- b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.
- c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.
- d. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based transformer fluid used in the transition.
- e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.
- f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

**42.35(2) Applying for the tax credit.** An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is claimed. The application must include the following information:

- a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.
- b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.
- c. The name, address, and tax identification number of the electric utility.
- d. The type of tax for which the credit will be claimed, and the first year in which the credit will be claimed.
- e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro-rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

**42.35(3) Claiming the tax credit.** After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code section 422.11R.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.36(175,422) Agricultural assets transfer tax credit.** Effective for tax years beginning on or after January 1, 2007, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The

administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2009, the amount of tax credit certificates issued by the Iowa agricultural development authority cannot exceed \$6 million, and the credit certificates will be issued on a first-come, first-served basis.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 483, and Iowa Code section 422.11M.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.37(15,422) Film qualified expenditure tax credit.** Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for individual income tax. The tax credit cannot exceed 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

**42.37(1) Qualified expenditures.** A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.

11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel. For limitations on the amount of labor and personnel expenditures, see Iowa department of economic development 261—paragraph 36.7(2)“b.”
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available from the film office of IDED.

**42.37(2) *Claiming the tax credit.*** Upon completion of the registered project in Iowa, the taxpayer must submit, in a format approved by IDED prior to production, a listing of the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer’s name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner’s, member’s, shareholder’s or beneficiary’s pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

**42.37(3) *Transfer of the film qualified expenditure tax credit.*** The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee’s name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax

purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, and Iowa Code section 422.11T.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.38(15,422) Film investment tax credit.** Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for individual income tax. The tax credit cannot exceed 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

**42.38(1) Claiming the tax credit.** Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—42.37(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 42.37(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For example, if three investors each invested \$100,000 in a project but the qualified expenditures in Iowa only totaled \$270,000, each investor would receive a tax credit based on a \$90,000 investment amount.

**42.38(2) Transfer of the film investment tax credit.** The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax

purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, section 4, and Iowa Code section 422.11U.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.39(422) Ethanol promotion tax credit.** Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA 137.

**42.39(1) Definitions.** The following definitions are applicable to this rule:

*“Biodiesel gallonage”* means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

*“Biofuel distribution percentage”* means the sum of the retail dealer’s total ethanol gallonage plus the retail dealer’s total biodiesel gallonage expressed as a percentage of the retail dealer’s total gasoline gallonage.

*“Biofuel threshold percentage”* is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

| Determination Period | More than 200,000 Gallons Sold by Retail Dealer | 200,000 Gallons or Less Sold by Retail Dealer |
|----------------------|---|---|
| 2009                 | 10%   | 6%  |
| 2010                 | 11%   | 6%  |
| 2011                 | 12%   | 10%   |
| 2012                 | 13%   | 11%   |
| 2013                 | 14%   | 12%   |
| 2014                 | 15%   | 13%   |
| 2015                 | 17%   | 14%   |
| 2016                 | 19%   | 15%   |
| 2017                 | 21%   | 17%   |
| 2018                 | 23%   | 19%   |
| 2019                 | 25%   | 21%   |
| 2020                 | 25%   | 25%   |

*“Biofuel threshold percentage disparity”* means the positive percentage difference between the retail dealer’s biofuel threshold percentage and the retail dealer’s biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

*“Determination period”* means any 12-month period beginning on January 1 and ending on December 31.

*“Ethanol gallonage”* means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

*“Gasoline gallonage”* means the total number of gallons of gasoline sold by the retail dealer during a determination period.

**42.39(2) Calculation of tax credit.**

*a.* The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

| Biofuel Threshold Percentage Disparity | Tax Credit Rate per Gallon 2009-2010 | Tax Credit Rate per Gallon 2011 | Tax Credit Rate per Gallon 2012-2020 |
|--|--------------------------------------|---------------------------------|--------------------------------------|
| 0%                                     | 6.5 cents                            | 8 cents                         | 8 cents                              |
| 0.01% to 2.00%                         | 4.5 cents                            | 6 cents                         | 6 cents                              |
| 2.01% to 4.00%                         | 2.5 cents                            | 2.5 cents                       | 4 cents                              |
| 4.01% or more                          | 0 cents                              | 0 cents                         | 0 cents                              |

*b.* For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

*c.* A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—42.33(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—42.46(422) for the same tax year for the same ethanol gallons.

*d.* The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

*e.* For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer's retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer's retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage as defined in subrule 42.39(1) is based on more than 200,000 gallons or on 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

*f.* Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**42.39(3) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 42.39(2), paragraph "a." Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December

31, 2020. A taxpayer whose tax year is not on a calendar-year basis and that did not claim the ethanol promotion tax credit on the previous return may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

**42.39(4) Allocation of tax credit to owners of a business entity.** If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

**42.39(5) Examples.** The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the total gasoline gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this percentage exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This calculation results in an ethanol promotion tax credit of 6.5 cents times 11,950, or \$776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or \$1,000.

**EXAMPLE 2.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons which consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold 60,000 gallons of diesel fuel at this site during 2010, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This calculation results in an ethanol promotion tax credit of 4.5 cents times 30,900, or \$1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

**EXAMPLE 3.** A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000 gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

|                                  |               |
|----------------------------------|---------------|
| Site A – 70,000 times 10% equals | 7,000         |
| Site B – 70,000 times 10% equals | 7,000         |
| Site C – 60,000 times 10% equals | 6,000         |
| Site C – 10,000 times 79% equals | 7,900         |
| Total                            | <u>27,900</u> |

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail

dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit is computed separately for each motor fuel site, and the ethanol promotion credit equals \$1,813.50, as shown below:

|  |                   |
|--|-------------------|
| Site A – 7,000 times 6.5 cents equals  | \$455.00          |
| Site B – 7,000 times 6.5 cents equals  | \$455.00          |
| Site C – 13,900 times 6.5 cents equals | \$903.50          |
| Total                                  | <u>\$1,813.50</u> |

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of \$2,310 for the fiscal year ending March 31, 2011, as shown below:

|                               |            |
|-------------------------------|------------|
| 30,000 times 6.5 cents equals | \$1,950    |
| 8,000 times 4.5 cents equals  | <u>360</u> |
| Total                         | \$2,310    |

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of \$1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or \$1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons

of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less than 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of \$1,462, as shown below:

|                                       |                |
|---------------------------------------|----------------|
| Site A – 7,000 times 2.5 cents equals | \$175          |
| Site B – 7,000 times 2.5 cents equals | \$175          |
| Site C – 13,900 times 8 cents equals  | \$1,112        |
| Total                                 | <u>\$1,462</u> |

This rule is intended to implement Iowa Code section 422.11N as amended by 2011 Iowa Acts, Senate File 531.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—42.40(422) Charitable conservation contribution tax credit.** Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for individual income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

**42.40(1) Definitions.** The following definitions are applicable to this rule:

“*Conservation purpose*” means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

“*Qualified organization*” means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

“*Qualified real property interest*” means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

**42.40(2) Computation of the credit.** The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is \$100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as an itemized deduction for charitable contributions for Iowa income tax purposes.

**42.40(3) Claiming the tax credit.** The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

**42.40(4) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of \$150,000 to a qualified organization during 2008. The tax credit is equal to \$75,000, or 50 percent of the \$150,000 fair market value of the real property. The taxpayer cannot claim the \$150,000 as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of \$500,000 to a qualified organization during 2009. The tax credit is limited to \$100,000, which equates to \$200,000 of the contribution being eligible for the tax credit. The remaining amount of \$300,000 (\$500,000 less \$200,000) can be claimed as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2009.

This rule is intended to implement Iowa Code section 422.11W.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.41(15,422) Redevelopment tax credit.** Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council may claim a redevelopment tax credit. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for a redevelopment project for the brownfield redevelopment authority which qualifies for the tax credit, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**42.41(1) Eligibility for the credit.** The Iowa department of economic development is responsible for developing a system for registration and authorization of redevelopment tax credits. Investments in brownfield or grayfield sites must be made on or after January 1, 2009, but before June 30, 2010, to be eligible for the tax credit. The maximum amount of tax credits that can be issued for redevelopment projects is \$1 million in the aggregate, and the amount of credits for any one redevelopment project cannot exceed \$100,000.

**42.41(2) Computation and claiming of the credit.**

- a. The amount of the tax credit shall equal one of the following:
  - (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.
  - (2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).
  - (3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.
  - (4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).
- b. Upon completion of the project, the Iowa department of economic development will issue a tax credit certificate to the taxpayer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.41(3).
- c. If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.
- d. The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled \$100,000 whereby a \$12,000 redevelopment tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).
- e. To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

**42.41(3) *Transfer of the credit.*** The redevelopment tax credit can be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

This rule is intended to implement Iowa Code sections 15.293A and 422.11V.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.42(15) High quality jobs program.** Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

**42.42(1) *Research activities credit.*** An eligible business approved under the high quality jobs program is eligible for an additional research activities credit as described in 701—subrule 52.7(4) for awards issued by the Iowa department of economic development prior to July 1, 2010. The eligible business is eligible for the research activities credit as described in 701—subrule 52.7(6) for awards issued by the Iowa department of economic development on or after July 1, 2010.

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate generating capacity. The research activities credit related to renewable energy generation components under the high quality jobs program and the enterprise zone program shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and in 701—subrule 52.7(5) for businesses in enterprise zones, and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs “a” and “b.”

**42.42(2) *Investment tax credit.*** An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created or retained by the location or

expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7).

The determination of the new investment eligible for the investment tax credit, the eligibility of a refundable investment tax credit for value-added agricultural product or biotechnology-related projects and the repayment of investment tax credits for the high quality jobs program is the same as set forth in subrule 42.29(2) for the high quality job creation program.

This rule is intended to implement Iowa Code chapter 15.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.43(16,422) Disaster recovery housing project tax credit.** For tax years beginning on or after January 1, 2011, a disaster recovery housing project tax credit is available for individual income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project, and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit.

**42.43(1) Issuance of tax credit certificates.** Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any person or entity.

**42.43(2) Limitation of tax credits.** The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed \$3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

**42.43(3) Claiming the tax credit.** The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa individual income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: An individual whose tax year ends on December 31 incurs \$100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of \$75,000, and \$15,000 of credit can be claimed on each Iowa individual income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the individual for the period ending December 31, 2011, is \$10,000, the credit is limited to \$10,000, and the remaining \$5,000 credit cannot be used. If the tax liability for the individual for the period ending December 31, 2012, is \$25,000, the credit is limited to \$15,000, and the remaining \$5,000 credit from 2011 cannot be used to reduce the tax for 2012.

**42.43(4) Potential recapture of tax credits.** If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on an individual income tax return.

This rule is intended to implement Iowa Code Supplement sections 16.211, 16.212 and 422.11X.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.44(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be deducted in the following sequence:

1. Personal exemption credit.
2. Tuition and textbook credit.
3. Nonresident and part-year resident credit.
4. Franchise tax credit.
5. S corporation apportionment credit.
6. Disaster recovery housing project tax credit.
7. School tuition organization tax credit.
8. Venture capital credit.
9. Endow Iowa tax credit.
10. Agricultural assets transfer tax credit.
11. Film qualified expenditure tax credit.
12. Film investment tax credit.
13. Redevelopment tax credit.
14. Investment tax credit.
15. Wind energy production tax credit.
16. Renewable energy tax credit.
17. New jobs credit.
18. Economic development region revolving fund tax credit.
19. Charitable conservation contribution tax credit.
20. Alternative minimum tax credit.
21. Historic preservation and cultural and entertainment district tax credit.
22. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
23. Research activities credit.
24. Assistive device credit.
25. Out-of-state tax credit.
26. Child and dependent care credit or early childhood development tax credit.
27. Motor fuel credit.
28. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
29. Wage-benefits tax credit.
30. Soy-based cutting tool oil tax credit.
31. Refundable portion of investment tax credit, as provided in subrule 42.14(2).
32. E-85 gasoline promotion tax credit.
33. Biodiesel blended fuel tax credit.
34. Soy-based transformer fluid tax credit.
35. Earned income tax credit.
36. Estimated payments, payment with vouchers and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11C, 422.11D, 422.11E, 422.11F, 422.11G, 422.11H, 422.11I, 422.11J, 422.11K, 422.11L, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11R, 422.11S, 422.11T, 422.11U, 422.11W, 422.11X, 422.12, 422.12B and 422.12C.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.45(15) Aggregate tax credit limit for certain economic development programs.** Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed \$185 million during a fiscal year. These programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the film, television and video project promotion program and the high quality jobs program. Effective for fiscal years beginning on or after July 1, 2010, awards made under these economic development programs cannot exceed \$120

million during a fiscal year. The administrative rules for the aggregate tax credit limit for the Iowa department of economic development may be found at 261—Chapter 76.

This rule is intended to implement 2009 Iowa Code Supplement section 15.119 as amended by 2010 Iowa Acts, Senate File 2380.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.46(422) E-15 plus gasoline promotion tax credit.** Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. “E-15 plus gasoline” means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA138. The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

|  |         |
|--|---------|
| Gallons sold from July 1, 2011, through December 31, 2014    | 3 cents |
| Gallons sold from January 1, 2015, through December 31, 2017 | 2 cents |

A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold for the same tax year for the same ethanol gallons.

Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**42.46(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2017. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends before December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

**EXAMPLE 1:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

**EXAMPLE 2:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons times 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

**EXAMPLE 3:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2018. The taxpayer sold 20,000 gallons of E-15 plus gasoline for the period from March 1, 2017, through February 28, 2018, of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$320 (16,000 gallons times 2 cents) on the taxpayer’s Iowa income tax return for the period ending February 28, 2018.

**42.46(2)** *Allocation of credit to owners of a business entity.* If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2011 Iowa Acts, Senate File 531, section 35, as amended by 2011 Iowa Acts, Senate File 533, sections 63 to 65.  
[ARC 9821B, IAB 11/2/11, effective 12/7/11]

[Filed 12/12/74]

- [Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]
- [Filed 10/28/77, Notice 9/21/77—published 11/16/77, effective 12/21/77]
- [Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
- [Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
- [Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]
- [Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
- [Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]
- [Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
- [Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]<sup>◊</sup>
- [Filed 1/24/86, Notice 12/18/85—published 2/12/86, effective 3/19/86]
- [Filed 6/27/86, Notice 5/7/86—published 7/16/86, effective 8/20/86]
- [Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
- [Filed 10/3/86, Notice 8/27/86—published 10/22/86, effective 11/26/86]
- [Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
- [Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]
- [Filed 12/23/87, Notice 11/18/87—published 1/13/88, effective 2/17/88]
- [Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]
- [Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
- [Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]<sup>◊</sup>
- [Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
- [Filed 10/26/90, Notice 9/19/90—published 11/14/90, effective 12/19/90]
- [Filed 11/9/90, Notice 10/3/90—published 11/28/90, effective 1/2/91]
- [Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
- [Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
- [Filed 11/20/92, Notice 10/14/92—published 12/9/92, effective 1/13/93]
- [Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]
- [Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]
- [Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
- [Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]
- [Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
- [Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
- [Filed 7/10/98, Notice 6/3/98—published 7/29/98, effective 9/2/98]
- [Filed 10/2/98, Notice 8/26/98—published 10/21/98, effective 11/25/98]
- [Filed 11/13/98, Notice 10/7/98—published 12/2/98, effective 1/6/99]
- [Filed 12/23/99, Notice 11/17/99—published 1/12/00, effective 2/16/00]
- [Filed 1/5/01, Notice 11/29/00—published 1/24/01, effective 2/28/01]
- [Filed 5/24/01, Notice 4/18/01—published 6/13/01, effective 7/18/01]
- [Filed 12/7/01, Notice 10/31/01—published 12/26/01, effective 1/30/02]
- [Filed 2/1/02, Notice 12/26/01—published 2/20/02, effective 3/27/02]
- [Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]
- [Filed 3/15/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]
- [Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]<sup>◊</sup>
- [Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]

[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]  
[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]◊  
[Filed 10/24/03, Notice 9/17/03—published 11/12/03, effective 12/17/03]◊  
[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]  
[Filed 12/5/03, Notice 10/15/03—published 12/24/03, effective 1/28/04]◊  
[Filed 12/31/03, Notice 11/26/03—published 1/21/04, effective 2/25/04]  
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]◊  
[Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]  
[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]  
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]  
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
[Filed 12/3/04, Notice 10/27/04—published 12/22/04, effective 1/26/05]  
[Filed 1/14/05, Notice 12/8/04—published 2/2/05, effective 3/9/05]  
[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]◊  
[Filed 10/20/05, Notice 9/14/05—published 11/9/05, effective 12/14/05]  
[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]◊  
[Filed 1/27/06, Notice 12/21/05—published 2/15/06, effective 3/22/06]  
[Filed 6/2/06, Notice 3/29/06—published 6/21/06, effective 7/26/06]  
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]  
[Filed 9/8/06, Notice 7/19/06—published 9/27/06, effective 11/1/06]  
[Filed 10/5/06, Notice 8/30/06—published 10/25/06, effective 11/29/06]◊  
[Filed 11/1/06, Notice 8/16/06—published 11/22/06, effective 12/27/06]  
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]  
[Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]  
[Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]  
[Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]  
[Filed 10/19/07, Notice 9/12/07—published 11/7/07, effective 12/12/07]◊  
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
[Filed 5/2/08, Notice 3/26/08—published 5/21/08, effective 6/25/08]  
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]◊  
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]  
[Filed ARC 9104B (Notice ARC 8954B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

◊ Two or more ARCs



CHAPTER 44  
PENALTY AND INTEREST  
[Prior to 12/17/86, Revenue Department[730]]

**701—44.1(422) Penalty.** See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 421.27 and 422.25.

**701—44.2(422) Computation of interest on unpaid tax.** Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

This rule is intended to implement Iowa Code sections 421.7 and 422.25.

**701—44.3(422) Computation of interest on refunds resulting from net operating losses.** If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment, whichever is later.

This rule is intended to implement Iowa Code section 422.25.

**701—44.4(422) Computation of interest on overpayments.** If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

**701—44.5(422) Waiver of penalty and interest related to certain casualty losses.** Rescinded IAB 11/2/11, effective 12/7/11.

[Filed 12/12/74]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed emergency 6/6/80—published 6/25/80, effective 6/6/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]

[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]

[Filed 12/13/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]

[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]

[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]

[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]

[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]

[Filed 2/8/85, Notice 1/2/85—published 2/27/85, effective 4/3/85]

[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]

[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]

[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]

[Filed ARC 9103B (Notice ARC 8944B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]

[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]



CHAPTER 52  
FILING RETURNS, PAYMENT OF TAX,  
PENALTY AND INTEREST, AND TAX CREDITS  
[Prior to 12/17/86, Revenue Department[730]]

**701—52.1(422) Who must file.** Every corporation, organized under the laws of Iowa or qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

For tax years beginning on or after January 1, 1989, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real or tangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

For tax years beginning on or after January 1, 1995, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. For tax years beginning on or after January 1, 1999, every corporation doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

Political organizations described in Internal Revenue Code Section 527 which are domiciled in this state and are required to file federal Form 1120POL and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

Homeowners associations described in Internal Revenue Code Section 528 which are domiciled in this state and are required to file federal Form 1120H and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

**52.1(1) Definitions.**

*a. Doing business.* The term “doing business” is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be “doing business.” In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

*b. Representative.* A person may be considered a representative even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

*c. Tangible property having a situs within this state.* The term “tangible property having a situs within this state” means that tangible property owned or used by a foreign corporation is habitually present in Iowa or it maintains a fixed and regular route through Iowa sufficient so that Iowa could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S. Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller*, 202 U.S. 584, 26 S. Ct. 714, 50 L.Ed. 1155 (1906); *American Refrigerator Transit Company v. State Tax Commission*, 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review*, Woodbury County, 210 N.W.2d 828.

*d. Intangible property located or having a situs within Iowa.* Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term “intangible property located or having a situs within Iowa” means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring

regularly in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Kmart Properties, Inc. v. Taxation & Revenue Department of New Mexico*, 131 P. 3d 27 (N.M. Ct. App. 2001), rev'd on other issues, 131 P. 3d 22 (N.M. 2005); *Secretary, Department of Revenue v. Gap (Apparel), Inc.*, 886 So. 2d 459 (La.Ct.App. 2004); *A & F Trademark v. Tolson*, 605 S.E. 2d 187 (N.C.App. 2004), cert. denied 126 S.Ct. 353 (2005); *Lanco, Inc. v. Director, Division of Taxation*, 879 A.2d 1234 (N.J.Super.A.D. 2005), aff'd, 908 A.2d 176 (N.J. 2006) (per curiam), cert. denied 127 S.Ct. 2974 (June 18, 2007); *Geoffrey, Inc. v. Oklahoma Tax Commission*, 132 P. 3d 632 (Okla. Ct. Civ. App. 2005), cert. denied (Mar. 20, 2006), as corrected (Apr. 12, 2006); *FIA Card Services, Inc. v. Tax Comm'r*, 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (June 18, 2007); *Capital One Bank v. Commissioner of Revenue*, 899 N.E.2d 76 (Mass. 2009); *Geoffrey, Inc. v. Commissioner of Revenue*, 899 N.E.2d 87 (Mass. 2009). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, trademarks, trade names, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, mortgage loans, consumer loans, business loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts such as credit card debt, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

**52.1(2) Corporate activities not creating taxability.** Public Law 86-272, 15 U.S.C.A., Sections 381-385, in general prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and, if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272. Public Law 86-272 does not extend to those corporations which sell services, real estate, or intangibles in more than one state or to domestic corporations. For example, Public Law 86-272 does not extend to brokers or manufacturers' representatives or other persons or entities selling products for another person or entity.

*a.* If the only activities in Iowa of a foreign corporation selling tangible personal property are those of the type described in the noninclusive listing below, the corporation is protected from the Iowa corporation income tax law by Public Law 86-272.

(1) The free distribution by salespersons of product samples, brochures, and catalogues which explain the use of or laud the product, or both.

(2) The lease or ownership of motor vehicles for use by salespersons in soliciting orders.

(3) Salespersons' negotiation of a price for a product, subject to approval or rejection outside the taxing state of such negotiated price and solicited order.

(4) Demonstration by salesperson, prior to the sale, of how the corporation's product works.

(5) The placement of advertising in newspapers, radio, and television.

(6) Delivery of goods to customers by foreign corporation in its own or leased vehicles from a point outside the taxing state. Delivery does not include nonimmune activities, such as picking up damaged goods.

(7) Collection of state or local-option sales taxes or state use taxes from customers.

(8) Audit of inventory levels by salespersons to determine if corporation's customer needs more inventory.

(9) Recruitment, training, evaluation, and management of salespersons pertaining to solicitation of orders.

(10) Salespersons' intervention/mediation in credit disputes between customers and non-Iowa located corporate departments.

(11) Use of hotel rooms and homes for sales-related meetings pertaining to solicitation of orders.

(12) Salespersons' assistance to wholesalers in obtaining suitable displays for products at retail stores.

- (13) Salespersons' furnishing of display racks to retailers.
- (14) Salespersons' advice to retailers on the art of displaying goods to the public.
- (15) Rental of hotel rooms for short-term display of products.
- (16) Mere forwarding of customer questions, concerns, or problems by salespersons to non-Iowa locations.

*b.* For tax years beginning on or after January 1, 1996, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state are one or more of the following activities:

- (1) Holding meetings of the board of directors or shareholders, or holiday parties, or employee appreciation dinners.
- (2) Maintaining bank accounts.
- (3) Borrowing money, with or without security.
- (4) Utilizing Iowa courts for litigation.
- (5) Owning and controlling a subsidiary corporation which is incorporated in or which is transacting business within this state where the holding or parent company has no physical presence in the state as that presence relates to the ownership or control of the subsidiary.
- (6) Recruiting personnel where hiring occurs outside the state.

*c.* For tax years beginning on or after January 1, 1997, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state, in addition to the activities listed in paragraph "b" above, are training its employees or educating its employees, or using facilities in this state for this purpose.

*d.* For tax years beginning on or after January 1, 2006, a foreign corporation will not be considered to be doing business in Iowa or deriving income from sources within Iowa if its only activities within Iowa, in addition to the activities listed in paragraphs "b" and "c" of this subrule, are utilizing a distribution facility in Iowa, owning or leasing property at a distribution facility in Iowa, or selling property shipped or distributed from a distribution facility in Iowa.

A distribution facility is an establishment at which shipments of tangible personal property are processed for delivery to customers. A distribution facility does not include an establishment at which retail sales of tangible personal property or returns of such property are undertaken with respect to retail customers more than 12 days in a year. However, an exception to the 12-day requirement is allowed for distribution facilities that process customer orders by mail, telephone, or electronic means, if the distribution facility also processes shipments of tangible personal property to customers, as long as no more than 10 percent of the goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores its inventory of books at a facility in Iowa. The facility processes orders for these books solely by mail, telephone and the Internet on behalf of A, and customers are not allowed to purchase books at the facility's site in Iowa. The facility processes shipments of these books, and 5 percent of the books at this facility are delivered to purchasers located in Iowa. A does not conduct any other business activities in Iowa. A is not considered to be doing business in Iowa because less than 10 percent of the books at the facility are delivered to an Iowa customer.

EXAMPLE 2: B, a foreign corporation, stores its inventory of compact disks at a facility in Iowa. The facility processes orders for these compact disks solely by mail, telephone and the Internet on behalf of B, and customers are not allowed to purchase compact disks at the facility's site in Iowa. The facility processes shipments of these compact disks, and 15 percent of the compact disks at the facility are delivered to purchasers located in Iowa. B does not conduct any other business activities in Iowa. B is considered to be doing business in Iowa because more than 10 percent of the compact disks at the facility are delivered to an Iowa customer.

EXAMPLE 3: C, a foreign corporation, stores its inventory of doors and windows at a facility in Iowa. The facility processes orders for these windows and doors solely by mail, telephone and the Internet, and customers are not allowed to purchase these windows and doors at the facility's site in Iowa. The facility processes shipments of these windows and doors, and 7 percent of the windows and doors are delivered to purchasers located in Iowa. C will also install these windows and doors in Iowa upon customer request.

C is considered to be doing business in Iowa even though less than 10 percent of the windows and doors are delivered to Iowa customers because C is also conducting installation activities in Iowa which are not protected under Public Law 86-272.

EXAMPLE 4: D, a foreign corporation, stores its inventory of home decorating and craft kits at a facility in Iowa. The facility does not process any customer orders by mail, telephone or the Internet, and does not process any shipments of these kits directly to customers. D allows customers to come to the facility 14 days each year to directly purchase these kits, and customers must arrange for their own delivery of the kits. D is considered to be doing business in Iowa because sales to retail customers are conducted more than 12 days in a year, and the facility does not process customer orders or shipments to customers.

**52.1(3) Corporate activities creating taxability.** “Solicitation of orders” within Public Law 86-272 is limited to those activities which explicitly or implicitly propose a sale or which are entirely ancillary to requests for purchases. Activities that are entirely ancillary to requests for purchases are ones that serve no independent business function apart from their connection to the soliciting of orders. An activity that is not ancillary to requests for purchases is one that a corporation (taxpayer) has a reason to do anyway whether or not it chooses to allocate it to its sales force operating in Iowa (such as repair, installation, service-type activities, or collection on accounts). Activities that take place after a sale ordinarily will not be entirely ancillary to a request for purchases and, therefore, ordinarily will not be considered in “solicitation of orders.” *Wisconsin Department of Revenue v. William Wrigley, Jr. Company*, 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992).

De minimis activities which are not “solicitation of orders” are protected under Public Law 86-272. Whether in-state nonsolicitation activities are sufficiently de minimis to avoid loss of tax immunity depends upon whether those activities establish only a trivial additional connection with the taxing state. Whether a corporation’s nonsolicitation in-state activities are de minimis should not be decided solely by the quantity of one type of such activity but, rather, all types of nonsolicitation activities of the taxpayer should be considered in their totality. *Wisconsin v. Wrigley*, 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992). Frequency of the activity may be relevant, but an isolated activity is not invariably trivial. The mere fact that an activity involves small amounts of money or property does not invariably mean it is trivial.

If a foreign corporation has greater than a de minimis amount of Iowa nonsolicitation activity which includes activity of the types described in the noninclusive listing below, whether done by the salesperson, other employee, or other representative, it is not immunized from the Iowa corporation income tax by Public Law 86-272.

- a. Installation or assembly of the corporate product.
- b. Ownership or lease of real estate by corporation.
- c. Solicitation of orders for, or sale of, services or real estate.
- d. Sale of tangible personal property (as opposed to solicitation of orders) or performance of services within Iowa.
- e. Maintenance of a stock of inventory.
- f. Existence of an office or other business location.
- g. Managerial activities pertaining to nonsolicitation activities.
- h. Collections on regular or delinquent accounts.
- i. Technical assistance and training given after the sale to purchaser and user of corporate products.
- j. The repair or replacement of faulty or damaged goods.
- k. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.
- l. Rectification of or assistance in rectifying any product complaints, shipping complaints, etc., if more is involved than relaying complaints to a non-Iowa location.
- m. Delivery of corporate merchandise inventory to corporation’s distributors or dealers on consignment.
- n. Maintenance of personal property which is not related to solicitation of orders.

- o. Participation in recruitment, training, monitoring, or approval of servicing distributors, dealers, or others where purchasers of corporation's products can have such products serviced or repaired.
- p. Inspection or verification of faulty or damaged goods.
- q. Inspection of the customer's installation of the corporate product.
- r. Research.
- s. Salespersons' use of part of their homes or other places as an office if the corporation pays for such use.
- t. The use of samples for replacement or sale; storage of such samples at home or in rented space.
- u. Removal of old or defective products.
- v. Verification of the destruction of damaged merchandise.
- w. Independent contractors, agents, brokers, representatives and other individuals or entities who act on behalf of or at the direction of the corporation (taxpayer) and who do non-de minimis amounts of nonsolicitation activities remove the corporation from the protection of Public Law 86-272. However, the maintenance of an office in Iowa or the making of sales in Iowa by independent contractors does not remove the corporation from the protection of Public Law 86-272. The term "independent contractors" means commission agents, brokers, or other independent contractors who are engaged in selling or soliciting orders for the sale of tangible personal property or perform other services for more than one principal and who hold themselves out as such in the regular course of their business activities. If a person is subject to the direct control of the foreign corporation that person may not qualify as an independent contractor.

**52.1(4)** *Taxation of corporations having only intangible property located or having a situs in Iowa.* For tax years beginning on or after January 1, 1995, corporations whose only connection with Iowa is their ownership of intangible property located or having a situs in Iowa are subject to Iowa income tax and must file an Iowa income tax return. Intangible property is located or has a situs in Iowa if the corporation's commercial domicile is in Iowa and the intangible property has not become an integral part of some business activity occurring regularly within or without Iowa. Regardless whether the corporation's commercial domicile is in or out of Iowa, intangible property is located or has a situs in Iowa if the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Arizona Tractor Company v. Arizona State Tax Commission*, 115 Ariz. 602, 566 P.2d 1348 (Ariz. App. 1977). In the event that the intangible property interest is a general or limited partnership interest, the location or situs of that partnership interest is the place(s) where the partnership conducts business. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a corporation with a commercial domicile in State X, has a limited partnership interest in a partnership which does a regular business in Iowa. A has no physical presence in Iowa and has no other contact with Iowa. A's interest in the limited partnership is intangible personal property. A is required to file an Iowa income tax return because A's intangible personal property limited partnership interest has a business situs in Iowa. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

EXAMPLE 2: B, a corporation with a commercial domicile in State X, owns stock in a subsidiary corporation doing business regularly in Iowa. B has no physical presence in Iowa and has no other contact with Iowa. B controls the subsidiary and has a unitary relationship with it. B pledged the subsidiary stock to secure a line of credit from a bank and used the loaned funds in B's business. Under these circumstances, the subsidiary stock is not an integral part of the subsidiary's business and, therefore, the stock does not have a location or situs in Iowa. Accordingly, B is not required to file an Iowa income tax return as a result of any dividends received by B or capital gains received by B from the sale of the stock. *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988).

EXAMPLE 3: C, a corporation with a commercial domicile in State X, owns trademarks and trade names which it, by license agreements, allows other corporations to use. Some of those other corporations do business in Iowa. The trademarks and trade names are used by these other corporations at their Iowa stores in connection with their business activities at those stores. C has no physical presence in Iowa and has no other contact with Iowa. C is paid royalties of 1 percent of net sales of the

licensed products or services. C is required to file an Iowa income tax return because C's intangible property interests in the trademarks and trade names have situs in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993).

EXAMPLE 4: D, a corporation with a commercial domicile in Iowa, is a holding company which does not sell any tangible personal property or sell any business service but which does own the stock of five subsidiaries, all of which do business outside of Iowa. D has no physical presence outside of Iowa and has no other contact outside of Iowa. D has a unitary relationship with each subsidiary. Under these circumstances, the stock is not an integral part of each subsidiary's business so the stock does not have a location or situs outside of Iowa. The location or situs of the stock is in Iowa because D's commercial domicile is in Iowa. Accordingly, all of the dividends from the stock paid to D and any capital gains incurred as a result of D's sale of the stock are wholly taxed by Iowa.

EXAMPLE 5: E, a corporation with a commercial domicile in Iowa, owns trademarks and trade names which it, by license agreements, allows other corporations, located outside of Iowa, to use. The trademarks and trade names are used by these other corporations at their non-Iowa stores in connection with their business activities at those stores. E has no physical presence outside of Iowa and has no other contact outside of Iowa. E has business activities in Iowa. The fees and royalties paid to E are part of E's unitary business income. Under these circumstances, E is entitled to apportion its net income within and without Iowa because E's intangible property interests in the trademarks and trade names have situs outside of Iowa and E has business activities in Iowa.

EXAMPLE 6: F, a corporation with a commercial domicile in State X, owns all of the stock of a subsidiary corporation doing business in Iowa. F has no physical presence in Iowa and no other contact with Iowa. F loans funds to the subsidiary which the subsidiary uses in its Iowa business. Under these circumstances, the interest-bearing asset is not an integral part of the subsidiary's business and, therefore, that intangible asset does not have a location or situs in Iowa. Accordingly, F is not required to file an Iowa income tax return. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed.131, 51 S.Ct. 54 (1930).

EXAMPLE 7: G, a corporation with a commercial domicile in State X, earns fees from the licensing of custom computer software. G has no physical presence in Iowa and no other contact with Iowa. G licenses the software to other corporations which do business in Iowa and which use the software in that business in Iowa. Under these circumstances, regardless whether the fees constitute royalties or something else, the license fees are earned from intangible personal property with a location or situs in Iowa. Accordingly, G is required to file an Iowa income tax return.

EXAMPLE 8: H, a corporation with a commercial domicile in State X, has no physical presence in Iowa. H has entered into a contract with an independent contractor to solicit sales of H's magazines in Iowa. The independent contractor does business in Iowa and receives payment for the magazines and deposits the funds in an Iowa bank for H's account. H earns interest on this account. Under these circumstances which are H's only contact with Iowa, H's interest-bearing account is an integral part of business activity in Iowa. Accordingly, H is required to file an Iowa income tax return and include the interest income in the numerator of the business activity formula.

EXAMPLE 9: J, a corporation with a commercial domicile in State X, earns income from mortgages that the corporation has purchased. J has no physical presence in Iowa and no other contact with Iowa. J earns interest income from the mortgages on property located in Iowa. Under these circumstances, the interest income is an integral part of business activity in Iowa. Accordingly, J is required to file an Iowa income tax return and include the interest income from the mortgages related to Iowa property in the numerator of the apportionment factor.

**52.1(5)** *Taxation of "S" corporations, domestic international sales corporations and real estate investment trusts.* Certain corporations and other types of entities, which are taxable as corporations for federal purposes, may by federal election and qualification have a portion or all of their income taxable to the shareholders or the beneficiaries. Generally, the state of Iowa follows the federal provisions (with adjustments provided by Iowa law) for determining the amount and to whom the income is taxable. Examples of entities which may avail themselves of pass-through provisions for taxation of at least part of their net income are real estate investment trusts, small business corporations electing to file

under Sections 1371-1378 of the Internal Revenue Code, domestic international sales corporations as authorized under Sections 991-997 of the Internal Revenue Code, and certain types of cooperatives and regulated investment companies. The entity's portion of the net income which is taxable as corporation net income for federal purposes is generally also taxable as Iowa corporation income (with adjustments as provided by Iowa law) and the shareholders or beneficiaries will report on their Iowa returns their share of the organization's income reportable for federal purposes as shareholder income (with adjustments provided by Iowa law). Nonresident shareholders or beneficiaries are required to report their distributive share of said income reasonably attributable to Iowa sources. Schedules shall be filed with the individual's return showing the computation of the income attributable to Iowa sources and the computation of the nonresident taxpayer's distributive share thereof. Entities with a nonresident beneficiary or shareholder shall include a schedule in the return computing the amount of income as determined under 701—Chapter 54. It will be the responsibility of the entity to make the apportionment of the income and supply the nonresident taxpayer with information regarding the nonresident taxpayer's Iowa taxable income.

For tax years beginning on or after January 1, 1995, S corporations which are subject to tax on built-in gains under Section 1374 of the Internal Revenue Code or passive investment income under Section 1375 of the Internal Revenue Code are subject to Iowa corporation income tax on this income to the extent received from business carried on in this state or from sources in this state.

a. The starting point for computing the Iowa tax on built-in gains is the amount of built-in gains subject to federal tax after considering the federal income limitation. The starting point for computing the capital gains subject to Iowa tax is the amount of capital gains subject to federal tax. The starting point for computing the passive investment income subject to Iowa income tax is the amount of passive investment income subject to federal tax. To the extent that any of the above three types of income exist for federal income tax purposes, they are combined for Iowa income tax purposes.

b. No adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation for tax years beginning prior to January 1, 2008. The 50 percent of federal income tax and Iowa corporation income tax deducted in computing federal net income are adjustments to the Iowa net income which flows through to the shareholders for tax years beginning prior to January 1, 2008. For tax years beginning on or after January 1, 2008, an adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation.

c. The allocation and apportionment rules of 701—Chapter 54 apply to nonresident shareholders if the S corporation is carrying on business within and without the state of Iowa.

d. Any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain, capital gains, or passive investment income of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, after the year of the net operating loss, the amount of the net recognized built-in gain shall be treated as taxable income. For taxable years beginning after August 5, 1997, a net operating loss can be carried forward 20 taxable years.

e. Except for estimated and other advance tax payments and any credit carryforward under Iowa Code section 422.33 arising in a taxable year for which the corporation was a C corporation no credits shall be allowed against the built-in gains tax or the tax on capital gains or passive investment income.

For tax years beginning after 1996, Iowa recognizes the federal election to treat subsidiaries of a parent corporation that has elected S corporation status as "qualified subchapter S subsidiaries" (QSSSs). To the extent that, for federal income tax purposes, the incomes and expenses of the QSSSs are combined with the parent's income and expenses, they must be combined for Iowa tax purposes.

**52.1(6) Exempted corporations and organizations filing requirements.**

a. *Exempt status.* An organization that is exempt from federal income tax under Section 501 of the Internal Revenue Code, unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code, is exempt from Iowa corporation income tax except as set forth in paragraph "e"

of this subrule. The department may, if a question arises regarding the exempt status of an organization, request a copy of the federal determination letter.

*b. Information returns.* Every corporation shall file returns of information as provided by Iowa Code sections 422.15 and 422.16 and any regulations regarding information returns.

*c. Annual return.* An organization or association which is exempt from Iowa corporation income tax because it is exempt from federal income tax is not required to file an annual income tax return unless it is subject to the tax on unrelated business income. The organization shall inform the director in writing of any revocation of or change of exempt status by the Internal Revenue Service within 30 days after the federal determination.

*d. Tax on unrelated business income for tax years beginning on or after January 1, 1988.* A tax is imposed on the unrelated business income of corporations, associations, and organizations exempt from the general business tax on corporations by Iowa Code section 422.34, subsection 2, to the extent this income is subject to tax under the Internal Revenue Code. The exempt organization is also subject to the alternative minimum tax imposed by Iowa Code section 422.33(4).

The exempt corporation, association, or organization must file Form IA 1120, Iowa Corporation Income Tax Return, to report its income and complete Form IA 4626 if subject to the alternative minimum tax. The exempt organization must make estimated tax payments if its expected income tax liability for the year is \$1,000 or more.

The tax return is due the last day of the fourth month following the last day of the tax year and may be extended for six months by filing Form IA 7004 prior to the due date. For tax years beginning on or after January 1, 1991, the tax return is due on the fifteenth day of the fifth month following close of the tax year and may be extended six months if 90 percent of the tax is paid prior to the due date.

The starting point for computing Iowa taxable income is federal taxable income as properly computed before deduction for net operating losses. Federal taxable income shall be adjusted as required in Iowa Code section 422.35.

If the activities which generate the unrelated business income are carried on partly within and partly without the state, then the taxpayer should determine the portion of unrelated business income attributable to Iowa by the apportionment and allocation provisions of Iowa Code section 422.33.

The provisions of 701—Chapters 51, 52, 53, 54, 55 and 56 apply to the unrelated business income of organizations exempt from the general business tax on corporations.

*e. Certain posts or organizations of past or present armed forces members may be tax-exempt corporations for tax years beginning after May 21, 2003.* An organization that would have qualified as an organization exempt from federal income tax under Section 501(c)(19) of the Internal Revenue Code but for the fact that the requirement that 75 percent of the members need to be past or present armed forces members is not met because the membership includes ancestors or lineal descendants is considered to be an organization exempt from federal income tax.

This change is effective for tax years beginning after May 21, 2003.

**52.1(7) *Income tax of corporations in liquidation.*** When a corporation is in the process of liquidation, or in the hands of a receiver, the income tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such corporations, and must be filed at the same time and in the same manner as required of other corporations.

**52.1(8) *Income tax returns for corporations dissolved.*** Corporations which have been dissolved during the income year must file income tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a corporation dissolves and disposes of its assets without making provision for the payment of its accrued Iowa income tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

**52.1(9) *Income tax returns for corporations storing goods in an Iowa warehouse.*** For tax years beginning on or after January 1, 2001, foreign corporations are not required to file income tax returns

if their only activities in Iowa are the storage of goods for a period of 60 consecutive days or less in a warehouse for hire located in Iowa, provided that the foreign corporation transports or causes a carrier to transport such goods to that warehouse and that none of these goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 45 consecutive days. The goods are then delivered to a purchaser outside Iowa. If this is A's only activity in Iowa, A is not required to file an Iowa income tax return.

EXAMPLE 2: B, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 75 consecutive days. The goods are then delivered to a purchaser outside Iowa. B is required to file an Iowa income tax return because the goods were stored in Iowa for more than 60 consecutive days.

EXAMPLE 3: C, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. One percent of these goods are shipped to a purchaser in Iowa, and the other 99 percent are shipped to a purchaser outside Iowa. C is required to file an Iowa income tax return because a portion of the goods were shipped to a purchaser in Iowa.

EXAMPLE 4: D, a foreign corporation, has retail stores in Iowa. D also stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. The goods are then delivered to a purchaser outside Iowa. D is required to file an Iowa income tax return because its Iowa activities are not limited to the storage of goods in a warehouse for hire in Iowa.

EXAMPLE 5: E, a foreign corporation, has goods delivered by a common carrier, F, into a warehouse for hire in Iowa. The goods are stored in the warehouse for a period of 40 consecutive days, and are then delivered to a purchaser outside Iowa. If this is E's only activity in Iowa, E is not required to file an Iowa income tax return. However, F is required to file an Iowa income tax return because it derives income from transportation operations in Iowa.

**52.1(10) *Deferment of income for start-up companies.*** For tax periods beginning on or after January 1, 2002, but before January 1, 2008, a business that qualifies as a "start-up" business can defer taxable income for the first three years that the business is in operation. The deferment of income for start-up companies is repealed effective for tax years beginning on or after January 1, 2008.

*a. Definition of start-up business.* A start-up business for purposes of this subrule does not include any of the following:

- (1) An existing business locating in Iowa from another state.
- (2) An existing business locating in Iowa from another location in Iowa.
- (3) A newly created business which is the result of the merger of two or more businesses.
- (4) A newly created subsidiary or new business of a corporation.
- (5) A previously existing business which has been dissolved and reincorporated.
- (6) An existing business operating under a different name and located in a different location.
- (7) A newly created partnership owned by two or more of the same partners as an existing business and engaging in similar business activity as the existing business.
- (8) A business entity that reorganizes or experiences a change in either the legal or trade name of the business.
- (9) A joint venture.

*b. Criteria for deferment of taxable income.* In order to qualify for the deferment of taxable income for a start-up business, each of the following criteria must be met:

- (1) The taxpayer is a business that is a wholly new start-up business beginning operations during the first tax year for which the deferment of taxable income is claimed.
- (2) The business has its commercial domicile, as defined by Iowa Code section 422.32, in Iowa.
- (3) The operations of the business are funded by at least 25 percent venture capital moneys. "Venture capital moneys" means an equity investment from an individual or a private seed and venture capital fund whose only business is investing in seed and venture capital opportunities. "Venture capital moneys" does not mean a loan or other nonequity financing from a person, financial institution or other entity.

(4) The taxpayer does not have any delinquent taxes or other debt outstanding and owing to the state of Iowa.

*c. Request for deferment of income.* A taxpayer must submit a request to the department for the deferment of taxable income. The request must provide evidence that all of the criteria to qualify as a start-up business have been met. The request should be made as soon as possible after the close of the first tax year of the business. The request is to be filed with the Iowa Department of Revenue, Policy Section, Compliance Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. Upon determination that the criteria have been met, the department will notify the taxpayer that the deferment of taxable income is approved. If the request for deferment of taxable income is denied, the taxpayer may file a protest within 60 days of the date of the letter denying the request for deferment of taxable income. The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

*d. Filing of tax returns.* If the request for deferment of taxable income is approved, taxable income for the first three years that the business is in operation is deferred. The taxpayer shall pay taxes on the deferred taxable income in five equal annual installments during the five tax years following the three years of deferment. Tax returns must be filed for each tax year in which the deferment is approved. If the taxpayer has a net loss during any tax year during the three-year deferment period, the loss may be applied to any deferred taxable income during that period. For purposes of assessing penalty and interest, the tax on any deferred income is not due and payable until the tax years in which the five equal annual installments are due and payable.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1:** A qualifying start-up business reports Iowa taxable income of \$1,000 in year one, \$5,000 in year two and \$10,000 in year three. The total tax deferred is \$60 in year 1, \$300 in year two and \$600 in year three, or \$960. The taxpayer shall pay \$192 (\$960 divided by 5) in deferred tax for each of the next five tax returns. No penalty or interest is due on the deferred annual tax of \$192 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that \$192 of additional tax is due annually for years four through eight, and when the additional payments of \$192 are due.

**EXAMPLE 2:** A qualifying start-up business reports an Iowa taxable loss of \$10,000 in year one, a loss of \$2,000 in year two and taxable income of \$22,000 in year three. The losses for year one and year two can be netted against the income in year three, resulting in deferred taxable income of \$10,000. The tax of \$600 computed on income of \$10,000 will be paid in five equal installments of \$120 for the next five tax returns. No penalty or interest is due on the deferred annual tax of \$120 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that \$120 of additional tax is due annually for years four through eight and when the additional payments of \$120 are due.

This rule is intended to implement Iowa Code sections 422.21, 422.32, 422.33, 422.34, 422.34A, and 422.36 and Iowa Code section 422.24A as amended by 2008 Iowa Acts, Senate File 2400, section 66.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

#### **701—52.2(422) Time and place for filing return.**

**52.2(1) Returns of corporations.** A return of income for all corporations must be filed on or before the due date. The due date for all corporations excepting cooperative associations as defined in Section 6072(d) of the Internal Revenue Code is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

**52.2(2) Returns of cooperatives.** A return of income for cooperatives, defined in Section 6072(d) of the Internal Revenue Code, must be filed on or before the fifteenth day of the ninth month following the close of the taxpayer's taxable year.

**52.2(3) Short period returns.** Where under a provision of the Internal Revenue Code, a corporation is required to file a tax return for a period of less than 12 months, a short period Iowa return must be filed for the same period. The short period Iowa return is due 45 days after the federal due date, not considering any federal extension of time to file.

**52.2(4) Extension of time for filing returns for tax years beginning on or after January 1, 1991.** See 701—subrule 39.2(4).

This rule is intended to implement Iowa Code sections 422.21 and 422.24.

#### **701—52.3(422) Form for filing.**

**52.3(1) Use and completeness of prescribed forms.** Returns shall be made by corporations on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

**52.3(2) Form for filing—domestic corporations.** A domestic corporation, as defined by Iowa Code subsection 422.32(5), is required to file a complete Iowa return for each year of its existence regardless of whether the corporation has income, loss, or inactivity. For tax periods beginning on or after January 1, 1999, domestic corporations are required to file a complete Iowa return only if they are doing business in Iowa, or deriving income from sources within Iowa. However, the corporation may substitute a copy of the true and accurate federal income tax return as filed with the Internal Revenue Service in lieu of certain Iowa return schedules. This substitution is optional, but in all instances a detailed computation of the federal tax liability actually due the federal government shall be required as a part of the Iowa return. The Iowa schedules subject to the substitution provision are: income statement, balance sheet, reconciliation of income per books with income per return and analysis of unappropriated retained earnings per books.

When a domestic corporation is included in the filing of a consolidated federal income tax return, the Iowa corporation income tax return shall include a schedule of the consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group, and a schedule of capital gains on a separate basis.

If a domestic corporation claims a foreign tax credit, research activities credit, alcohol fuel credit, employer social security credit, or work opportunity credit on its federal income tax return, a detailed computation of the credits claimed shall be included with the Iowa return upon filing. In those instances where the domestic corporation is involved in the filing of a consolidated federal income tax return, the credit computations shall be reported on a separate entity basis.

Similarly, where a domestic corporation is charged with a holding company tax or an alternative minimum tax, the details of the taxes levied shall be put forth in a schedule to be included with the Iowa return. Furthermore, these taxes shall be identified on a separate company basis where the domestic corporation files as a member of a consolidated group for federal purposes.

**52.3(3) Form for filing—foreign corporations.** Foreign corporations, as defined by Iowa Code subsection 422.32(6), must include a true and accurate copy of their federal corporation income tax

return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, research activities credit computation, work opportunity credit computation, foreign tax credit computation, alcohol fuel credit computation, employer social security credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.

When a foreign corporation whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

- a. Capital gains.
- b. Dividend income and special deductions.
- c. Research activities credit, alcohol fuel credit and employer social security credit computations.
- d. Work opportunity credit computation.
- e. Foreign tax credit computation.
- f. Holding company tax computation.
- g. Alternative minimum tax computation.
- h. Schedules detailing other income and other deductions.

**52.3(4) Amended returns.** If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 51.2(1) and rule 701—55.3(422).

This rule is intended to implement Iowa Code section 422.21.

#### **701—52.4(422) Payment of tax.**

**52.4(1) Quarterly estimated payments.** Effective for taxable years beginning on or after July 1, 1977, corporations are required to make quarterly payments of estimated income tax. Rules pertaining to the estimated tax are contained in 701—Chapter 56.

**52.4(2) Full estimated payment on original due date.** Rescinded IAB 3/15/95, effective 4/19/95.

**52.4(3) Penalty and interest on unpaid tax.** See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

**52.4(4) Payment of tax by uncertified checks.** The department will accept uncertified checks in payment of income taxes, provided the checks are collectible for their full amount without any deduction for exchange or other charges unless requirements for electronic transmission of remittances and related information specify otherwise. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more corporations' taxes, the remittance must be accompanied by a letter of transmittal stating: (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the

name of each corporation whose tax is to be paid by the remittance; and (e) the amount of payment on account of each corporation.

**52.4(5) Procedure with respect to dishonored checks.** If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from his obligation until the check has been paid.

**52.4(6) New jobs credit.** Transferred to 701—52.8(422) IAB 11/28/90, effective 1/2/91.

This rule is intended to implement Iowa Code sections 422.21, 422.24, 422.25, 422.33 and 422.86.

**701—52.5(422) Minimum tax.**

**52.5(1)** Rescinded IAB 11/24/04, effective 12/29/04.

**52.5(2)** For tax years beginning after 1997, a small business corporation or a new corporation for its first year of existence, which through the operation of Internal Revenue Code Section 55(e) is exempt from the federal alternative minimum tax, is not subject to Iowa alternative minimum tax. A small business corporation may apply any alternative minimum tax credit carryforward to the extent of its regular corporation income tax liability.

For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code subsection 422.33(1). The minimum tax rate is 60 percent of the maximum corporate tax rate rounded to the nearest one-tenth of 1 percent or 7.2 percent. Minimum taxable income is computed as follows:

|         |  |
|---------|--|
|         | State taxable income as adjusted by Iowa Code section 422.35   |
| Plus:   | Tax preference items, adjustments and losses added back  |
| Less:   | Allocable income including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items         |
|         | Subtotal   |
| Times:  | Apportionment percentage   |
|         | Result   |
| Plus:   | Income allocable to Iowa including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items |
| Less:   | Iowa alternative tax net operating less deduction<br>\$40,000 exemption amount   |
| Equals: | Iowa alternative minimum taxable income  |

For tax years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for Subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for Subsections (a)(4) and (d) of the Internal Revenue Code used to compute federal alternative minimum taxable income. In making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities net of amortization of any discount or premium shall be subtracted. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. In making the adjustment for adjusted current earnings, subtract Foreign Sales Company (FSC) dividend income and Puerto Rican dividend income computed under Internal Revenue Code Section 936 to the extent they are included in the federal computation of adjusted current earnings.

Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

- a. Tax preference items are:
  1. Intangible drilling costs;
  2. Incentive stock options;
  3. Reserves for losses on bad debts of financial institutions;
  4. Appreciated property charitable deductions;
  5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.
- b. Adjustments are:
  1. Depreciation;
  2. Mining exploration and development;
  3. Long-term contracts;
  4. Iowa alternative minimum net operating loss deduction;
  5. Book income or adjusted earnings and profits.
- c. Losses added back are:
  1. Farm losses;
  2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—53.2(422) carried forward from tax years which begin before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years which begin after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying rule 701—53.2(422). The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the \$40,000 exemption exceeds \$150,000. The exemption shall not be reduced below zero.

EXAMPLE: The following example shows the computation of the alternative minimum tax when there are net operating loss carryforwards and carrybacks including an alternative minimum tax net operating loss.

For tax year 1987, the following information is available:

|                                     |           |
|-------------------------------------|-----------|
| Federal taxable income before NOL   | \$182,000 |
| Federal NOL carryforward            | <97,000>  |
| Federal income tax                  | 19,750    |
| Tax preferences and adjustments     | 48,000    |
| Iowa income tax expensed on federal | 2,570     |
| Iowa NOL carryforward               | 147,000   |

For tax year 1988, the following information is available:

|  |             |
|--|-------------|
| Federal taxable income before NOL          | \$<154,000> |
| Federal income tax refund                  | 15,460      |
| Tax preferences and adjustments            | 78,000      |
| Iowa income tax refund reported on federal | 2,570       |

The alternative minimum tax for 1987 before the 1988 net operating loss carryback should be computed as follows:

|   |                        |
|---|------------------------|
| Regular Iowa Tax                            |                        |
| Federal taxable income                      | \$182,000              |
| less 50% federal tax                        | <9,875>                |
| add Iowa income tax expensed                | <u>2,570</u>           |
| Iowa taxable income before NOL carryforward | \$174,695              |
| less NOL carryforward                       | <147,000>              |
| Iowa taxable income                         | \$ 27,695              |
| Iowa income tax                             | \$ 1,716               |
| Alternative Minimum Tax                     |                        |
| Iowa taxable income before NOL              | \$174,695              |
| add preferences and adjustments             | <u>48,000</u>          |
| Total                                       | \$222,695              |
| less NOL carryforward*                      | <u>&lt;147,000&gt;</u> |
| <br>  |                        |
| Iowa alternative taxable income             | \$ 75,695              |
| less exemption amount                       | <u>&lt;40,000&gt;</u>  |
| Total                                       | \$ 35,695              |
| Times 7.2%                                  | 2,570                  |
| Less regular tax                            | <u>&lt;1,715&gt;</u>   |
| Alternative minimum tax                     | \$ 855                 |

\*Net operating loss carryforwards from tax years beginning before January 1, 1987, are deductible at 100 percent without reduction for items of tax preference or adjustments arising in the tax year.

The alternative minimum tax for 1987 after the 1988 net operating loss carryback should be computed as follows:

|   |                        |
|---|------------------------|
| Regular Iowa Tax                              |                        |
| Federal taxable income                        | \$ 182,000             |
| less 50% federal tax                          | <9,875>                |
| add Iowa income tax expensed                  | <u>2,570</u>           |
| Iowa taxable income before NOL carryforward   | \$ 174,695             |
| less NOL carryforward                         | <u>&lt;147,000&gt;</u> |
|   | \$ 27,695              |
| less NOL carryback from 1988 <sup>1</sup>     | <u>&lt;148,840&gt;</u> |
| NOL carryforward                              | \$ <121,145>           |
| <br>  |                        |
| Alternative Minimum Tax                       |                        |
| Iowa taxable income before NOL                | \$ 174,695             |
| add preferences and adjustments               | <u>48,000</u>          |
| Total   | \$ 222,695             |
| less NOL carryforward from pre-1987 tax year  | <u>&lt;147,000&gt;</u> |
| Total   | \$ 75,695              |
| less alternative minimum tax NOL <sup>2</sup> | <u>&lt;68,126&gt;</u>  |
| Total   | \$ 7,569               |
| less exemption                                | <u>&lt;40,000&gt;</u>  |
| Alternative minimum taxable income after NOL  | \$ -0-                 |

<sup>1</sup>Computation of 1988 Iowa NOL

|                                    |                      |
|------------------------------------|----------------------|
| Federal NOL                        | \$<154,000>          |
| add 50% of federal refund          | 7,730                |
| less Iowa refund in federal income | <u>&lt;2,570&gt;</u> |
| Iowa NOL                           | \$<148,840>          |

<sup>2</sup>Computation of 1988 Alternative Minimum Tax NOL

|   |                          |
|---|--------------------------|
| Iowa NOL  | \$<148,840>              |
| add preferences and adjustments   | <u>78,000</u>            |
| Total   | \$ <70,840>              |
| NOL carryback limited to 90% of alternative minimum<br>income before NOL and exemption* | <u>\$ &lt;68,126&gt;</u> |
| Alternative minimum tax NOL carryforward  | \$ 2,705                 |

\*For purposes of the alternative minimum tax, net operating loss carryforward or carryback from tax years beginning after December 31, 1986, must be reduced by items of tax preference and adjustments, and are limited to 90 percent of alternative minimum taxable income before deduction of the post-1986 NOL and the \$40,000 exemption amount ( $\$75,695 \times 90\% = \$68,126$ ).

**52.5(3)** Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

**52.5(4)** Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid by a taxpayer in prior tax years commencing with tax years beginning on or after January 1, 1987, can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

*a.* Computation of minimum tax credit on Schedule IA 8827. The minimum tax credit is computed on Schedule IA 8827 from information on Schedule IA 4626 for prior tax years, from Form IA 1120 and Schedule IA 4626 for the current year and from Schedule IA 8827 for prior tax years.

*b.* Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2007. For 2008, taxpayer reported regular tax less credits of \$8,000 and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$2,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax less credits of \$8,000 and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax less credits exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

*c.* Computation of the minimum tax credit attributable to a member leaving an affiliated group filing a consolidated Iowa corporation income tax return. The amount of minimum tax credit available for carryforward attributable to a member of a consolidated Iowa income tax return shall be computed as follows: The consolidated minimum tax credit available for carryforward from each tax year is multiplied by a fraction, the numerator of which is the separate member's tax preferences and adjustments for the

tax year and the denominator of which is the total tax preferences and adjustments of all members of the consolidated Iowa income tax return for the tax year.

*d.* Computation of the amount of minimum tax credit which may be used by a new member of a consolidated Iowa corporation income tax return. The amount of minimum tax credit carryforward which may be used by a new member of a consolidated Iowa income tax return is limited to the separate member's contribution to the amount by which the regular income tax less credits set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

The separate member's contribution to the amount by which the regular income tax less nonrefundable credits exceeds the tentative minimum tax shall be computed as follows:

$$\frac{\left[ \frac{A}{B} \times C + D \right] \times F}{E} = \text{Separate member's contribution to the amount by which regular income tax less credits set forth in section 422.33 exceeds the tentative minimum tax.}$$

A = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated income subject to apportionment.

D = Separate corporation income allocable to Iowa.

E = Iowa consolidated income subject to tax.

F = The amount by which the regular income tax less credits set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

*e.* Minimum tax credit after merger. When two or more corporations merge or consolidate into one corporation, the minimum tax credit of the merged or consolidated corporations is available for use by the survivor of the merger or consolidation.

This rule is intended to implement Iowa Code section 422.33.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—52.6(422) Motor fuel credit.** A corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. A corporation which holds a motor fuel tax refund permit when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of the income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

Shareholders of S corporations may claim an income tax credit on their individual income tax returns for their respective shares of the motor vehicle fuel taxes paid by the corporations. The credit for a shareholder is that person's pro-rata share of the fuel tax paid by the corporation. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each shareholder.

The corporation must attach to its return a schedule showing the allocation to each shareholder of the motor fuel purchased by the corporation.

This rule is intended to implement Iowa Code section 422.33.

**701—52.7(422) Research activities credit.** Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a tax credit equal to 6.5 percent of the state's apportioned share of qualifying expenditures for increasing research activities. For purposes of this credit, "qualifying expenditures" means the qualifying expenditures for increasing research activities as defined for purposes of the federal

credit for increasing research activities computed under Section 41 of the Internal Revenue Code. For tax years beginning on or after January 1, 1991, “qualifying expenditures” means the qualifying expenditures for increasing research activities as defined for purposes of the federal credit for increasing research activities computed under Section 41 of the Internal Revenue Code as in effect on January 1, 1998. The Iowa research activities credit is made permanent for tax years beginning on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes. The “state’s apportioned share of qualifying expenditures for increasing research activities” must be the ratio of the qualified expenditures in Iowa to total qualified expenditures times total qualifying expenditures for increasing research activities.

**52.7(1)** *Qualified expenditures in Iowa are:*

*a.* Wages for qualified research services performed in Iowa.  
*b.* Cost of supplies used in conducting qualified research in Iowa.  
*c.* Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.

*d.* Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.

**52.7(2)** *Total qualified expenditures are:*

*a.* Wages paid for qualified research services performed everywhere.  
*b.* Cost of supplies used in conducting qualified research everywhere.  
*c.* Rental or lease cost of personal property used in conducting qualified research everywhere.  
*d.* Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.

Qualifying expenditures for increasing research activities is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research expenditures on the shareholder’s individual income tax return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation’s Iowa credit for increasing research expenditures and the shareholder’s pro-rata share. The shareholder’s pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder’s pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation’s tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the taxpayer for the following year.

**52.7(3)** *Research activities credit for tax years beginning in 2000.* Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities.

*a.* The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

*b.* In lieu of the credit computed under paragraph 52.7(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years

beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

*c.* In lieu of the credit computed under paragraph 52.7(3) "a," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.

*d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) "b" and the alternative simplified credit described in paragraph 52.7(3) "c," such amounts are limited to research activities conducted within this state. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

*e.* A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research activities on the shareholder's individual return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation's Iowa credit for increasing research activities and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the corporation for the following year.

**52.7(4) *Research activities credit for an eligible business.*** Effective for tax years beginning on or after January 1, 2000, an eligible business may claim a tax credit for increasing research activities in this state during the period the eligible business is participating in the new jobs and income program with the Iowa department of economic development. An eligible business must meet all the conditions listed under Iowa Code section 15.329, which include requirements to make an investment of \$10 million as indexed for inflation and the creation of a minimum of 50 full-time positions. The research credit authorized in this subrule is in addition to the research activities credit described in 701—subrule 42.11(3) or the research credit described in subrule 52.7(3).

*a.* The additional research activities credit for an eligible business is computed under the criteria for computing the research activities credit under 701—subrule 42.11(3) or under subrule 52.7(3), depending on which of those subrules the initial research credit was computed. The same qualified research expenses and basic research expenses apply in computation of the research credit for an eligible business as were applicable in computing the credit in 701—subrule 42.11(3) or 52.7(3). In addition, if the alternative incremental credit method was used to compute the initial research credit under 701—subrule 42.11(3) or 52.7(3), that method would be used to compute the research credit for an eligible business. Therefore, if a taxpayer that met the qualifications of an eligible business had a research activities credit of \$200,000 as computed under subrule 52.7(3), the research activities credit for the eligible business would result in an additional credit for the taxpayer of \$200,000.

*b.* If the eligible business is a partnership, S corporation, limited liability company, estate or trust where the income from the eligible business is taxed to the individual owners of the business, these

individual owners may claim the additional research activities credit allowed to the eligible business. The research credit is allocated to each of the individual owners of the eligible business on the basis of the pro-rata share of that individual's earnings from the eligible business.

**52.7(5)** *Corporate tax research credit for increasing research activities within an enterprise zone.* Effective for tax years beginning on or after January 1, 2000, for awards made by the Iowa department of economic development prior to July 1, 2010, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. This credit for increasing research activities is in lieu of the research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). For the amount of the credit for increasing research activities within an enterprise zone for awards made by the economic development authority on or after July 1, 2010, see subrule 52.7(6).

*a.* The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Thirteen percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*b.* In lieu of the credit computed under paragraph 52.7(5) "a," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning prior to January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 3.30 percent, 4.40 percent, and 5.50 percent, respectively.

*c.* In lieu of the credit computed under paragraph 52.7(5) "a," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) are 9.10 percent and 3.90 percent, respectively.

*d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) "b" and the alternative simplified credit described in paragraph 52.7(3) "c" of this rule, such amounts are limited to research activities conducted within the enterprise zone. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

*e.* Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.

**52.7(6)** *Research activities credit for awards made by the Iowa department of economic development on or after July 1, 2010.* For eligible businesses approved under the enterprise zone program by the Iowa department of economic development when an award is made on or after July 1, 2010, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. This credit for increasing research activities is in lieu of the

research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). The amount of the credit depends upon the gross revenues of the eligible business.

*a.* The credit equals the sum of the following for eligible businesses with gross revenues of less than \$20 million.

(1) Sixteen and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Sixteen and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percentage equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*b.* The credit equals the sum of the following for eligible businesses with gross revenues of \$20 million or more.

(1) Nine and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Nine and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percentage equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*c.* In lieu of the credit computed under paragraphs 52.7(6)“*a*” and “*b*,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code depend upon the gross revenues of the eligible business.

(1) The percentages are 7 percent and 3 percent, respectively, for eligible businesses with gross revenues of less than \$20 million.

(2) The percentages are 2.1 percent and 0.9 percent, respectively, for eligible businesses with gross revenues of \$20 million or more.

*d.* For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative simplified credit described in paragraph 52.7(3)“*c*” of this rule, such amounts are limited to research activities conducted within the enterprise zone. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2011.

*e.* Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.

**52.7(7) Reporting of research activities credit claims.** Beginning with research activities credit claims filed on or after July 1, 2009, the department shall issue an annual report to the general assembly of all research activities credit claims in excess of \$500,000. The report, which is due by February 15 of each year, will contain the name of each claimant and the amount of the research activities credit for all claims filed during the previous calendar year in excess of \$500,000.

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—52.8(422) New jobs credit.** A tax credit is available to a corporation which has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

**52.8(1) Definitions.**

*a.* The term “*new jobs*” means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa Industrial New Jobs Training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in the state.

*b.* The term “*jobs directly related to new jobs*” means those jobs which directly support the new jobs but does not include in-state employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee’s vacant position is filled by a new employee.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line but does not fill the transferred employee’s position. The new supervisor’s position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee’s old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line and fills the transferred employee’s position with a new employee. The new supervisor’s position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee’s old position was filled by a new employee.

The burden of proof that a job is directly related to new jobs is on the taxpayer.

*c.* The term “*taxable wages*” means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code subsection 96.19(37) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal-year taxpayers, “taxable wages” shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer’s fiscal year begins.

*d.* The term “*agreement*” means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term “agreement” also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitment relating to training programs and new jobs.

*e.* The term “*base employment level*” means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under chapter 260E on the date of the agreement.

*f.* The term “*project*” means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

*g.* The term “*industry*” means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health or professional services. Industry does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. Industry is a business engaged in the above listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

*h.* The term “*new employees*” means the same as new jobs or jobs directly related to new jobs.

*i.* The term “*full-time job*” means any of the following:

- (1) An employment position requiring an average work week of 35 or more hours;
- (2) An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

(3) An aggregation of any number of part-time or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

| <u>Average Number of Weekly Hours</u> | <u>Category</u> |
|---------------------------------------|-----------------|
| More than 0 but less than 15          | ¼               |
| 15 or more but less than 25           | ½               |
| 25 or more but less than 35           | ¾               |
| 35 or more                            | 1 (full-time)   |

**52.8(2)** *How to compute the credit.* The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement the taxpayer hires two additional new employees under the agreement to replace the two employees which left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

**52.8(3)** *When the credit can be taken.* The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement 2 of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the seven new employees.

A shareholder in an S corporation may claim the pro-rata share of the Iowa new jobs credit on the shareholder's individual tax return. The S corporation shall provide each shareholder with a schedule showing the computation of the corporation's Iowa new jobs credit and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa new jobs credit shall be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation. All shareholders of an S corporation shall elect to take the Iowa new jobs credit the same year.

Any new jobs credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91, and 422.110 may be carried forward for ten years or until it is used, whichever is the earliest.

This rule is intended to implement Iowa Code section 422.33.

**701—52.9(422) Seed capital income tax credit.** Rescinded IAB 3/6/02, effective 4/10/02.

**701—52.10(15) New jobs and income program tax credits.** For tax years ending after May 1, 1994, for programs approved after May 1, 1994, but before July 1, 2005, an investment tax credit under Iowa Code section 15.333 and an additional research activities credit under Iowa Code section 15.335 are available to an eligible business. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the investment tax credit and additional research activities credit under the high quality job creation program. Any investment tax credit and additional research activities credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid, and can be claimed on tax returns filed after July 1, 2005.

**52.10(1) Definitions:**

- a. *“Eligible business”* means a business meeting the conditions of Iowa Code section 15.329.
- b. *“Improvements to real property”* includes the cost of utility lines, drilling wells, construction of sewage lagoons, parking lots and permanent structures. The term does not include temporary structures.
- c. *“Machinery and equipment”* means machinery used in manufacturing establishments and computers except point-of-sale equipment as defined in Iowa Code section 427A.1. The term does not include computer software.
- d. *“New investment directly related to new jobs created by the location or expansion of an eligible business under the program”* means the cost of machinery and equipment purchased for use in the operation of the eligible business which has been depreciated in accordance with generally accepted accounting principles and the cost of improvements to real property.

For the cost of improvements to real property to be eligible for an investment tax credit, the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332. Replacement machinery and equipment and additional improvements to real property placed in service during the period of property tax exemption by an eligible business qualify for an investment tax credit.

For tax years beginning on or after January 1, 2001, the requirement that the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332 has been eliminated.

**52.10(2) Investment tax credit.** An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

If an eligible business fails to maintain the requirements of the new jobs and income program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this subrule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**52.10(3) *Research activities credit.*** An additional research activities credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

See also subrule 52.7(3) for the computation of the research activities credit for tax years beginning on or after January 1, 2000, and subrule 52.7(4) for the research activities credit for an eligible business for tax years beginning on or after January 1, 2000.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**52.10(4) *Investment tax credit—value-added agricultural products.*** For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation tax return, and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1.** Corporation A completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation A is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation A applies for a tax credit certificate for the entire unused credit of \$1 million in May 2002. The entire \$1 million is approved by the Iowa department of economic development, so the tax credit certificate is attached to the tax return for the year ending December 31, 2002. Corporation A will request a refund of \$1 million on this tax return.

**EXAMPLE 2.** Corporation B completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation B is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation B applies for a tax credit of \$1 million in May 2002. Due to the proration of available credits, Corporation B is awarded a tax credit certificate for \$400,000. The tax credit certificate is attached to the tax return for the year ending December 31, 2002. Corporation B will request a refund of \$400,000 on this tax return. The remaining \$600,000 of unused credit can be carried forward for the following seven tax years or until the credit is depleted, whichever occurs first. If Corporation B expects no tax liability for the tax period ending December 31, 2002, Corporation B may apply for a tax credit certificate in May 2003 for this \$600,000 amount.

**EXAMPLE 3.** Corporation C completes a value-added agricultural project in March 2002 and has an investment tax credit of \$1 million. Corporation C is required to file an Iowa income tax return and expects a tax liability of \$200,000 for the tax period ending December 31, 2002. Thus, Corporation C applies for a tax credit certificate for the unused credit of \$800,000 in May 2002. A tax credit certificate

is awarded for the entire \$800,000. The tax credit certificate for \$800,000 shall be attached to the tax return for the period ending December 31, 2003, since the certificate is not valid until the year following the project's completion. The tax return for the period ending December 31, 2002, reports a tax liability of \$150,000. The investment credit is limited to \$150,000 for the period ending December 31, 2002, and the remaining \$50,000 can be carried forward for the following seven tax years.

EXAMPLE 4. Corporation D is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation D has an investment tax credit of \$500,000. Corporation D is not required to file an Iowa income tax return because Corporation D is exempt from federal income tax. When filing for the tax credit certificate in May 2003 for the \$500,000 unused credit, Corporation D must attach a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue tax credit certificates to each member on the list based on each member's interest in the cooperative. The members can attach the tax credit certificate to their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 5. Corporation E is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation E has an investment tax credit of \$500,000. Corporation E is required to file an Iowa income tax return because Corporation E is not exempt from federal income tax. Corporation E expects a tax liability of \$100,000 on its Iowa income tax return for the year ending December 31, 2002. Corporation E applies for a tax credit certificate for the unused credit of \$400,000 and elects to transfer the \$400,000 unused credit to its members. When applying for the tax credit certificate in May 2003, Corporation E must provide a list of its members and the pro rata share of each member's earnings in the cooperative. The Iowa department of economic development will issue tax credit certificates to each member of the cooperative. The members can attach the tax credit certificate to their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 6. Corporation F is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation F is a limited liability company that files a partnership return for federal income tax purposes. Corporation F is required to file an Iowa partnership return because Corporation F is not exempt from federal income tax. Corporation F has an investment tax credit of \$500,000 which must be claimed by the individual partners of the partnership based on their pro-rata share of individual earnings of the partnership. Corporation F expects a tax liability of \$200,000 for the individual partners. Corporation F may apply for a tax credit certificate in May 2003 for the unused credit of \$300,000. Corporation F must list the names of each partner and the ownership interest of each partner in order to allocate the investment credit for each partner. The tax credit certificate may be claimed on the partner's Iowa income tax return for the period ending December 31, 2003.

**52.10(5) Corporate tax credit—certain sales taxes paid by developer.** For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

*a. Sales taxes eligible for the credit.* The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

*b. How to claim the credit.* The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph "a." Beginning on July 1, 2009, this information must be provided to the Iowa department of revenue. The

amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. Beginning on July 1, 2009, the Iowa department of revenue shall issue these tax credit certificates.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and 15.335.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

#### **701—52.11(422) Refunds and overpayments.**

**52.11(1) to 52.11(6)** Reserved.

**52.11(7)** *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(8)** *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending on or after July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(9)** *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years ending on or after April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(10)** *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

**52.11(11)** *Overpayment—interest accruing before July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(12)** *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

**52.11(13)** *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(14) Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.** If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

**701—52.12(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be deducted in the following sequence.

1. Franchise tax credit.
2. Disaster recovery housing project tax credit.
3. School tuition organization tax credit.
4. Venture capital credits.
5. Endow Iowa tax credit.
6. Agricultural assets transfer tax credit.
7. Film qualified expenditure tax credit.
8. Film investment tax credit.
9. Redevelopment tax credit.
10. Investment tax credit.
11. Wind energy production tax credit.
12. Renewable energy tax credit.
13. New jobs credit.
14. Economic development region revolving fund tax credit.
15. Charitable conservation contribution tax credit.
16. Alternative minimum tax credit.
17. Historic preservation and cultural and entertainment district tax credit.
18. Corporate tax credit for certain sales tax paid by developer.
19. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
20. Research activities credit.
21. Assistive device credit.
22. Motor fuel credit.
23. Wage-benefits tax credit.
24. Soy-based cutting tool oil tax credit.
25. Refundable portion of investment tax credit, as provided in subrule 52.10(4).
26. E-85 gasoline promotion tax credit.
27. Biodiesel blended fuel tax credit.
28. Soy-based transformer fluid tax credit.
29. Estimated tax and payments with vouchers.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110. [ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.13(422) Livestock production credits.** For rules relating to the livestock production income tax credit refunds see rule 701—43.8(422).

This rule is intended to implement 1996 Iowa Acts, chapter 1197, sections 19, 20, and 21.

**701—52.14(15E) Enterprise zone tax credits.** For tax years ending after July 1, 1997, for programs approved after July 1, 1997, a business which qualifies under the enterprise zone program is eligible to receive tax credits. An eligible business under the enterprise zone program must be approved by the Iowa department of economic development and meet the requirements of Iowa Code section 15E.193. The administrative rules for the enterprise zone program for the Iowa department of economic development may be found at 261—Chapter 59.

**52.14(1) Supplemental new jobs credit from withholding.** An eligible business approved under the enterprise zone program is allowed the supplemental new jobs credit from withholding as provided in 701—subrule 46.9(1).

**52.14(2) Investment tax credit.** An eligible business approved under the enterprise zone program is allowed an investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the eligible business.

The provisions under the new jobs and income program for the investment tax credit described in rule 701—52.10(15) are applicable to the enterprise zone program with the following exceptions:

a. The corporate tax credit for certain sales taxes paid by a developer described in subrule 52.10(5) does not apply for the enterprise zone program.

b. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 52.28(2).

c. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment credit as described in subrule 52.10(4).

**52.14(3) Research activities credit.** An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in subrules 52.7(5) and 52.7(6).

a. *Tax years ending on or after July 1, 2005, but before July 1, 2009.* For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program described in subrule 52.28(1) shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.28(1) for businesses approved under the high quality job creation program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

b. *Tax years ending on or after July 1, 2009.* For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities.

(1) For purposes of this paragraph, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity.

(2) The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality jobs program described in subrule 52.28(1) shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

(3) These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.40(1) for businesses approved under the high quality jobs program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

**52.14(4) *Repayment of incentives.*** Effective July 1, 2003, eligible businesses in an enterprise zone may be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

This rule is intended to implement Iowa Code section 15E.193 and Supplement section 15E.196. [ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.15(15E) Eligible housing business tax credit.** A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in Iowa Code section 15E.193B.

**52.15(1) *Computation of tax credit.*** New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.15(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.

**52.15(2) *Transfer of the eligible housing business tax credit.*** For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax

credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code Supplement section 15E.193B as amended by 2006 Iowa Acts, chapter 1158.

**701—52.16(422) Franchise tax credit.** For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro-rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33, as amended by 1999 Iowa Acts, chapter 95.

**701—52.17(422) Assistive device tax credit.** Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of the assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be

eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

**52.17(1) *Submitting applications for the credit.*** A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved and the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

**52.17(2) *Definitions.*** The following definitions are applicable to this subrule:

*"Assistive device"* means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

*"Business entity"* means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

*"Disability"* means the same as defined in Iowa Code section 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;

5. Alcoholism.

“*Employee*” means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

“*Small business*” means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

“*Workplace modifications*” means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

**52.17(3)** *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of \$2,500 and one shareholder of the S corporation receives 25 percent of the earnings of the corporation, that shareholder would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code section 422.33.

**701—52.18(422) Historic preservation and cultural and entertainment district tax credit.** A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer’s Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for the approved rehabilitation projects of eligible property in Iowa. The administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

**52.18(1)** *Eligible property for the historic preservation and cultural and entertainment district tax credit.* The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.
- c. Property or district designated as a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

**52.18(2)** *Application and review process for the historic preservation and cultural and entertainment district tax credit.*

a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning

July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, \$50 million in historic preservation and cultural and entertainment district tax credits is available. The allocation of the \$50 million of credits for the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, is set forth in rule 223—48.7(303,404A). For fiscal years beginning on or after July 1, 2012, \$45 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.

*b.* For the state fiscal year beginning on July 1, 2009, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2009, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2010. For the state fiscal year beginning July 1, 2010, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2010, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2011. For the state fiscal year beginning July 1, 2011, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2011, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2012.

*c.* Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the applications to be processed.

*d.* The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property.

*e.* Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

**52.18(3)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is 25 percent of the qualified rehabilitation costs made to eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes.

Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation costs that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

For example, the basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the rehabilitated property would have been \$600,000, since for those tax periods any qualified rehabilitation costs used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would be reduced accordingly by the same amount as the reduction required for federal tax purposes.

**52.18(4)** *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation and cultural and entertainment district tax credit certificate, which shall be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is the later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

| Annual Interest Rate | Five-Year Present Value/Dollar Compounded Annually |
|----------------------|--|
| 5%                   | \$.784   |
| 6%                   | \$.747   |
| 7%                   | \$.713   |
| 8%                   | \$.681   |
| 9%                   | \$.650   |
| 10%                  | \$.621   |
| 11%                  | \$.594   |
| 12%                  | \$.567   |
| 13%                  | \$.543   |
| 14%                  | \$.519   |
| 15%                  | \$.497   |
| 16%                  | \$.476   |
| 17%                  | \$.456   |
| 18%                  | \$.437   |

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 2001 which is 11 percent or .594 which results in a refund of \$297,000.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**52.18(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to individual owners of the entity.* When the business entity that has earned a historic preservation and cultural and entertainment district tax credit is an S corporation, partnership, limited liability company, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit is to be allocated to the individual owners. The business entity is to allocate the historic preservation and cultural and entertainment district tax credit to each individual owner in the same pro-rata basis that the earnings or profits of the business entity are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a shareholder of an S corporation received 25 percent of the earnings of the corporation and the corporation had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to the shareholder.

For projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro-rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

**52.18(6)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than \$1,000 shall not be transferable.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 52.18(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2010 Iowa Acts, Senate File 2380, and Iowa Code section 422.33.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.19(422) Ethanol blended gasoline tax credit.** Effective for tax years beginning on or after January 1, 2002, an ethanol blended gasoline tax credit may be claimed against a taxpayer's corporation income tax liability for retail dealers of gasoline. The taxpayer must operate at least one retail motor fuel site at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For fiscal years ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 55.3(5) has not yet expired.

EXAMPLE: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number of

gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a \$250 credit available.

The credit may be calculated on Form IA 6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit can be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involve ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—52.30(422) for the same tax year for the same ethanol gallons.

**EXAMPLE:** A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

**52.19(1) Definitions.** The following definitions are applicable to this rule:

*"Ethanol blended gasoline"* means the same as defined in Iowa Code section 214A.1 as amended by 2006 Iowa Acts, House File 2754, section 3.

*"Gasoline"* means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

*"Motor fuel pump"* means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

*"Retail dealer"* means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

*"Retail motor fuel site"* means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

*"Sell"* means to sell on a retail basis.

**52.19(2) Allocation of credit to owners of a business entity.** If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of \$3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of \$750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

**52.19(3) Repeal of ethanol blended gasoline tax credit.** The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer's fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 701—52.36(422) is available beginning January 1, 2009, for retail dealers of gasoline.

**EXAMPLE:** A taxpayer who is a retail dealer of gasoline has a fiscal year end of April 30, 2009. The taxpayer sold 150,000 gallons of gasoline from May 1, 2008, through December 31, 2008, at the taxpayer's retail motor fuel site, of which 110,000 gallons was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 110,000 less 90,000, or 20,000 gallons. The

taxpayer may claim the ethanol blended gasoline tax credit for the fiscal year ending April 30, 2009, in the amount of \$500, or 20,000 gallons times two and one-half cents.

This rule is intended to implement Iowa Code section 422.33 as amended by 2006 Iowa Acts, House File 2754.

**701—52.20(15E) Eligible development business investment tax credit.** Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

**701—52.21(15E,422) Venture capital credits.**

**52.21(1)** *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have

the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**52.21(2)** *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**52.21(3)** *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code section 15E.43 and sections 15E.51, 15E.66, and 422.33(13) as amended by 2010 Iowa Acts, Senate File 2380.

[ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.22(15) New capital investment program tax credits.** Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

**52.22(1)** *Research activities credit.* A business approved under the new capital investment program is eligible for an additional research activities credit as described in subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 52.7(3).

**52.22(2)** *Investment tax credit.*

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible

business. The percentage is equal to the amount provided in paragraph “b.” New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer’s cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

*b. Tax credit percentage.* The amount of tax credit claimed shall be based on the number of high-quality jobs created as determined by the Iowa department of economic development:

(1) If no high-quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high-quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high-quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high-quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high-quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

*c. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 52.10(4). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

*d. Repayment of benefits.* If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

- (1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- (2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- (3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- (4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- (5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

**52.22(3) Corporate tax credit—certain sales taxes paid by developer.** For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

*a. Sales taxes eligible for the credit.* The sales taxes paid by the third-party developer which are eligible for this credit include the following:

- (1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.
- (2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

*b. How to claim the credit.* The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph "a." The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating

to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and 15.381 to 15.387.  
[ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.23(15E) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 and subsequent calendar years is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount

claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2010 Iowa Acts, Senate File 2380, and Iowa Code section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.24(422) Soy-based cutting tool oil tax credit.** Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit.

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2005 Iowa Acts, Senate File 389.

**701—52.25(15I,422) Wage-benefits tax credit.** Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

**52.25(1) Definitions.** The following definitions are applicable to this rule:

*"Average county wage"* means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

*"Benefits"* means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

*"Department"* means the Iowa department of revenue.

*"Full-time"* means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

“*Grow Iowa values fund*” means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

“*Nonqualified new job*” means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

“*Qualified new job*” or “*job creation*” means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business within the previous 12 months in Iowa.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

“*Retail business*” means a business which sells its product directly to a consumer.

“*Retained qualified new job*” or “*job retention*” means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

“*Service business*” means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside the state.

**52.25(2)** *Calculation of credit.* A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

- a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.
- b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.
- c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro-rata share of the individual’s earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**52.25(3)** *Application for the tax credit, tax credit certificate and amount of tax credit available.*

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

- (1) Name, address and federal identification number of the business.
- (2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa should be included.
- (3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.
- (4) A computation of the amount of credit being requested.
- (5) The address and state of residence of each new employee.
- (6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification number of the partners, shareholders, members or beneficiaries, along with their percentage of the pro-rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

*b.* Upon receipt of the application, the department has 45 days either to approve or disapprove the application. If the department does not act on the application within 45 days, the application is deemed to be approved. If the department disapproves the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of disapproval.

*c.* If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate will contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

*d.* The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million for the fiscal year ending June 30, 2007, and shall not exceed \$4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the \$4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates received after the \$4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million or \$4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

*e.* A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the \$4 million limit for tax credits for the fiscal years ending June 30, 2008, through June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 52.25(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first \$4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

*f.* For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first \$4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of \$4 million were issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the \$4 million in wage-benefits tax credits filed applications totaling \$3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first \$3 million of the available \$4 million will be allowed to these same businesses. The remaining \$1 million that is still available for the year ending June 30, 2008, will

be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining \$1 million in tax credits is issued.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. See 261—subrule 68.3(2) for more detail on the procedures to apply for a waiver of the wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150, or moneys from the grow Iowa values fund.

**52.25(4) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is \$11.86 per hour. If the average county wage per hour for Clayton County is \$11.95 for the fourth quarter of 2005, \$12.05 for the first quarter of 2006, and \$12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is \$12.00 per hour. This wage equates to an average annual wage of \$24,960 ( $\$12.00 \times 40 \text{ hours} \times 52 \text{ weeks}$ ). In order to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$32,448 (130 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$39,936 (160 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is \$13.75 per hour in Grundy County, this wage equates to an average county wage of \$28,600. The wages and benefits for each of these three new employees is \$40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of \$2,000 for each employee ( $\$40,000 \times 5 \text{ percent}$ ), for a total wage-benefits tax credit of \$6,000. If Business E files on a calendar-year basis, the \$6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months, which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the

business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. However, the credit may not be allowed if more than \$4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if more than \$4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

**52.25(5) *Repeal of the wage-benefits tax credit.*** The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June 30, 2011, as provided in subrule 52.25(3), paragraphs “d,” “e,” and “f.” A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code section 422.33(18).

**701—52.26(422,476B) Wind energy production tax credit.** Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer’s Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

**52.26(1) *Application and review process for the wind energy production tax credit.*** An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate capacity of no less than  $\frac{3}{4}$  of a megawatt.

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 150 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a

facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

**52.26(2) Computation of the credit.** The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

**EXAMPLE:** A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of “related person” uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer’s name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.26(1).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner’s, member’s, shareholder’s or beneficiary’s pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder’s interest in the partnership, limited liability company or S corporation, or the beneficiary’s interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**52.26(3) *Transfer of the wind energy production tax credit certificate.*** The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.33 and chapter 476B as amended by 2009 Iowa Acts, Senate File 456.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.27(422,476C) Renewable energy tax credit.** Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

**52.27(1) *Application and review process for the renewable energy tax credit.*** A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2012.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 330 megawatts of nameplate generating capacity. The maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 20 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility.

A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1).

**52.27(2) Computation of the credit.** The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents per 1000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility may exceed 12 months.

**EXAMPLE:** A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.27(1). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, 2021.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**52.27(3) *Transfer of the renewable energy tax credit certificate.*** The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**52.27(4) *Small wind innovation zones.*** Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

This rule is intended to implement Iowa Code section 422.33 and chapter 476C as amended by 2009 Iowa Acts, Senate File 456 and House File 810.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—52.28(15) High quality job creation program.** Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—52.40(15) for information on the investment tax credit and additional research activities credit under the high quality jobs program. Any investment tax credit and additional research activities credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid and can be claimed on tax returns filed after July 1, 2009.

**52.28(1) *Research activities credit.*** An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as subrule described in 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For

purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 52.7(3). The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development subrule 261—68.4(7).

**52.28(2) Investment tax credit.**

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer’s cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned \$100,000 of investment tax credits for new investment made in 2006. The business can claim \$20,000 of investment tax credits for each of the years from 2006 through 2010. The \$20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the \$20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

*b. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal

year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 52.14(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

*c. Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

**52.28(3) Determination of tax credit amounts.** The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

*a.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“a” for the amount of tax credits that may be claimed.

*b.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“b” for the amount of tax credits that may be claimed.

*c.* An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—52.25(15H).

This rule is intended to implement Iowa Code Supplement chapter 15.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.29(15E,422) Economic development region revolving fund tax credit.** Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.232 and 422.33 as amended by 2010 Iowa Acts, Senate File 2380.

[ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.30(422) E-85 gasoline promotion tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

|                                    |          |
|------------------------------------|----------|
| Calendar years 2006, 2007 and 2008 | 25 cents |
| Calendar years 2009 and 2010       | 20 cents |
| Calendar year 2011                 | 10 cents |
| Calendar years 2012 through 2017   | 16 cents |

A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—52.19(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold on or after January 1, 2009, for the same tax year for the same ethanol gallons.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**EXAMPLE:** A taxpayer operated one retail motor fuel site in 2006 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2006. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2006 tax year.

**52.30(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, can continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2017. For a retail dealer whose tax year is not on a calendar-year

basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE: A taxpayer who is a retail dealer of gasoline has a fiscal year ending March 31, 2009. The taxpayer sold 2,000 gallons of E-85 gasoline for the period from April 1, 2008, through December 31, 2008, and sold 500 gallons of E-85 gasoline for the period from January 1, 2009, through March 31, 2009. The taxpayer is entitled to a total E-85 gasoline promotion tax credit of \$600 for the fiscal year ending March 31, 2009, which consists of a \$500 credit (2,000 gallons multiplied by 25 cents) for the period from April 1, 2008, through December 31, 2008, and a credit of \$100 (500 gallons multiplied by 20 cents) for the period from January 1, 2009, through March 31, 2009.

EXAMPLE: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2006. The taxpayer sold 800 gallons of E-85 gasoline for the period from January 1, 2006, through April 30, 2006. The taxpayer is entitled to claim an E-85 gasoline promotion tax credit of \$200 (800 gallons times 25 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006. In lieu of claiming the credit on the return for the period ending April 30, 2006, the taxpayer can claim the E-85 gasoline promotion tax credit on the tax return for the period ending April 30, 2007, including all E-85 gallons sold for the period from January 1, 2006, through April 30, 2007.

**52.30(2) Allocation of credit to owners of a business entity.** If a taxpayer claiming the E-85 gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—52.31(422) Biodiesel blended fuel tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, but before January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. For gallons sold during the 2012 calendar year, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. For gallons sold during the 2013 to 2017 calendar years, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. In determining the minimum percentage by volume of biodiesel, the department will taken into account reasonable variances due to testing and

other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**EXAMPLE:** A taxpayer operated four retail motor fuel sites during 2006 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling \$1,650, which is 55,000 gallons multiplied by three cents.

**EXAMPLE:** A taxpayer operated two retail motor fuel sites during 2006, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel, and the other site sold 10,000 gallons of biodiesel blended fuel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2006 tax year. If the facts in this example had occurred during the 2009 tax year, the taxpayer could claim a biodiesel blended fuel tax credit totaling \$750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

**52.31(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, the taxpayer may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2017.

**EXAMPLE:** A taxpayer who operates one retail motor fuel site has a fiscal year ending April 30, 2006. The taxpayer sold 60,000 gallons of diesel fuel for the period from May 1, 2005, through April 30, 2006, of which 28,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through April 30, 2006, the taxpayer sold 20,000 gallons of diesel fuel, of which 12,000 gallons was biodiesel blended fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of \$360 (12,000 gallons times 3 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006, since more than 50 percent of all diesel fuel sold during the period from January 1, 2006, through April 30, 2006, was biodiesel blended fuel.

**EXAMPLE:** A taxpayer who operates one retail motor fuel site has a fiscal year ending June 30, 2006. The taxpayer sold 80,000 gallons of diesel fuel for the period from July 1, 2005, through June 30, 2006, of which 42,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through June 30, 2006, the taxpayer sold 40,000 gallons of diesel fuel, of which 19,000 gallons was biodiesel blended fuel. The taxpayer is not entitled to claim the biodiesel blended fuel tax credit on the taxpayer's Iowa income tax return for the period ending June 30, 2006, since less than 50 percent of all diesel fuel sold during the period from January 1, 2006, through June 30, 2006, was biodiesel blended fuel, even though more than 50 percent of all diesel fuel sold during the period from July 1, 2005, through June 30, 2006, was biodiesel blended fuel.

**EXAMPLE:** A taxpayer who operates one retail motor fuel site has a fiscal year ending February 28, 2012. The taxpayer sold 100,000 gallons of diesel fuel for the period from March 1, 2011, through February 28, 2012, of which 60,000 gallons was biodiesel blended fuel. For the period from March 1, 2011, through December 31, 2011, the taxpayer sold 85,000 gallons of diesel fuel, of which 50,000 gallons was biodiesel fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of \$1,500 (50,000 gallons times 3 cents) on the taxpayer's Iowa income tax return for the period ending February 12, 2012, since the credit is computed only on gallons sold through December 31, 2011.

**52.31(2) Allocation of credit to owners of a business entity.** If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust

electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—52.32(422) Soy-based transformer fluid tax credit.** Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

**52.32(1) Eligibility requirements for the tax credit.** All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

- a. The costs must be incurred after June 30, 2006, and before January 1, 2009.
- b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.
- c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.
- d. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based transformer fluid used in the transition.
- e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.
- f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

**52.32(2) Applying for the tax credit.** An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is claimed. The application must include the following information:

- a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.
- b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.
- c. The name, address, and tax identification number of the electric utility.
- d. The type of tax for which the credit will be claimed, and the first year in which the credits will be claimed.
- e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro-rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

**52.32(3) Claiming the tax credit.** After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners,

members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, Senate File 572.

**701—52.33(175,422) Agricultural assets transfer tax credit.** Effective for tax years beginning on or after January 1, 2007, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2009, the amount of tax credit certificates issued by the Iowa agricultural development authority cannot exceed \$6 million, and the credit certificates will be issued on a first-come, first-served basis.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 473, and section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.34(15,422) Film qualified expenditure tax credit.** Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for corporation income tax. The tax credit cannot exceed 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

**52.34(1) *Qualified expenditures.*** A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel. For limitations on the amount of labor and personnel expenditures, see Iowa department of economic development 261—paragraph 36.7(2)“b.”
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available from the film office of IDED.

**52.34(2) *Claiming the tax credit.*** Upon completion of the registered project in Iowa, the taxpayer must submit, in a format approved by IDED prior to production, a listing of the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer’s name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner’s, member’s, shareholder’s or beneficiary’s pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

**52.34(3) *Transfer of the film qualified expenditure tax credit.*** The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee’s name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the

department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, and Iowa Code section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.35(15,422) Film investment tax credit.** Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for corporation income tax. The tax credit cannot exceed 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

**52.35(1) Claiming the tax credit.** Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—52.34(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 52.34(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For example, if three investors each invested \$100,000 in a project but the qualified expenditures in Iowa only totaled \$270,000, each investor would receive a tax credit based on a \$90,000 investment amount.

**52.35(2) Transfer of the film investment tax credit.** The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual

or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, section 4, and Iowa Code section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.36(422) Ethanol promotion tax credit.** Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA 137.

**52.36(1) Definitions.** The following definitions are applicable to this rule:

“*Biodiesel gallonage*” means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

“*Biofuel distribution percentage*” means the sum of the retail dealer’s total ethanol gallonage plus the retail dealer’s total biodiesel gallonage expressed as a percentage of the retail dealer’s total gasoline gallonage.

“*Biofuel threshold percentage*” is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

| Determination Period | More than 200,000 Gallons Sold by Retail Dealer | 200,000 Gallons or Less Sold by Retail Dealer |
|----------------------|---|---|
| 2009                 | 10%   | 6%  |
| 2010                 | 11%   | 6%  |
| 2011                 | 12%   | 10%   |
| 2012                 | 13%   | 11%   |
| 2013                 | 14%   | 12%   |
| 2014                 | 15%   | 13%   |
| 2015                 | 17%   | 14%   |
| 2016                 | 19%   | 15%   |
| 2017                 | 21%   | 17%   |
| 2018                 | 23%   | 19%   |
| 2019                 | 25%   | 21%   |
| 2020                 | 25%   | 25%   |

“*Biofuel threshold percentage disparity*” means the positive percentage difference between the retail dealer’s biofuel threshold percentage and the retail dealer’s biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

“*Determination period*” means any 12-month period beginning on January 1 and ending on December 31.

“*Ethanol gallonage*” means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

“*Gasoline gallonage*” means the total number of gallons of gasoline sold by the retail dealer during a determination period.

**52.36(2) Calculation of tax credit.**

a. The tax credit is calculated by multiplying the retail dealer’s total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer’s biofuel threshold percentage disparity. The tax credit rate is set forth below:

| Biofuel Threshold Percentage Disparity | Tax Credit Rate per Gallon 2009-2010 | Tax Credit Rate per Gallon 2011 | Tax Credit Rate per Gallon 2012-2020 |
|--|--------------------------------------|---------------------------------|--------------------------------------|
| 0%                                     | 6.5 cents                            | 8 cents                         | 8 cents                              |
| 0.01% to 2.00%                         | 4.5 cents                            | 6 cents                         | 6 cents                              |
| 2.01% to 4.00%                         | 2.5 cents                            | 2.5 cents                       | 4 cents                              |
| 4.01% or more                          | 0 cents                              | 0 cents                         | 0 cents                              |

b. For use in calculating a retail dealer’s total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—52.30(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—52.43(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer’s retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer’s retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage as defined in subrule 52.36(1) is based on more than 200,000 gallons, or 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the

tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

*f.* Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**52.36(3) Fiscal year filers.** or taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 52.36(2), paragraph "a." Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December 31, 2020. For a taxpayer whose tax year is not on a calendar year basis and that did not claim the ethanol promotion tax credit on the previous return, the taxpayer may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

**52.36(4) Allocation of tax credit to owners of a business entity.** If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

**52.36(5) Examples.** The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the total gasoline gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This results in an ethanol promotion tax credit of 6.5 cents times 11,950, or \$776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or \$1,000.

**EXAMPLE 2.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons. This consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2010 60,000 gallons of diesel fuel, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This results in an ethanol promotion tax credit of 4.5 cents times 30,900, or \$1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

**EXAMPLE 3.** A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000 gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

|                                  |               |
|----------------------------------|---------------|
| Site A – 70,000 times 10% equals | 7,000         |
| Site B – 70,000 times 10% equals | 7,000         |
| Site C – 60,000 times 10% equals | 6,000         |
| Site C – 10,000 times 79% equals | 7,900         |
| Total                            | <u>27,900</u> |

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit is computed separately for each motor fuel site, and the ethanol promotion credit equals \$1,813.50, as shown below:

|  |                   |
|--|-------------------|
| Site A – 7,000 times 6.5 cents equals  | \$455.00          |
| Site B – 7,000 times 6.5 cents equals  | \$455.00          |
| Site C – 13,900 times 6.5 cents equals | \$903.50          |
| Total                                  | <u>\$1,813.50</u> |

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of \$2,310 for the fiscal year ending March 31, 2011, as shown below:

|                               |                |
|-------------------------------|----------------|
| 30,000 times 6.5 cents equals | \$1,950        |
| 8,000 times 4.5 cents equals  | 360            |
| Total                         | <u>\$2,310</u> |

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of \$1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or \$1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of \$1,462, as shown below:

|                                       |         |
|---------------------------------------|---------|
| Site A – 7,000 times 2.5 cents equals | \$175   |
| Site B – 7,000 times 2.5 cents equals | \$175   |
| Site C – 13,900 times 8 cents equals  | \$1,112 |
| Total                                 | \$1,462 |

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—52.37(422) Charitable conservation contribution tax credit.** Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for corporation income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

**52.37(1) Definitions.** The following definitions are applicable to this rule:

“*Conservation purpose*” means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

“*Qualified organization*” means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

“*Qualified real property interest*” means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

**52.37(2) Computation of the credit.** The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is \$100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as a deduction for charitable contributions for Iowa income tax purposes.

**52.37(3) Claiming the tax credit.** The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is

required to be attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

**52.37(4) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of \$150,000 to a qualified organization during 2008. The tax credit is equal to \$75,000, or 50 percent of the \$150,000 fair market value of the real property. The taxpayer cannot claim the \$150,000 as a deduction for charitable contributions on the Iowa corporation income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of \$500,000 to a qualified organization during 2009. The tax credit is limited to \$100,000, which equates to \$200,000 of the contribution being eligible for the tax credit. The remaining amount of \$300,000 (\$500,000 less \$200,000) can be claimed as a deduction for charitable contributions on the Iowa corporation income tax return for 2009.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, House File 2700, section 63.

**701—52.38(422) School tuition organization tax credit.** Effective for tax years beginning on or after July 1, 2009, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. The credit is not available for S corporations, partnerships and limited liability companies where the income is taxed directly to the individual shareholders, partners or members. For information on the initial registration, participation forms and reporting requirements for school tuition organizations, see rule 701—42.30(422).

**52.38(1) Amount of tax credit authorized.** Of the \$7.5 million of school tuition organization tax credits authorized for 2009 and subsequent calendar years, no more than 25 percent, or \$1,875,000, can be authorized for corporation income tax taxpayers.

**52.38(2) Issuance of tax credit certificates.** The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate will contain the name, address and tax identification number of the taxpayer, the amount and date that the contribution was made, the amount of the credit, the tax year that the credit may be applied, the school tuition organization to which the contribution was made, and the tax credit certificate number.

**52.38(3) Claiming the tax credit.** The taxpayer must attach the tax credit certificate to the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The taxpayer may not claim a deduction for charitable contributions for Iowa corporation income tax purposes for the amount of the contribution made to the school tuition organization.

This rule is intended to implement Iowa Code section 422.33 as amended by 2009 Iowa Acts, Senate File 470.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.39(15,422) Redevelopment tax credit.** Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council may claim a redevelopment tax credit. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for a redevelopment project for the brownfield redevelopment authority which qualifies for the tax credit, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**52.39(1) Eligibility for the credit.** The Iowa department of economic development is responsible for developing a system for registration and authorization of redevelopment tax credits. Investments in brownfield or grayfield sites must be made on or after January 1, 2009, but before June 30, 2010, to be eligible for the tax credit. The maximum amount of tax credits that can be issued for redevelopment projects is \$1 million in the aggregate, and the amount of credits for any one redevelopment project cannot exceed \$100,000.

**52.39(2) Computation and claiming of the credit.**

- a. The amount of the tax credit shall equal one of the following:
- (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.
  - (2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).
  - (3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.
  - (4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).
- b. Upon completion of the project, the Iowa department of economic development will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.39(3).
- c. If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.
- d. The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled \$100,000 for which a \$12,000 redevelopment tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).
- e. To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

**52.39(3) Transfer of the credit.** The redevelopment tax credit can be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information describing how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be

deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

This rule is intended to implement Iowa Code section 15.293A.  
[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.40(15) High quality jobs program.** Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

**52.40(1) Research activities credit.** An eligible business approved under the high quality jobs program is eligible for an additional research activities credit as described in subrule 52.7(4) for awards issued by the Iowa department of economic development prior to July 1, 2010. The eligible business is eligible for the research activities credit as described in subrule 52.7(6) for awards issued by the Iowa department of economic development on or after July 1, 2010.

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality jobs program and the enterprise zone program shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and in subrule 52.7(5) for businesses in enterprise zones, and are not applicable to the research activities credit set forth in subrule 52.7(3).

**52.40(2) Investment tax credit.** An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created or retained by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7).

The determination of the new investment eligible for the investment tax credit, the eligibility of a refundable investment tax credit for value-added agricultural product or biotechnology-related projects and the repayment of investment tax credits for the high quality jobs program is the same as set forth in subrule 52.28(2) for the high quality job creation program.

This rule is intended to implement Iowa Code chapter 15.  
[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.41(15) Aggregate tax credit limit for certain economic development programs.** Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed \$185 million during a fiscal year. These programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the film, television and video project promotion program, and the high quality jobs program. Effective for fiscal years beginning on or after July 1, 2010, awards made under these economic development programs cannot exceed \$120 million during a fiscal year. The administrative rules for the aggregate tax credit limit for the Iowa department of economic development may be found at 261—Chapter 76.

This rule is intended to implement 2009 Iowa Code Supplement section 15.119 as amended by 2010 Iowa Acts, Senate File 2380.  
[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.42(16,422) Disaster recovery housing project tax credit.** For tax years beginning on or after January 1, 2011, a disaster recovery housing project tax credit is available for corporation income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project, and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit. The administrative rules of the Iowa finance authority for the disaster recovery housing project tax credit may be found at 265—Chapter 34.

**52.42(1) Issuance of tax credit certificates.** Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any other person or entity.

**52.42(2) Limitation of tax credits.** The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed \$3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

**52.42(3) Claiming the tax credit.** The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa corporation income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: A corporation whose tax year ends on December 31 incurs \$100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of \$75,000, and \$15,000 of credit can be claimed on each Iowa corporation income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the corporation for the period ending December 31, 2011, is \$10,000, the credit is limited to \$10,000, and the remaining \$5,000 credit cannot be used. If the tax liability for the corporation for the period ending December 31, 2012, is \$25,000, the credit is limited to \$15,000, and the remaining \$5,000 credit from 2011 cannot be used to reduce the tax for 2012.

**52.42(4) Potential recapture of tax credits.** If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on a corporation income tax return.

This rule is intended to implement Iowa Code Supplement sections 16.211 and 16.212 and Iowa Code section 422.33 as amended by 2009 Iowa Acts, Senate File 457.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.43(422) E-15 plus gasoline promotion tax credit.** Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. "E-15 plus gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit

is calculated on Form IA138. The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

|  |         |
|--|---------|
| Gallons sold from July 1, 2011, through December 31, 2014    | 3 cents |
| Gallons sold from January 1, 2015, through December 31, 2017 | 2 cents |

A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold for the same tax year for the same ethanol gallons.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**52.43(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2017. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends before December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

**EXAMPLE 1:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

**EXAMPLE 2:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons times 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

**EXAMPLE 3:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2018. The taxpayer sold 20,000 gallons of E-15 plus gasoline for the period from March 1, 2017, through February 28, 2018, of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$320 (16,000 gallons times 2 cents) on the taxpayer's Iowa income tax return for the period ending February 28, 2018.

**52.43(2) Allocation of credit to owners of a business entity.** If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

[Filed 12/12/74]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]

[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]  
    [Filed emergency 6/6/80—published 6/25/80, effective 6/6/80]  
    [Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]  
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]  
    [Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]  
[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]  
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]  
[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]  
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]  
[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]  
    [Filed 2/10/84, Notice 1/4/84—published 2/29/84, effective 4/5/84]<sup>◊</sup>  
    [Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]  
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]  
    [Filed 2/22/85, Notice 1/16/85—published 3/13/85, effective 4/17/85]  
    [Filed 3/8/85, Notice 1/30/85—published 3/27/85, effective 5/1/85]  
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]<sup>◊</sup>  
    [Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]  
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 1/22/86]  
    [Filed 6/27/86, Notice 5/7/86—published 7/16/86, effective 8/20/86]  
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]  
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]<sup>◊</sup>  
    [Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]  
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]  
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]  
[Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]  
    [Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]  
    [Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]<sup>◊</sup>  
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]  
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]  
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]  
    [Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]  
    [Filed 8/2/90, Notice 6/27/90—published 8/22/90, effective 9/26/90]  
    [Filed 9/13/90, Notice 8/8/90—published 10/3/90, effective 11/7/90]<sup>◊</sup>  
    [Filed 11/9/90, Notice 10/3/90—published 11/28/90, effective 1/2/91]  
    [Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]  
    [Filed 1/17/91, Notice 12/12/90—published 2/6/91, effective 3/13/91]  
    [Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]  
    [Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]  
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]  
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]  
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]  
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]  
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]  
    [Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]  
    [Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]  
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]  
    [Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]  
    [Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]  
    [Filed 3/22/96, Notice 2/14/96—published 4/10/96, effective 5/15/96]  
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]  
    [Filed 11/15/96, Notice 10/9/96—published 12/4/96, effective 1/8/97]  
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]

[Filed 2/20/98, Notice 1/14/98—published 3/11/98, effective 4/15/98]  
[Filed 8/5/98, Notice 7/1/98—published 8/26/98, effective 9/30/98]  
[Filed 11/13/98, Notice 10/7/98—published 12/2/98, effective 1/6/99]  
[Filed 11/24/99, Notice 9/22/99—published 12/15/99, effective 3/29/00]  
[Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]  
[Filed 1/5/01, Notice 11/29/00—published 1/24/01, effective 2/28/01]  
[Filed 3/2/01, Notice 1/24/01—published 3/21/01, effective 4/25/01]  
[Filed 5/24/01, Notice 4/18/01—published 6/13/01, effective 7/18/01]  
[Filed 8/30/01, Notice 7/25/01—published 9/19/01, effective 10/24/01]  
[Filed 10/12/01, Notice 8/8/01—published 10/31/01, effective 12/5/01]  
[Filed 12/7/01, Notice 10/3/01—published 12/26/01, effective 1/30/02]  
[Filed 12/7/01, Notice 10/31/01—published 12/26/01, effective 1/30/02]  
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]  
[Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]  
[Filed 3/15/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]  
[Filed 9/13/02, Notice 8/7/02—published 10/2/02, effective 11/6/02]  
[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]◊  
[Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]  
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]  
[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]◊  
[Filed 10/24/03, Notice 9/17/03—published 11/12/03, effective 12/17/03]◊  
[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]◊  
[Filed 12/5/03, Notice 10/15/03—published 12/24/03, effective 1/28/04]◊  
[Filed 12/31/03, Notice 11/26/03—published 1/21/04, effective 2/25/04]  
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]  
[Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]  
[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]  
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]  
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
[Filed 12/3/04, Notice 10/27/04—published 12/22/04, effective 1/26/05]  
[Filed 1/14/05, Notice 12/8/04—published 2/2/05, effective 3/9/05]  
[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]◊  
[Filed 10/20/05, Notice 9/14/05—published 11/9/05, effective 12/14/05]  
[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]◊  
[Filed 1/27/06, Notice 12/21/05—published 2/15/06, effective 3/22/06]  
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]  
[Filed 10/5/06, Notice 8/30/06—published 10/25/06, effective 11/29/06]◊  
[Filed 11/1/06, Notice 8/16/06—published 11/22/06, effective 12/27/06]  
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]  
[Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]◊  
[Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]  
[Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]  
[Filed 10/19/07, Notice 9/12/07—published 11/7/07, effective 12/12/07]◊  
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
[Filed 5/2/08, Notice 3/26/08—published 5/21/08, effective 6/25/08]  
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]◊  
[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]  
[Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 8605B (Notice ARC 8481B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]  
[Filed ARC 9104B (Notice ARC 8954B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

◇ Two or more ARCs



CHAPTER 53  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—53.1(422) Computation of net income for corporations.** Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 701—53.2(422) to 701—53.13(422) and 701—53.17(422) to 701—53.26(422). The remaining provisions of this rule and 701—53.14(422) to 701—53.16(422) shall also be applicable in determining net income.

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—53.2(422) Net operating loss carrybacks and carryovers.** In years beginning after December 31, 1954, net operating losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes for the same period, provided the following adjustments are made:

**53.2(1) Additions to income.**

a. Refunds of federal income taxes due to net operating loss and credit carrybacks shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss or excess credit occurs. The federal refund shall still accrue for tax periods beginning on or after January 1, 2009, even though the Iowa net operating loss carryback is not allowed.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received. The federal refund due to any net operating loss carryback for federal income tax purposes for tax years beginning on or after January 1, 2009, must still be reflected even though the Iowa net operating loss carryback is not allowed.

b. Iowa income tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

**53.2(2) Reductions of income.**

a. Federal income tax paid or accrued during the year of the net operating loss shall be reflected to the extent allowed by law as an additional deduction in the year of the loss.

b. Iowa income tax refunds reported as income for federal return purposes in the loss year shall be reflected as reductions of income in the year of the loss.

c. Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

**53.2(3)** If a corporation does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 53.2(1) and 53.2(2).

*a.* After making the adjustments to federal taxable income as provided in 53.2(1) and 53.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—54.5(422), 54.6(422) and 54.7(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

*b.* The net operating loss attributable to Iowa, as determined in rule 701—53.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision for tax years beginning prior to August 6, 1997. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

*c.* For tax years beginning after August 5, 1997, but before January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

*d.* For tax years beginning on or after January 1, 1998, but before January 1, 2009, for a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss. However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) of the Internal Revenue Code for the two-year or three-year carryback in lieu of the five-year carryback must be attached to the Iowa return or the Form IA 1139 Application for Refund Due to the Carryback of Corporate Farming Losses, to show why the carryback was two years or three years instead of five years. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

When the taxpayer carries on more than one trade or business within a corporate shell or files a consolidated Iowa corporation income tax return, the income or loss from each trade or business must be combined to determine the amount of net operating loss that exists and whether it is a net operating loss from the trade or business of farming.

EXAMPLE 1. The taxpayer carries on the trade or business of farming and also the trade or business of trucking for entities outside the corporate shell. For the tax year, the taxpayer had a net operating loss from farming of \$25,000 and net income from trucking of \$10,000 for a net operating loss for the year of

\$15,000 which is a net operating loss from the trade or business of farming which may be carried back 5 tax years and forward 20 tax years.

EXAMPLE 2. The taxpayer carries on the trade or business of farming and the trade or business of construction. For the tax year, the taxpayer had income from farming of \$12,000 and a net operating loss from construction of \$45,000 for a net operating loss for the year of \$33,000 which is a net operating loss from the trade or business of construction which may be carried back 2 tax years and forward 20 tax years.

EXAMPLE 3. The taxpayer carries on the trade or business of farming and the trade or business of construction. During the tax year, the taxpayer had a net operating loss of \$18,000 from farming and a net operating loss of \$9,000 from construction for a total net operating loss of \$27,000. Of this net operating loss, \$18,000 is from farming and may be carried back 5 years and forward 20 years and \$9,000 is from construction and may be carried back 2 years and forward 20 years.

*e.* For tax years beginning on or after January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), shall be carried forward 20 taxable years. The net operating loss cannot be carried back to a previous tax year. The federal refund due to any carryback of a federal net operating loss must still be included in income as provided in subrule 53.2(1), paragraph “a.”

**53.2(4)** No part of a net operating loss for a year which the corporation was not subject to the imposition of Iowa corporation income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss. To be deductible, a net operating loss must be sustained from that portion of the corporation’s trade or business carried on in Iowa.

**53.2(5)** No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

**53.2(6)** The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a part of a consolidated income tax return for federal income tax purposes, but a separate return for Iowa income tax purposes, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

#### **701—53.3(422) Capital loss carryback.**

**53.3(1)** Capital losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net allocable and apportionable income.

*a.* For accrual-basis taxpayers the federal income tax refund shall not be accrued to the loss year but rather treated as a reduction in federal income tax paid in the carryback year.

*b.* Cash-basis taxpayers shall include the federal income tax refund in Iowa taxable income in the year received.

*c.* Where the taxpayer files a separate Iowa corporation income tax return but files as part of a federal consolidated income tax return, the portion of the federal refund due to a capital loss carryback attributable to the taxpayer shall be calculated by computing the federal tax deduction in the carryback year as follows:

|  |   |                                 |   |     |
|--|---|---------------------------------|---|-----|
| Separate Company Income -<br>Separate Company Capital<br>Loss Carryback  | × | Consolidated<br>Federal Tax     | × | 50% |
| <hr/>  |   |                                 |   |     |
| Sum of the Incomes of Profit<br>Companies - Sum of Separate<br>Company Capital Loss<br>Carrybacks to Profit<br>Companies |   | after Capital<br>Loss Carryback |   |     |

**53.3(2)** When the carryback year has both allocable and apportionable capital gains, the capital loss carryback shall be applied pro rata on a percentage basis of the specific gain to the total gains.

EXAMPLE: Assume a taxpayer has a 1973 capital loss carryback available of \$2000. The loss would be applied in the following manner:

| 1970   | 1970                  | 1970   |
|--|-----------------------|--|
| <u>Total Capital Gain</u>  | <u>Allocable Gain</u> | <u>Apportionable Gain</u>                    |
| \$16,000   | \$4,000               | \$12,000                                     |
| Allocable gain   | -\$4,000              |  |
| Total capital gain   | -\$16,000             | = ¼ or 25% of carryback<br>to allocable gain |
| 1970 allocable capital gain after application of loss carryback:<br>\$4,000 less (\$2,000 × 25%) = \$3,500 net allocable capital gain. |                       |  |

This rule is intended to implement Iowa Code sections 422.35 and 422.37.

**701—53.4(422) Net operating and capital loss carrybacks and carryovers.** If the taxpayer, for tax periods beginning prior to January 1, 2009, has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the new operating loss offset against any remaining income.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—53.5(422) Interest and dividends from federal securities.** See rule 701—40.2(422) for a discussion of the exempt status of interest and dividends from federal securities.

This rule is intended to implement Iowa Code section 422.35.

**701—53.6(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions.** Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income. See rule 701—40.3(422) for a listing of obligations of the state of Iowa and its political subdivisions, the interest from which is exempt from Iowa corporation income tax. For the tax treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in rule 701—40.3(422), see rule 701—40.52(422).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal tax under Section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six

months or less to the extent the loss was disallowed under Section 852(b)(4)(B) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, add, to the extent not already included, income from the sale of obligations of the state of Iowa and its political subdivisions. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa taxable income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition from Iowa corporation income tax.

This rule is intended to implement Iowa Code section 422.35 as amended by 2001 Iowa Acts, House File 715.

**701—53.7(422) Safe harbor leases.** For tax years ending after January 1, 1981, deductions in determining federal taxable income for sale-leaseback agreements taken as a result of the application of Section 168(f)(8) of the Internal Revenue Code shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of Sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense, and the lessee shall add rental expense. When the deduction for depreciation is not allowed under a previous provision of this rule, the lessee shall be allowed a deduction for depreciation on any property involved in a sale-leaseback agreement. This depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of a sale-leaseback agreement shall be deducted in determining Iowa taxable income. The lessee shall deduct interest income and the lessor shall deduct rent income. Each lessor and lessee corporation shall include a copy of federal Form 6793 in its Iowa corporation income tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code section 422.35.

**701—53.8(422) Additions to federal taxable income.**

**53.8(1) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**53.8(2) Percentage depletion.** For tax years beginning on or after January 1, 1986, add the amount that percentage depletion of an oil, gas, or geothermal well computed under Section 613 of the Internal Revenue Code is in excess of cost depletion computed under Section 611 of the Internal Revenue Code.

This rule is intended to implement Iowa Code section 422.35 as amended by 1994 Iowa Acts, Senate File 2215.

**701—53.9(422) Gains and losses on property acquired before January 1, 1934.** Where property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date. *City National Bank of Clinton v. Iowa State Tax Commission*, 251 Iowa 603, 102 N.W.2d 381 (1960).

If as a result of this provision a basis is to be used for purposes of Iowa corporation income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.35.

**701—53.10(422) Work opportunity tax and alcohol fuel credit.** Where provided for in the Internal Revenue Code, as detailed below, a deduction shall be allowed for the amount of credit to the extent that the credit increased federal adjusted gross income.

**53.10(1)** For tax years beginning on or after January 1, 1977, the amount of credit allowable for federal work opportunity tax credit as provided for in Section 51 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

**53.10(2)** For tax periods beginning on or after January 1, 1980, the amount of credit allowable for the federal alcohol fuels credit as provided for in Section 40 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

This rule is intended to implement Iowa Code section 422.35 as amended by 1997 Iowa Acts, Senate File 129.

**701—53.11(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals.** For tax years beginning on or after January 1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2), is allowed a deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 904.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code chapter 913 applies.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2) is allowed a deduction for 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued during the tax year for work done in Iowa for employees first hired after January 1, 1989, who meet the above criteria.

**53.11(1)** The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

**53.11(2)** The term "small business corporation" includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

*a.* A small business corporation shall not have had more than 20 full-time equivalent positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

| <u>Average Number of Weekly Hours</u> | <u>Category</u> |
|---------------------------------------|-----------------|
| More than 0 but less than 15          | ¼               |
| 15 or more but less than 25           | ½               |
| 25 or more but less than 35           | ¾               |
| 35 or more                            | 1 (full-time)   |

*b.* A small business corporation shall not have more than \$1 million in annual gross revenues or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

*c.* A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

*d.* “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

*e.* “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

### **53.11(3) Definitions.**

*a.* The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

*b.* The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*c.* The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

*d.* The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

*e.* The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

*f.* The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

*g.* The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

**53.11(4)** If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual, constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

**53.11(5)** The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

**53.11(6)** If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

**53.11(7)** For tax years ending after July 1, 1990, a taxpayer who did not qualify for the additional deduction for wages paid or accrued for work done in Iowa by certain individuals set forth above is allowed an additional deduction of 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued for work done in Iowa for employees first hired on or after July 1, 1990, if the new employee is:

*a.* An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to Iowa Code chapter 906.

(3) Is on probation pursuant to Iowa Code chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to Iowa Code chapter 904, division IX.

*b.* An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

The additional deduction is not allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction is allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

The taxpayer must include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring, and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

If the employee for whom an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer must file an amended return adding back the additional deduction for wages. The amended return must state the name and social security number of the employee who failed to successfully complete a probationary period.

**53.11(8)** The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa. The conditions set out in the unnumbered paragraphs under paragraph “b” of subrule 53.11(7) also apply to the deduction for the hiring of certain individuals in this subrule.

This rule is intended to implement Iowa Code sections 16.1 and 422.35 as amended by 2001 Iowa Acts, House Files 287 and 759.

**701—53.12(422) Federal income tax deduction.** “Federal income taxes” shall mean those income taxes paid or payable to the United States Government and shall not include taxes paid or payable or taxes deemed to have been paid to a foreign country. *Construction Products, Inc. v. Briggs, State Board of Tax Review*, Case No. 25, February 1, 1972. “Federal income taxes” includes the federal alternative minimum tax. For tax years beginning on or after January 1, 1990, and before January 1, 1996, “federal income taxes” includes the federal environmental tax. Because the federal environmental tax is deducted in computing federal taxable income and Iowa Code subsection 422.35(4) only allows a deduction for 50 percent of the federal income tax paid or accrued, the federal environmental tax deducted in computing federal taxable income must be added to federal taxable income.

**53.12(1) Cash basis taxpayer.**

*a.* When a taxpayer is reporting on the cash basis, 50 percent of the amount of federal income taxes actually paid during the taxable period is allowable as a deduction, whether or not such taxes represent the preceding year’s tax or additional taxes for prior years. Fifty percent of a federal tax refund shall be reported as income in the year received.

*b.* A corporation reporting on the cash basis may deduct 50 percent of the federal income tax on the accrual basis if an election is made upon filing the first return. If the corporation claims an accrual deduction on the first return, it shall be considered as an election. Once the election is made, the corporation may change the basis of federal income tax deduction only with the permission of the director. If a change in accounting method is approved or required by the Internal Revenue Service, the director is deemed to have approved the change in the basis of the federal tax deduction.

*c.* The federal income tax deduction during the transitional period following a change in accounting method from cash to accrual is the accrual deduction in the year of change, plus any cash payment of federal income tax paid in the year of the change for the tax year prior to the change in accounting method, reduced by a refund of federal income tax paid for the tax year prior to the year of the change in accounting method received in the year of the change. For the year of change and years subsequent to the year of the change, the deduction shall be the accrual deduction plus any federal income tax paid for a tax year prior to the year of change as a result of an amended federal return or federal audit, reduced by any refund of federal income tax paid for a tax year prior to the year of the change in accounting method.

*d.* The federal income tax deduction during the transitional period following a change in accounting method from accrual to cash is the cash deduction in the year of change, plus any cash payment of federal estimated income tax paid in the year prior to the year of the change for the year of the change. Any refund of federal income tax from a tax year prior to the year of the change received in the year of the change or in a subsequent year is properly accrued to the prior tax year. Any payment of federal income tax due to an amended return or federal audit for a tax year prior to the year of the change made in the year of the change or a subsequent year is accrued to that prior tax year. (For information on amended returns, see 701—subrule 52.3(4).)

**53.12(2) *Accrual basis taxpayer.***

*a.* The amount of federal income tax to be allowed as a deduction for an accrual basis taxpayer is limited to 50 percent of the actual federal income tax liability for that year.

*b.* Additional federal income taxes and refunds of federal income taxes (except for 53.12(2) “*c*”) shall be a part of the tax liability accrued for such prior years.

*c.* Refunds resulting from net operating loss carrybacks, investment credit carrybacks, unused excess profits tax credits, and similar items shall be included in income for Iowa corporation income tax purposes in the year in which such refunds are legally accrued.

**53.12(3) Rescinded, effective February 2, 1977.**

**53.12(4) *Consolidated federal income tax allocation.***

*a.* When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the allowable deduction shall be 50 percent of the consolidated federal income tax liability allocable to that corporation. The allocation of the consolidated federal income tax shall be determined as follows: The net consolidated federal income tax liability is multiplied by a fraction, the numerator of which is the taxpayer’s federal taxable income as computed on a separate basis, and the denominator of which is the total federal taxable incomes of each corporation included in the consolidated return. If the computation of the taxable income of a member results in an excess of deductions over gross income such member’s taxable income shall be zero. *Sibley State Bank v. Bair, State Board of Tax Review*, Docket No. 182, May 26, 1978. *Internorth, Inc., and Northern Propane Gas Company v. Iowa State Board of Tax Review, Iowa Department of Revenue and Gerald D. Bair, Director of Revenue*, 333 N.W.2d 471 (Iowa 1983).

*b.* If a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the federal income tax deduction allowed the Iowa taxpayer shall not exceed 50 percent of the consolidated federal income tax liability.

This rule is intended to implement Iowa Code section 422.35.

**701—53.13(422) Iowa income taxes and Iowa tax refund.** Iowa corporation income taxes paid or accrued during the tax year as may be applicable under the method of filing are permissible deductions for federal corporation income tax purposes, but are not permissible deductions for purposes of determining Iowa net taxable income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa corporation income tax purposes. Refunds of Iowa income tax to the extent that the refunds were included in the determination of federal taxable income shall be subtracted from federal taxable income, only to the extent that a deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa income tax refunds resulting from Iowa refundable tax credits are not allowed as a deduction for Iowa corporation income tax purposes.

EXAMPLE: Corporation A reports income on a cash basis and made Iowa estimated payments of \$2,000 during the 2003 tax year. The \$2,000 of estimated payments was claimed as a deduction for federal income tax purposes, but was not allowed as a deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of \$1,600. Corporation A had \$2,000 of Iowa estimated payments and a \$500 ethanol blended gasoline tax credit, and received a \$900 Iowa tax refund in 2004. Of the \$900 refund reported as income on the federal return, Corporation A will be allowed a \$400 (\$2,000 - \$1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.35.

**701—53.14(422) Method of accounting, accounting period.** The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for corporation tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

This rule is intended to implement Iowa Code section 422.35.

**701—53.15(422) Consolidated returns.**

**53.15(1) Definition.** The term "common parent" as used in these rules shall have the same general meaning as when used in the federal income tax regulation. However, where the common parent is not subject to the Iowa income tax because of the provisions of 701—subrule 52.1(1) or because of specific exemption under Iowa Code section 422.34, the common parent shall designate as the agent for the affiliated group, one of its subsidiaries subject to the Iowa income tax and shall notify the director of the same in writing. Where the common parent has designated one of its subsidiaries to act as agent for the affiliated group, reference in this rule to "common parent" shall mean the designated agent.

Unless otherwise distinctly expressed, the terms used in this rule shall have the same meaning as when used in a comparable context in the federal income tax regulations for consolidated returns except for determining whether an affiliated group had exercised its privilege of filing a consolidated return. All references to the "commissioner" or "district director" in the federal regulations shall be construed to mean the director for purposes of the Iowa rules.

*a.* An affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year. Each corporation which is subject to the Iowa corporation income tax and has been a member during any part of the taxable year for which the consolidated return is to be filed must consent (as provided in paragraph 53.15(1) "d") to the filing of the consolidated return.

*b.* If a group wishes to exercise its privilege of filing a consolidated return, the consolidated return must be filed not later than the date prescribed by Iowa Code section 422.21 (including extensions of time) for the filing of the common parent's return. The consolidated return may not be withdrawn after the last day for filing (including extensions of time) but the group may change the basis of its return at any time prior to the last day.

*c.* The consolidated return shall be made on Form IA-1120 for the group by the common parent corporation. The common parent corporation of the group must attach a copy of the federal Form 851 (Affiliations Schedule) to the consolidated return.

*d.* If a group wishes to exercise its privilege of filing a consolidated return, each subsidiary must consent to the filing of the consolidated return for the year. The subsidiaries must consent to the filing of an Iowa consolidated return by joining in the filing of an Iowa consolidated return on or before the due date (including any extensions of time). If both separate and consolidated returns are filed on or before the due date (including any extensions of time), the latest returns filed will be considered as the taxpayers' election in regards to the filing of separate or consolidated returns.

*e.* The common parent, for all purposes other than the making of the consent required by subrule 53.15(1) "a," shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. No subsidiary shall have authority to act for or to represent itself in any matter. The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. If a subsidiary has ceased to be a member of the group and if the subsidiary files written notice of the cessation with the director, then upon request of the subsidiary, the director will furnish it with a copy of any notice of deficiency in respect of the tax for a consolidated return year for which it was a member. The filing of the written notification and request by a corporation shall not have the effect of limiting the scope of the agency of the common parent.

*f.* Unless the director agrees to the contrary, an agreement entered into by the common parent extending the time within which a notice of deficiency may be issued, or a levy or a proceeding in court begun in respect of the tax for a consolidated return year shall be applicable to each corporation which

was a member of the group during any part of the taxable year and to each corporation, the income of which was included in the consolidated return for the taxable year, notwithstanding that the liability of the corporation is subsequently computed on the basis of a separate return under these rules.

g. If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the director of that fact and designate another member to act as its agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If this notice is not given by the common parent, the remaining members may, subject to the approval of the director, designate another member to act as agent, and notice of the designation shall be given to the director. Until a notice in writing designating a new agent has been approved by the director, any notice of deficiency or other communications mailed to the common parent shall be considered as having been properly mailed to the agent of the group. If the director has reasons to believe that the existence of the common parent has terminated, the director may, if deemed advisable, deal directly with any member in respect of its liability.

**53.15(2)** *When director may require consolidated return.* In accordance with the provisions of rule 701—53.15(422), the director may require a consolidated return for those members of an affiliated group of corporations which would be eligible to elect to consolidate their incomes under Iowa Code section 422.37 if the filing of separate returns for such corporations would improperly reflect the taxable incomes of said corporations or of said group.

**53.15(3)** *Discontinuance of filing consolidated returns.*

a. An affiliated group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it is allowed to discontinue filing consolidated returns, or unless a federal consolidated return is not filed by the group.

b. In the event that a consolidated filing for Iowa tax purposes is discontinued for any reason, the common parent shall so notify the department by letter. The mere filing of separate returns does not, in itself, constitute sufficient notice.

c. The following constitute factors for determining when consolidated filing for Iowa tax purposes can be discontinued:

(1) If the filing of separate returns will more clearly disclose the taxable income of each member of the affiliated group. Corporations should note that such determination is vested in the director. Therefore, corporations should make application to the director within a reasonable time prior to the due date of the return (including extensions of time). Normally, this would be not later than 90 days prior to said due date. The application should set forth in detail the taxable income on both a consolidated and separate basis together with the reasons why separate returns would more clearly disclose Iowa taxable income. The mere fact that the consolidated tax liability is greater or less than the combined separate liabilities is not, of itself, a ground for discontinuance of consolidated filing.

(2) If one or more of the members of the affiliated group cease to be subject to Iowa corporate income tax, consolidation may be discontinued in whole or in part.

(3) If one or more of the members of the affiliated group change in character so that they are no longer taxable under the Iowa corporate income tax law.

EXAMPLE: Common parent A is a manufacturer. Subsidiary B is a company engaged in small loans. A and B file consolidated Iowa returns. In a subsequent taxable year, B changes its business by surrendering its small loan company license and obtains a state bank charter. Even though A and B continue to file federal consolidated returns, B is now a corporation exempt from tax under Iowa Code section 422.34. Therefore A and B should discontinue filing Iowa consolidated returns.

(4) If the affiliated group is purchased by another corporation or affiliated group so that after the purchase the stockholders own less than 50 percent of the fair market value of all classes of outstanding stock of the new corporation or affiliated group then the old group must discontinue filing Iowa consolidated returns. The new group may exercise its privilege of filing a consolidated return.

d. If a group is allowed to discontinue filing consolidated returns for any taxable year, then each member of the affiliated group subject to Iowa tax must file a separate return for such year on or before

the last day prescribed by law (including extensions of time) for the filing of the consolidated return for such year.

*e.* A group shall be considered as remaining in existence, for the purposes of the Code, in accordance with the rules prescribed in Treasury Regulation Section 1.1502-75(d).

*f.* If a consolidated return erroneously includes the income of one or more corporations which were not members of the group at any time during the consolidated return year, the tax liability of such corporations will be determined upon the basis of separate returns (or a consolidated return of another group, if paragraph 53.15(1)“*c*” or 53.15(3)“*a*” applies) and the consolidated return will be considered as including only the income of the corporations which were members of the group during that taxable year.

*g.* In any case in which amounts have been assessed and paid upon the basis of a consolidated return, and where the tax liability of one or more of the corporations included in the consolidated return is to be computed in the manner described in paragraph 53.15(3)“*f*,” the amounts so paid shall be allocated between the group composed of the corporations properly included in the consolidated return and each of the corporations, whose tax liability is to be computed on a separate basis (or on the basis of a consolidated return of another group) in such manner as the corporations which were included in the consolidated return, and where the tax liability of one or more of the corporations included absence of an agreement, the tax liability of the group shall be allocated under subrule 53.12(4).

*h.* The taxable year of members of the group, including rules for changing the parent’s taxable year, income to be included in the separate returns, and the time for making separate returns for periods not included in a consolidated return for the purposes of the Iowa Code, shall be in accordance with the rules prescribed in Treasury Regulation Section 1.1502-76(a)-(c).

**53.15(4)** *Determination of consolidated Iowa income.*

*a.* Unless otherwise provided by these rules or manifestly inconsistent with the provisions of the Iowa Code, the consolidated taxable income for a consolidated return year under the Iowa Code shall be determined in the same manner and under the same procedures, including intercompany adjustments and eliminations, as are required by the federal income tax regulations in the case of a federal consolidated return.

*b.* If the Iowa affiliated group differs in its members from the federal affiliated group, such nonqualifying member(s) shall not be considered includable corporations and all computations hereunder shall be made as if such member(s) were not members of the affiliated group. The consolidated federal income tax liability shall be allocated between includable corporations and nonincludable corporations by subrule 53.12(4).

*c.* The apportionment provisions of Iowa Code section 422.33 shall be taken into account by an affiliated group doing business within and without Iowa. All members of an affiliated group which join in the filing of an Iowa consolidated return shall determine the portion of the consolidated net income earned within and without Iowa by the same method. All intercompany transactions shall be eliminated in the determination of the apportionment factors.

The gross receipts of each corporation which joins in the filing of an Iowa consolidated corporation income tax return shall be included in the computation of the business activity ratio. The gross receipts of each corporation shall be included in the numerator of the business activity ratio to the extent that it has nexus in Iowa and its gross receipts are not eliminated by intercompany adjustments and are considered Iowa gross receipts by rules 701—54.2(422) to 701—54.8(422). The gross receipts of each corporation shall be included in the denominator of the business activity ratio to the extent its gross receipts are not eliminated by intercompany adjustments.

**53.15(5)** *Schedules.* Supporting schedules shall be filed with the consolidated return. The statement of gross income and deductions and other schedules required for each corporation shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily ascertained. A column shall also be provided giving effect to any eliminations and adjustments. The items included in the column for eliminations and adjustments should be symbolized to identify contra items affected, and suitable explanations appended, if necessary. Similar schedules shall contain in columnar form a reconciliation of retained earnings for each corporation,

together with a reconciliation of consolidated retained earnings. Consolidated balance sheets at the beginning and close of the taxable year of the group shall accompany the consolidated return prepared in a form similar to that required for other schedules. Transactions with a subsidiary which is not included as part of the Iowa consolidated return shall not be considered as intercompany transactions for elimination purposes in computing the consolidated Iowa taxable income for the return period.

**53.15(6) Liability for tax.**

*a.* Except as provided in paragraph 53.15(6) “b,” the common parent corporation and each subsidiary subject to the Iowa corporation income tax which was a member of the affiliated group during any part of the consolidated return year shall be severally liable for the tax for the year computed in accordance with Iowa Code chapter 422, on or before the due date (not including extensions of time) for the filing of the consolidated return for that year.

*b.* If a subsidiary has ceased to be a member of the group and if the cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the director may make an assessment and collection of the deficiency from the former subsidiary in an amount not exceeding the portion of the deficiency which the director may determine to be allocable to it. If the director makes assessment and collection of any part of a deficiency from the former subsidiary, then for purposes of any credit or refund of the amount collected from the former subsidiary the agency of the common parent under the provisions of paragraph 53.15(1) “e” shall not apply.

*c.* No agreement entered into by one or more members of the affiliated group with any other member of the group shall in any case have the effect of reducing the liability prescribed under this subrule.

**53.15(7) Computation of contribution.** Computation of a separate corporation’s contribution to consolidated income or net operating loss subject to Iowa tax for purposes of net operating loss carryover and carryback limitations shall be as follows:

$$\frac{A}{B} \times C \times \frac{D}{A} + E = \text{separate corporation contribution to consolidated income subject to Iowa tax.}$$

A = Separate corporation gross sales within and without Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated net income subject to apportionment.

D = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

E = Separate corporation income allocable to Iowa.

**53.15(8) Limitations on net operating loss carryover and carryback.**

*a. Definitions.*

(1) The term “separate return year” means a year in which a corporation filed a separate return and also a year for which it joined (or was required to join) in the filing of an Iowa consolidated return by another affiliated group.

(2) The term “separate return limitation year” means any separate return year of a member of the group or of a predecessor of the member.

*b. Limitation on net operating loss carryover.* A net operating loss from a separate return limitation year of a member of the group may be carried over only to the extent that the member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7). A net operating loss carryover from a separate return limitation year cannot create or increase a consolidated net operating loss which is carried back for tax years beginning prior to January 1, 2009.

A consolidated net operating loss may be carried over to a consolidated return year without limitation even though in the carryover year the affiliated group contains members which were not members of the group in the loss year.

If a member of the affiliated group in the loss year leaves the group through the sale of its stock or because it is now a corporation exempt from tax under Iowa Code section 422.34, its share, as determined by subrule 53.15(7), of the unabsorbed consolidated net operating loss at the end of the consolidated return year during which the member left the group or became exempt from tax may not be carried forward to a subsequent consolidated return.

*c. Limitation on net operating loss carryback for tax periods beginning prior to January 1, 2009.* A member's share of an Iowa consolidated net operating loss as computed under subrule 53.15(7) must be carried back to a separate return year, unless the affiliated group elected to carry the net operating loss forward. However, if the member was not in existence in the carryback year but had been a member of the group for every tax year of its existence, its share of the Iowa consolidated loss may be carried back to a separate return year of the common parent.

If a consolidated net operating loss is carried back to a consolidated return year and all members of the affiliated group are the same in the carryback year as in the loss year, the consolidated net operating loss may be carried back without limitation. If there are members of the affiliated group in the loss year which were not members in the carryback year, then the formula in subrule 53.15(7) must be used to determine the portion of the consolidated net operating loss attributable to the members in existence in the carryback year and which may be carried back. Any member of the affiliated group which was a member of the loss-year affiliated group which has been a member of the group since its formation will be regarded as having been a member of the group in the carryback year even though it was not then in existence. A merger or liquidation of members within the affiliated group will be disregarded in determining whether there has been a change in the group between the loss year and the carryback year.

The amount of net operating loss that may be carried back from a separate return year to a consolidated return year is limited to the extent that the former member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7).

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483, and section 422.37.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—53.16(422) Federal rulings and regulations.** In determining whether “taxable income,” “net operating loss deduction” or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which call for an alternative method for determining “taxable income,” “net operating loss deduction,” or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code section 422.35.

**701—53.17(422) Depreciation of speculative shell buildings.**

**53.17(1)** For tax years beginning on or after July 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal taxable income in order to deduct depreciation under this rule.

**53.17(2)** On sale or other disposition of the speculative shell building, the taxpayer must report on the taxpayer's Iowa corporation income tax return the same gain or loss reported on the taxpayer's federal corporation income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

**53.17(3)** For the purposes of this rule, the term “speculative shell building” means a building as defined in Iowa Code section 427.1, subsection (27)“c.”

This rule is intended to implement Iowa Code section 422.35.

**701—53.18(422) Deduction of multipurpose vehicle registration fee.** For tax years beginning on or after January 1, 1992, and before January 1, 2005, corporations may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph “h.” In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an ordinary and necessary business expense.

For tax years beginning on or after January 1, 2005, the deduction for Iowa corporation income tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

This rule is intended to implement Iowa Code section 422.35.

**701—53.19(422) Deduction of foreign dividends.** For tax years beginning on or after January 1, 1992, corporations may claim a deduction based on percentage of ownership as set forth in Section 243 of the Internal Revenue Code for foreign dividends including Subpart F income as defined in Section 952 of the Internal Revenue Code. See *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance*, 505 U.S. 71, 120 L.Ed 59, 112 S.Ct. 2365 (1992).

This rule is intended to implement Iowa Code section 422.35.

**701—53.20(422) Employer social security credit for tips.** Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer’s FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer’s deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994. No social security tax credit is allowed on the Iowa corporation income tax return.

This rule is intended to implement Iowa Code section 422.35 as amended by 1995 Iowa Acts, chapter 152.

**701—53.21(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust.** To the extent that the contribution was not deductible for federal income tax purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust may be deducted for Iowa income tax purposes. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code section 422.35 as amended by 1998 Iowa Acts, House File 2119.

**701—53.22(422) Additional first-year depreciation allowance.**

**53.22(1) Assets acquired after September 10, 2001, but before May 6, 2003.** For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance (“bonus depreciation”) of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss

reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1:** Taxpayer acquired a \$100,000 qualifying asset on January 1, 2002, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2002. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2002. Therefore, a \$24,000 (\$44,000 – \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2002.

**EXAMPLE 2:** Taxpayer acquired a \$1,000,000 qualifying asset on January 1, 2002, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2005, for \$500,000. Using the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2002-2005. This results in a basis for this asset of \$322,560 (\$1,000,000 – \$677,440), and a gain of \$177,440 (\$500,000 – \$322,560) on the federal return for 2005 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2002-2005. This results in a basis for this asset of \$460,800 (\$1,000,000 – \$539,200), and a gain of \$39,200 (\$500,000 – \$460,800) on the Iowa return for 2005 on the sale of the asset. Therefore, a decrease to net income of \$138,240 (\$177,440 – \$39,200) relating to this gain adjustment must be made on the Iowa return for 2005.

**53.22(2)** *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa corporation income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa corporation income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

*a.* If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.60(2), paragraph “a,” for examples illustrating how this subrule is applied.

*b.* If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

**53.22(3)** *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the

total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1:** Taxpayer acquired a \$100,000 qualifying asset on January 10, 2008, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2008. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2008. Therefore, a \$24,000 (\$44,000 – \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2008.

**EXAMPLE 2:** Taxpayer acquired a \$1,000,000 qualifying asset on January 10, 2008, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2011, for \$500,000. Using the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2008-2011. This results in a basis for this asset of \$322,560 (\$1,000,000 – \$677,440), and a gain of \$177,440 (\$500,000 – \$322,560) on the federal return for 2011 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2008-2011. This results in a basis for this asset of \$460,800 (\$1,000,000 – \$539,200), and a gain of \$39,200 (\$500,000 – \$460,800) on the Iowa return for 2011 on the sale of the asset. Therefore, a decrease to net income of \$138,240 (\$177,440 – \$39,200) relating to this gain adjustment must be made on the Iowa return for 2011.

**53.22(4) *Qualified disaster assistance property.*** For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

**53.22(5) *Assets acquired after December 31, 2009, but before January 1, 2013.*** For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2013, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2013, can be calculated on Form IA 4562A.

See subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—53.23(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa corporation income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa corporation income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa corporation income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa corporation income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa corporation income tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa corporation income tax.

**53.23(1)** If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.65(1) for examples illustrating how this subrule is applied.

**53.23(2)** If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to \$25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: Taxpayer acquired a \$110,000 qualifying asset on January 1, 2003, which has a five-year life for depreciation purposes. Taxpayer was entitled to a \$100,000 Section 179 expensing allowance, a \$5,000 bonus depreciation deduction under Section 168(k) of the Internal Revenue Code, and an additional depreciation deduction under Section 168 of the Internal Revenue Code for a total deduction of \$106,000 for federal tax purposes. For Iowa purposes, taxpayer filed a return showing a \$25,000 Section 179 expensing allowance and a \$17,000 depreciation deduction using MACRS, for a total Iowa deduction of \$42,000. Therefore, since taxpayer elected not to take the increased Section 179 expensing for Iowa tax purposes, a \$64,000 (\$106,000 – \$42,000) adjustment to net income relating to this Section 179 and depreciation adjustment would be made on the Iowa return for 2003. Similar adjustments would be made on the 2004 and 2005 Iowa returns if taxpayer elected not to take the increased Section 179 expensing for Iowa tax purposes.

EXAMPLE 2: Assume the same facts as given in Example 1, and the qualifying asset was sold on December 31, 2005, for \$50,000. Taxpayer elected not to take the increased Section 179 expensing for Iowa tax purposes. Taxpayer would have claimed \$108,560 of Section 179 and depreciation deductions on the federal returns for 2003-2005. This results in a basis for this asset of \$1,440 (\$110,000 – \$108,560), and a gain of \$48,560 (\$50,000 – \$1,440) on the federal return for 2005 on the sale of the asset.

Taxpayer would have claimed \$85,520 of Section 179 and depreciation deductions using the Section 179 limit of \$25,000 and the MACRS depreciation method on the Iowa returns for 2003-2005. This results in a basis for this asset of \$24,480 (\$110,000 – \$85,520), and a gain of \$25,520 (\$50,000 – \$24,480) on the Iowa return for 2005 on the sale of the assets. Therefore, an adjustment to net income of \$23,040 (\$48,560 – \$25,520) relating to this gain adjustment would be made on the Iowa return for 2005.

**53.23(3)** Special filing provision for 2010 change. Taxpayers who did not claim the increased Section 179 expensing on their tax return for the period beginning on or after January 1, 2010, but before January 1, 2011, as originally filed have two options to reflect this adjustment. Taxpayer may either file an amended return for the applicable tax year to reflect this adjustment or taxpayer may reflect this adjustment on the next tax return. If the taxpayer elects to reflect this adjustment on the next tax return, the limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code is suspended related to the claiming of the adjustment for the next tax year.

EXAMPLE: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for the period ending December 31, 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for the period ending December 31, 2010. Taxpayer elects not to file an amended return for the period ending December 31, 2010, but to make the adjustment on the Iowa return for the period ending December 31, 2011. Taxpayer reported a loss on the federal return for the period ending December 31, 2011; therefore, no Section 179 expense can be claimed on the federal return for the period ending December 31, 2011, in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for the period ending December 31, 2011, since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—53.24(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain.** For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa corporation income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa purposes can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms “threat” and “imminence,” and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

**53.24(1) Reporting requirements.** In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa corporation income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 53.24(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

**53.24(2) Claiming the exclusion when gain is not recognized for federal tax purposes.** For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa corporation tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa corporation income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa corporation income tax.

**EXAMPLE:** In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa corporation income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa corporation income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.35.

**701—53.25(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television, or video projects.**

**53.25(1) Projects registered on or after January 1, 2007, but before July 1, 2009.** For tax years beginning on or after January 1, 2007, a taxpayer that is an Iowa-based business may exclude, to the extent included in federal taxable income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—52.34(15,422). An Iowa-based business is a business whose commercial domicile as defined in Iowa Code section 422.32(3) is in Iowa.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—52.34(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a

film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a corporation which is domiciled in Iowa. If this same corporation receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, the corporation cannot exclude this income on the Iowa corporation income tax return because the corporation has claimed the film qualified expenditure tax credit.

**53.25(2) Projects registered on or after July 1, 2009.** For tax years beginning on or after July 1, 2009, a taxpayer that is an Iowa-based business may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa corporation income tax return for each of the tax years 2010-2013.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, section 5, and section 422.35.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—53.26(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal taxable income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

[Filed 12/12/74]

[Filed emergency 1/6/76, Notice 12/1/75—published 1/26/76, effective 1/6/76]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]

[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]

[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]

[Filed emergency 1/19/83—published 2/16/83, effective 1/19/83]

[Filed emergency 6/3/83—published 6/22/83, effective 6/3/83]

[Filed 2/10/84, Notice 1/4/84—published 2/29/84, effective 4/5/84]

[Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]

[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]

[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]

[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]<sup>o</sup>

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]

[Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]

[Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]

[Filed 8/16/89, Notice 7/12/89—published 9/6/89, effective 10/11/89]

[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]

[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]

[Filed 8/3/90, Notice 6/27/90—published 8/22/90, effective 9/26/90]

[Filed 9/13/90, Notice 8/8/90—published 10/3/90, effective 11/7/90]

[Filed 1/17/91, Notice 12/12/90—published 2/6/91, effective 3/13/91]  
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]  
[Filed 1/17/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]  
[Filed 7/2/92, Notice 5/27/92—published 7/22/92, effective 8/26/92]  
[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]  
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]  
[Filed 4/9/93, Notice 3/3/93—published 4/28/93, effective 6/2/93]  
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]  
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]  
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]  
[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]  
[Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]  
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]  
[Filed 5/1/98, Notice 3/25/98—published 5/20/98, effective 6/24/98]  
[Filed 8/5/98, Notice 7/1/98—published 8/26/98, effective 9/30/98]  
[Filed 11/24/99, Notice 9/22/99—published 12/15/99, effective 3/29/00]  
[Filed 8/16/01, Notice 7/11/01—published 9/5/01, effective 10/10/01]  
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]  
[Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]  
[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]  
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]  
[Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]  
[Filed emergency 9/24/04—published 10/13/04, effective 9/24/04]  
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]  
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
[Filed emergency 2/25/05—published 3/16/05, effective 2/25/05]  
[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]  
[Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]  
[Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]  
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]  
[Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 9103B (Notice ARC 8944B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

◇ Two or more ARCs



CHAPTER 59  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—59.1(422) Computation of net income for financial institutions.** “Net income” for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in rules 701—59.2(422) to 701—59.13(422). The remaining provisions of this rule and rules 701—59.14(422) to 701—59.24(422) shall also be applicable in determining net income.

In the case of a financial institution which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the financial institution had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer’s separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.

**701—59.2(422) Net operating loss carrybacks and carryovers.** Net operating losses shall be allowed or allowable for Iowa franchise tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes, provided the following adjustments are made:

**59.2(1) Additions to income.**

*a.* Refunds of federal income taxes due to net operating loss, capital loss and investment credit or other credit carrybacks shall not be added for tax years beginning on or after January 1, 1980.

*b.* Iowa franchise tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

*c.* Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

**59.2(2) Reductions of income.** Iowa franchise tax refunds reported as income for federal income tax purposes in the loss year shall be reflected as reductions of income in the year of the loss.

**59.2(3)** If a financial institution does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 59.2(1) and 59.2(2).

*a.* After making the adjustments to federal taxable income as provided in subrules 59.2(1) and 59.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—59.25(422) to 701—59.29(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

*b.* The net operating loss attributable to Iowa, as determined in rule 701—59.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision for tax years beginning before August 6, 1997. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be

carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

c. For tax years beginning after August 5, 1997, but before January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—59.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa franchise tax return filed with the department.

d. For tax years beginning on or after January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—59.2(422), shall be carried forward 20 taxable years. The net operating loss cannot be carried back to a previous tax year.

**59.2(4)** No part of a net loss for a year for which the financial institution was not subject to the imposition of Iowa franchise tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

**59.2(5)** No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

**59.2(6)** The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a member of a consolidated income tax return for federal income tax purposes, but is required to file a separate franchise tax return, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483, and sections 422.61 and 422.63.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—59.3(422) Capital loss carryback.** Capital losses shall be allowed or allowable for Iowa franchise tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net income. For capital losses occurring in tax years beginning on or after January 1, 1980, refunds of federal corporation income taxes shall not be an adjustment in computing income subject to the franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.4(422) Net operating and capital loss carrybacks and carryovers.** If the taxpayer, for tax periods beginning before January 1, 2009, has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the net operating loss offset against any remaining income.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483, and section 422.61.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—59.5(422) Interest and dividends from federal securities.** For franchise tax purposes, dividends received from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies and instrumentalities become a part of the taxable income. Examples of these types of obligations are bonds issued by the governments of Puerto Rico, Washington D.C., Guam and the Virgin Islands. Notwithstanding the above, only interest received after July 1, 1991, from bonds purchased after January 1, 1991, issued by the governments of Puerto Rico, Guam and the Virgin Islands is subject to tax.

Gains or losses from the sale or other disposition of any bonds shall be taxable for state franchise tax purposes.

Interest received on federal tax refunds is taxable for Iowa franchise tax purposes.

This rule is intended to implement Iowa Code section 422.61.

**701—59.6(422) Interest and dividends from foreign securities and securities of states and other political subdivisions.** Interest and dividends from foreign securities and securities of states and their political subdivisions including Iowa shall be included in taxable income for periods beginning on or after January 1, 1980. For tax periods beginning on or after January 1, 1987, subtract interest expense allocable to interest exempt from federal income tax which was disallowed as a deduction under Internal Revenue Code Section 265(b) or 291(e)(1)(B).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal income tax under Section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under Section 852(b)(4)(B) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, add, to the extent not already included, income from the sale of obligations of the state of Iowa and its political subdivisions and interest and dividend income from these obligations. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, along with interest and dividend income from these bonds, shall be included in Iowa taxable income unless the law authorizing these obligations specifically exempts the income from the sale and interest and dividend income from Iowa franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61 as amended by 2001 Iowa Acts, House File 715.

**701—59.7(422) Safe harbor leases.** For tax years ending after January 1, 1981, deductions in determining federal taxable income for sale-leaseback agreements taken as a result of the application of Section 168(f)(8) of the Internal Revenue Code shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of Sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense, and the lessee shall add rental expense. When the deduction for depreciation is not allowed under a previous provision of this rule, the lessee shall be allowed a deduction for depreciation on any property involved in a sale-leaseback agreement. The depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of sale-leaseback agreement shall be deducted in determining Iowa taxable income. The lessee shall deduct interest income and the lessor shall deduct rent income. Each lessor and lessee corporation shall include a copy of federal Form 6793 in its Iowa franchise tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.8(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals.** For tax years beginning on or after January 1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 59.8(2), is allowed a deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 904, division IX.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by 701—subrule 53.11(2), is allowed a deduction for 65 percent not to exceed \$20,000 of the 12 months of wages paid or accrued during the tax year for work done in Iowa for employees first hired after January 1, 1989, who meet the above criteria.

**59.8(1)** The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the division of job service of the department of employment services, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

**59.8(2)** The term "small business corporation" includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

*a.* A small business corporation shall not have had more than 20 full-time equivalent positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the individual for whom an additional deduction for wages is taken was hired. "Full-time equivalent position" means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

| <u>Average Number of Weekly Hours</u> | <u>Category</u> |
|---------------------------------------|-----------------|
| More than 0 but less than 15          | ¼               |
| 15 or more but less than 25           | ½               |
| 25 or more but less than 35           | ¾               |
| 35 or more                            | 1 (full-time)   |

*b.* A small business corporation shall not have more than \$1 million in annual gross revenues or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. "Annual gross revenues" means total interest received from loans and investments, service charges, management fees, fiduciary fees, commissions, and gross proceeds from the sale of securities held as investments as determined in accordance with generally accepted accounting principles.

*c.* A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. "Affiliate

or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

**59.8(3) Definitions.**

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term “*handicapped*” does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

**59.8(4)** If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under Section 59 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A “vocational rehabilitation referral” is any individual certified by a state employment agency as having a physical or mental disability which, for the individual, constitutes or results in a substantial

handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state- or federal-approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

**59.8(5)** The taxpayer shall include a schedule with the filing of the taxpayer's tax return showing the name, address, social security number, date of hiring and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

**59.8(6)** If the employee for whom an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

**59.8(7)** For tax years ending after July 1, 1990, a taxpayer who did not qualify for the additional deduction for wages paid or accrued for work done in Iowa by certain individuals set forth above is allowed an additional deduction of 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued for work done in Iowa for employees first hired on or after July 1, 1990, if the new employee is:

*a.* An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to Iowa Code chapter 906.
- (3) Is on probation pursuant to Iowa Code chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to Iowa Code chapter 904, division IX.

*b.* An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 907A.1 applies.

The additional deduction is not allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa division of job service of the department of employment services, the additional deduction is allowed.

The taxpayer must include a schedule with the filing of the taxpayer's tax return showing the name, address, social security number, date of hiring, and wages paid of each employee for whom the taxpayer claims the additional deduction for wages.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa franchise tax return taking the additional deduction for wages, the taxpayer must file an amended return adding back the additional deduction for wages. The amended return must state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code sections 16.1(36), 422.35 and 422.61.

**701—59.9(422) Work opportunity tax credit.** Where a financial institution claims the federal work opportunity tax credit as provided in Section 51 of the Internal Revenue Code, the amount of credit allowable shall be a deduction from Iowa taxable income to the extent the credit increased federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.10(422) Work incentive program credit.** Rescinded IAB 3/15/95, effective 4/19/95.

**701—59.11(422) Gains and losses on property acquired before January 1, 1934.** Where property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date. *City National Bank of Clinton v. Iowa State Tax Commission*, 251 Iowa 603, 102 N.W.2d 381 (1960).

If as a result of this provision a basis is to be used for purposes of Iowa franchise tax which is different from the basis used for purposes of federal income tax, an appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa income subject to franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.12(422) Federal income tax deduction.** For tax years beginning on or after January 1, 1980, a deduction for 50 percent of federal income taxes paid or accrued is not allowed. Cash-basis taxpayers are not allowed a deduction for 50 percent of federal income taxes paid during a tax year beginning on or after January 1, 1980, which represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal income tax refund received during a tax year beginning on or after January 1, 1980, shall not be reported as income. For tax years beginning on or after January 1, 1990, because the federal environmental tax is deducted in computing federal taxable income and Iowa Code section 422.61(3) "a" does not allow the deduction of federal income taxes, the federal environmental tax must be added to federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.13(422) Iowa franchise taxes.** Iowa franchise taxes paid or accrued during the tax year as may be applicable under the method of filing are permissible deductions for federal corporation income tax purposes, but not for purposes of determining Iowa net income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa franchise tax purposes. Refunds of Iowa franchise tax to the extent that the returns are included in the determination of federal taxable income shall all be subtracted from federal taxable income.

This rule is intended to implement Iowa Code section 422.61.

**701—59.14(422) Method of accounting, accounting period.** The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for franchise tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.15(422) Consolidated returns.** There is no provision in the Iowa franchise tax law to allow financial institutions to file consolidated Iowa franchise tax returns with another financial institution or another corporation as defined in Iowa Code section 422.32. In the absence of any statutory authority for allowing consolidated Iowa franchise tax returns, separate Iowa franchise tax returns must be filed.

This rule is intended to implement Iowa Code sections 421.14 and 422.68(1).

**701—59.16(422) Federal rulings and regulations.** In determining whether "taxable income," "net operating loss deduction" or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which call for an alternative method for determining "taxable income," "net operating loss deduction," or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.17(422) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—59.18(422) Depreciation of speculative shell buildings.**

**59.18(1)** For tax years beginning on or after July 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost of recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to federal taxable income in order to deduct depreciation under this rule.

**59.18(2)** On sale or other disposition of the speculative shell building, the taxpayer must report on the taxpayer's Iowa corporation income tax return the same gain or loss reported on the taxpayer's federal corporation income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

**59.18(3)** For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1, subsection (27) "c."

This rule is intended to implement Iowa Code sections 422.35 and 422.63.

**701—59.19(422) Deduction of multipurpose vehicle registration fee.** For tax years beginning on or after January 1, 1992, and before January 1, 2005, corporations may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph "h." In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an ordinary and necessary business expense.

For tax years beginning on or after January 1, 2005, the deduction for Iowa franchise tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

This rule is intended to implement Iowa Code section 422.35.

**701—59.20(422) Disallowance of expenses to carry an investment subsidiary for tax years which begin on or after January 1, 1995.** A financial institution which has an investment in an investment subsidiary on or after July 1, 1995, must allocate a portion of its total expenses used in computing its federal taxable income on a separate return basis to its investment subsidiary. The expenses which are allocable to the investment in an investment subsidiary are computed by multiplying the financial institution's total expenses used in computing its federal taxable income on a separate return basis by the ratio of the average adjusted basis in its investment subsidiary to the average adjusted basis for all assets of the financial institution. For tax years beginning on or after January 1, 1995, and before December 31, 1995, a financial institution which has an investment in an investment subsidiary on July 1, 1995, must allocate a portion of its total expenses for the entire tax year to its investment in an investment subsidiary even though it did not have an investment in an investment subsidiary for the entire tax year.

A calculation of the average for the tax year of the adjusted bases of a financial institution's investment in investment subsidiaries, and total assets, held each day of the tax year is the most accurate method for determining under Iowa Code subsection 422.61(3) the portion of a financial institution's total expenses that is allocable to the financial institution's investment in investment subsidiaries. However, the department will generally allow the average adjusted bases of an investment in investment subsidiaries for the tax year to be calculated using the average of the adjusted bases of the investment in investment subsidiaries held by the financial institution at the end of each month within the tax year. The department generally will allow the average bases of all assets of the financial institution for the tax year to be calculated using the average bases of all assets held by the financial institution at the end of each quarter of the tax year. A financial institution may compute for any tax year, without prior permission of the director, the average adjusted bases of investment in investment subsidiaries or total assets on a more frequent basis than set forth above. However, a financial institution may not compute these averages for any tax year on a less frequent basis than quarterly without obtaining prior approval of the director. This permission will be granted only in extraordinary circumstances. In addition, a

financial institution may not compute these averages for any tax year on a less frequent basis than it used for the preceding tax year unless the financial institution obtains prior approval of the director. A financial institution that has elected to use an estimate of the adjusted tax bases of its total assets for each of the first three quarters of the taxable year under Internal Revenue Service's Revenue Ruling 90-44 for federal income tax purposes may use this estimate for Iowa franchise purposes.

**59.20(1)** For the purposes of this rule, the term "affiliate" means a corporation, trust, estate, association, or similar organization:

*a.* Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions; or

*b.* Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for election of directors of such financial institution at the preceding election, or by trustees for the benefit of the shareholders of such financial institution; or

*c.* Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any financial institution; or

*d.* Which owns or controls, directly or indirectly, either a majority of the voting shares of a financial institution or more than 50 percent of the number of shares voted for the election of directors of a financial institution at the preceding election, or controls in any manner the election of a majority of the directors of a financial institution, or for the benefit of those shareholders or members all or substantially all of the outstanding voting shares of a financial institution is held by trustees; or

*e.* Which is a bank holding company, as defined by the laws of the United States, of which a financial institution is a subsidiary, and any other subsidiary as defined by the laws of the United States, of a bank holding company.

**59.20(2)** For the purposes of this rule, the term "average adjusted basis" means the financial institution's average adjusted basis as computed pursuant to Section 1016 of the Internal Revenue Code on a separate company basis.

**59.20(3)** For purposes of this rule, the term "investment subsidiary" means an affiliate that is owned, capitalized or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

This rule is intended to implement Iowa Code section 422.61 as amended by 1995 Iowa Acts, chapter 193.

**701—59.21(422) S corporation and limited liability company financial institutions.** For tax years beginning on or after January 1, 1997, a financial institution as defined in Section 581 of the Internal Revenue Code which has in effect an election under Subchapter S of the Internal Revenue Code must compute an amount of income as if the financial institution were subject to federal corporation income tax. For tax years beginning on or after July 1, 2004, a financial institution organized as a limited liability company under Iowa Code chapter 524 that is taxed as a partnership for federal income tax purposes must compute an amount of income as if the financial institution were subject to federal corporation income tax. The income is to be computed in the same manner as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable tax would compute its federal taxable income.

This rule is intended to implement Iowa Code section 422.61 as amended by 2004 Iowa Acts, House File 2484.

**701—59.22(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust.** To the extent that the contribution was not deductible for federal income tax

purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust may be deducted for Iowa franchise tax purposes. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code sections 422.35 as amended by 1998 Iowa Acts, House File 2119, and 422.61.

**701—59.23(422) Additional first-year depreciation allowance.**

**59.23(1)** *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance (“bonus depreciation”) of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

**59.23(2)** *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa franchise tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa franchise tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

*a.* If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.60(2), paragraph “a,” for examples illustrating how this subrule is applied.

*b.* If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

**59.23(3)** *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50

percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

**59.23(4) *Qualified disaster assistance property.*** For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

**59.23(5) *Assets acquired after December 31, 2009, but before January 1, 2013.*** For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2013, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2013, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 512, and section 422.61.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—59.24(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27,

Section 202, may be taken for Iowa franchise tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa franchise tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa franchise tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa franchise tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa franchise tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa franchise tax.

**59.24(1)** If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

See 701—subrule 40.65(1) for examples illustrating how this subrule is applied.

**59.24(2)** If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to \$25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

See 701—subrule 53.23(2) for examples illustrating how this subrule is applied.

**59.24(3)** Special filing provision for 2010 change. Taxpayers who did not claim the increased Section 179 expensing on their tax return for the period beginning on or after January 1, 2010, but before January 1, 2011, as originally filed have two options to reflect this adjustment. Taxpayer may either file an amended return for the applicable tax year to reflect this adjustment, or taxpayer may reflect this adjustment on the next tax return. If the taxpayer elects to reflect this adjustment on the next tax return, the limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code is suspended related to the claiming of the adjustment for the next tax year.

EXAMPLE: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for the period ending December 31, 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for the period ending December 31, 2010. Taxpayer elects not to file an amended return for the period ending December 31, 2010, but to make the adjustment on the Iowa return for the period ending December 31, 2011. Taxpayer reported a loss on the federal return for the period ending December 31, 2011; therefore, no Section 179 expense can be claimed on the federal return for the period ending December 31, 2011, in accordance with Section 179(b)(3) of the Internal Revenue Code.

Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for the period ending December 31, 2011, since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 512, and section 422.61.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

#### ALLOCATION AND APPORTIONMENT

**701—59.25(422) Basis of franchise tax.** Iowa Code section 422.60 imposes a franchise tax on financial institutions (as defined in 701—subrule 57.1(2)) for the privilege of doing business within the state. The tax is measured by net income. For financial institutions subject to the tax, the tax is levied and collected only on income which may accrue or be recognized to the financial institutions from business done or carried on in the state plus net income from certain sources without the state which by rule follows the commercial domicile of the financial institution.

If a financial institution carries on business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The financial institution will be presumed to be carrying on its business entirely within the state of Iowa if its activities are carried on only within Iowa, even though it receives income from sources outside the state in the form of interest, dividends, royalties, and other sources of income from intangibles.

**59.25(1) Definition—doing business.** The term “doing business” is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every financial institution organized for profit and carrying out any of the purposes of its organization shall be deemed to be “doing business.” In determining whether a financial institution is doing business, it is immaterial whether its activities actually result in a profit or loss.

**59.25(2) Definition—carrying on business partly within and partly without the state.** “Carrying on business partly within and partly without the state” means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a financial institution is carrying on business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of past or future years have no bearing on the current year.

The following nonexclusive activities if done on a regular and continuing basis by financial institution officers or employees in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

- a. Solicitation of loans by traveling loan officers.
- b. Collection of overdue accounts.
- c. Any other activities carried on in advancement, promotion, or fulfillment of the business of the financial institution.

This rule is intended to implement Iowa Code sections 422.60 and 422.63.

#### **701—59.26(422) Allocation and apportionment.**

**59.26(1)** The classification of income by the labels customarily given, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents and royalties shall be apportioned as business income to the extent the income was earned as a part of a financial institution’s unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes*, 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.*, 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether income is part of a financial institution’s unitary business income depends upon the facts and circumstances in

the particular situation. The burden of proof is upon the taxpayer to show that the treatment of income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of financial institutions in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

**59.26(2)** Application of related expense to nonbusiness income. Subrule 59.26(1) deals with the separation of “net” income, therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related.

A directly related expense shall mean an expense which can be specifically attributed to an item of income. Interest expense shall be considered directly related to a specific property which generates, has generated, or could reasonably have been expected to generate gross income if the existence of all of the facts and circumstances described below is established. Such facts and circumstances are as follows:

- a. The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property;
- b. The proceeds of the borrowing were actually applied to the specified purpose;
- c. The creditor can look only to the specific property (or any lease or other interest therein) as security for the loan;
- d. It may be reasonably assumed that the return on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and
- e. There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in “c” and “d” above.

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of the facts and circumstances are not present in substance. Any expense directly attributable to allocable interest, dividends, rents and royalties shall be deducted from income to arrive at net allocable income.

EXAMPLE: For purposes of this example, it is assumed that the taxpayer has nonbusiness rental income. The taxpayer invests in a 20-story office building. Under the terms of the lease agreements, the taxpayer provides heat, electricity, janitorial services, and maintenance. The taxpayer also pays the property taxes. Construction of the building was funded through borrowings which meet the criteria of a direct expense under the provisions of this paragraph. The directly related expenses to the operation of the property are:

|                     |                    |
|---------------------|--------------------|
| Interest expense    | \$1,200,000        |
| Property taxes      | 500,000            |
| Depreciation        | 500,000            |
| Electricity         | 300,000            |
| Heat                | 200,000            |
| Insurance           | 150,000            |
| Janitorial services | 100,000            |
| Repairs             | 50,000             |
| Total expenses      | <u>\$3,000,000</u> |

The directly related expense of the allocable rental income is \$3,000,000.

This rule is intended to implement Iowa Code section 422.63.

**701—59.27(422) Net gains and losses from the sale of assets.** For purposes of administration of this rule, a capital gain or loss shall mean the sale price or value at the time of disposal of an asset less the adjusted basis, whether reportable as short-term or long-term capital gain or ordinary income for federal income tax purposes.

**59.27(1)** Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the year the gain or loss is reported on the federal income tax return and may at the taxpayer's election be included in the computation of the business activity ratio as follows:

*a.* Gain from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.

*b.* Gain from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

*c.* Gains from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.

*d.* All gains shall be included in the denominator of the activity ratio.

A taxpayer cannot elect to exclude or include gains or loss from the sale of assets where the election would result in an understatement of income reasonably attributable to Iowa. Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.

**59.27(2)** Gain or loss from the sale, exchange, or other disposition of property not used in the taxpayer's trade or business shall be allocated as follows:

*a.* Gains or losses from the sale, exchange, or other disposition of real property located in this state are allocable to this state.

*b.* Gains or losses from the sale, exchange, or other disposition of tangible personal property are allocable to this state if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

*c.* Gains or losses from the sale, exchange, or other disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

This rule is intended to implement Iowa Code section 422.63.

**701—59.28(422) Apportionment factor.** In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

**59.28(1)** Receipts derived from transactions and activities in the regular course of trade or business which produce business income are included in the denominator of the apportionment factor. Income which is not subject to the Iowa franchise tax shall not be included in the computation of the apportionment factor.

**59.28(2)** The numerator of the apportionment factor is that portion of the total receipts included in the denominator of the taxpayer attributable to this state during the income year determined as follows:

*a.* Receipts from the lease, rental, or other use of real property shall be included in the numerator if the real property is located in Iowa.

*b.* Receipts from the sale of tangible personal property shall be included in the numerator if the property is delivered or shipped to a purchaser in this state regardless of the f.o.b. point or other conditions of the sales.

*c.* Receipts from the use of tangible personal property shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of

which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

*d.* All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

*e.* Interest and other receipts from assets in the nature of loans (including federal funds sold and banker's acceptances) and installment obligations shall be attributed to the state where the borrower is located.

*f.* Interest income from a participating bank's portion of participation loan shall be attributed to the state where the borrower is located.

*g.* Interest income from loans solicited by traveling loan officers shall be attributed to the state where the borrower is located.

*h.* Interest or service charges from bank, travel, and entertainment credit card receivables and credit card holders' fees shall be attributed to the state in which the credit card holder resides in the case of an individual or, if a corporation, to the state of the corporation's commercial domicile.

*i.* Merchant discount income derived from bank and financial corporation credit card holder transactions with a merchant shall be attributed to the state in which the merchant is located. It shall be presumed that the location of the merchant is the address on the invoice submitted by the merchant to the taxpayer.

*j.* Receipts for the performance of fiduciary services are attributable to the state where the services are principally performed.

*k.* Receipts from investments of a bank in securities, the income from which constitutes business income, shall be attributed to its commercial domicile except that:

(1) Receipts from securities used to maintain reserves against deposits to meet federal and state reserve deposit requirements shall be attributed to each state based upon the ratio that total deposits in the state bear to total deposits everywhere.

(2) Receipts from securities owned by a bank but held by a state treasurer or other public official or pledged to secure public or trust funds deposited in the bank shall be attributed to the banking office at which the secured deposit is maintained.

*l.* Receipts (fees or charges) from the issuance of traveler's checks and money orders shall be attributed to the state where the taxpayer's office is located that issued the traveler's checks. If the traveler's checks are issued by an independent representative or agent of the taxpayer, the fees or charges shall be attributed to the state where the independent representative or agent issued the traveler's checks.

*m.* Fees, commissions, or other compensation for financial services rendered for a customer located in this state or an account maintained within this state.

*n.* Any other gross receipts resulting from the operation as a financial organization within the state to the extent the items do not represent a recapture of an expense.

*o.* Receipts from management services if the recipient of the management services is located in this state.

This rule is intended to implement Iowa Code section 422.63.

**701—59.29(422) Allocation and apportionment of income in special cases.** If a taxpayer feels that the allocation and apportionment method as prescribed by rule 701—59.28(422) in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by rule 701—59.28(422) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules

detailing the alternative method shall be submitted to the department. The department shall require detail and proof within the time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. The petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair*, 437 U.S. 267, 57 L.Ed.2d 197 (1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair*, supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair*, supra.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue*, 414 N.W.2d 113 (Iowa 1987).

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule, "statutory method of apportionment" means the apportionment factor set forth in rule 701—59.28(422).

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing the taxpayer's return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.63.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

Rules 701—59.25(422) to 701—59.29(422) are effective for tax years beginning on or after June 1, 1989.

- [Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]
- [Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]
- [Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
- [Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
- [Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
- [Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
- [Filed emergency 1/19/83—published 2/16/83, effective 1/19/83]
- [Filed emergency 6/3/83—published 6/22/83, effective 6/3/83]
- [Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]
- [Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
- [Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
- [Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
- [Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]
- [Filed 6/8/89, Notice 5/3/89—published 6/28/89, effective 8/2/89]
- [Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
- [Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]◊
- [Filed 9/13/90, Notice 8/8/90—published 10/3/90, effective 11/7/90]
- [Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
- [Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
- [Filed 7/2/92, Notice 5/27/92—published 7/22/92, effective 8/26/92]
- [Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]◊
- [Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]
- [Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
- [Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
- [Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]
- [Filed 3/22/96, Notice 2/14/96—published 4/10/96, effective 5/15/96]
- [Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
- [Filed 8/5/98, Notice 7/1/98—published 8/26/98, effective 9/30/98]
- [Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
- [Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]
- [Filed 6/22/00, Notice 5/17/00—published 7/12/00, effective 8/16/00]
- [Filed 8/16/01, Notice 7/11/01—published 9/5/01, effective 10/10/01]
- [Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
- [Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]

[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]  
[Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]  
[Filed emergency 9/24/04—published 10/13/04, effective 9/24/04]  
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]  
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
[Filed emergency 2/25/05—published 3/16/05, effective 2/25/05]  
[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]  
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]  
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]  
[Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]  
[Filed ARC 9103B (Notice ARC 8944B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

◊ Two or more ARCs



TITLE VIII  
MOTOR FUEL  
CHAPTER 67  
ADMINISTRATION  
[Prior to 1/1/96, see 701—Ch 63]

**701—67.1(452A) Definitions.** For purposes of this chapter, 701—Chapter 68, and 701—Chapter 69, the following definitions shall govern:

“*Appropriate state agency*” or “*state agency*” means the department of revenue or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in Iowa Code chapter 452A.

“*Aviation gasoline*” means any gasoline capable of being used for propelling aircraft which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage for purposes of propelling aircraft. It does not include motor fuel capable of being used for propelling motor vehicles.

“*Biodiesel*” means a renewable fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, which meets the standards provided in Iowa Code section 214A.2.

“*Biodiesel blended fuel*” means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component, provided in Iowa Code section 214A.2.

“*Biofuel*” means ethanol or biodiesel.

“*Blender*” means a person who owns and blends ethanol with gasoline to produce ethanol blended gasoline and blends the product at a nonterminal location. The person is not restricted to blending ethanol with gasoline. Products blended with gasoline other than ethanol are taxed as gasoline. “*Blender*” also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel.

“*Carrier*” means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

“*Common carrier*” or “*contract carrier*” means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

“*Commercial motor vehicle*” means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. “*Commercial motor vehicle*” does not include a motor truck with a combined gross weight of less than 26,000 pounds, operated as a part of an identifiable one-way fleet and which is leased for less than 30 days to a lessee for the purpose of moving property which is not owned by the lessor.

“*Dealer*” means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

“*Denatured ethanol*” means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with American Society of Testing Materials designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning.

“*Department*” means the department of revenue.

“*Director*” means the director of the Iowa department of revenue or the director’s authorized representative.

“*Distributor*” means a person who acquires tax-paid motor fuel, special fuel, or alcohol from a supplier, restrictive supplier, or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

“*E-85 gasoline*” means ethanol blended gasoline formulated with a minimum percentage of between 70 and 85 percent by volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2.

*“Eligible purchaser”* means a distributor of motor fuel or special fuel who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

*“End user”* of special fuel means a person who has purchased a minimum of 240,000 gallons of special fuel each year in the two preceding years who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

*“Ethanol”* means ethyl alcohol that is to be blended with gasoline if the ethanol meets the standards provided in Iowa Code section 214A.2.

*“Ethanol blended gasoline”* means a formulation of gasoline which is a liquid petroleum product blended with ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. When “motor fuel” is used in these rules, it includes ethanol blended gasoline.

*“Export”* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

*“Exporter”* means a person or other entity who acquires fuel in this state for export to another state.

*“Foreign supplier”* means a person licensed as a supplier to collect and report the tax, but who does not have jurisdictional connections with this state.

*“Fuel(s)”* means and includes both motor fuel and special fuel as defined in Iowa Code chapter 452A.

*“Fuel taxes”* means the per gallon excise taxes imposed under division I of Iowa Code chapter 452A with respect to motor fuel and undyed special fuel.

*“Gasoline”* means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

*“Import”* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

*“Importer”* means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

*“Invoiced gallons”* means gross gallons as shown on the bill of lading or manifest.

*“Iowa urban transit system”* means a system whereby motor buses are operated primarily upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. “Iowa urban transit system” also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus.

Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services, and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

*“Licensee”* means a person holding an uncanceled supplier’s, restrictive supplier’s, importer’s, exporter’s, or blender’s license issued by the department or any other person who possesses fuel for which the tax has not been paid.

*“Mobile machinery and equipment”* means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway including, but not limited to, corn shellers, truck-mounted feed grinders, roller mills, ditch-digging apparatus, power shovels, draglines, earth-moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, and earth-moving scrapers. However, “mobile machinery and equipment” does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

*“Motor fuel”* means a substance or combination of substances which is intended to be or is capable of being used for the purpose of operating an internal combustion engine, including but not limited to a motor vehicle, and is kept for sale or sold for that purpose and includes the following:

1. All products commonly or commercially known or sold as gasoline (including ethanol blended gasoline, casinghead, and absorption or natural gasoline) regardless of their classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

2. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials designation D-86), shows not less than 10 percent distilled (recovered) below 347° F (175° C) and not less than 95 percent distilled (recovered) below 464° F (240° C).

*“Motor fuel”* does not include special fuel and does not include liquefied gases which would not exist as liquids at a temperature of 60° F and a pressure of 14 7/10 pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph “2,” in which event the resulting product shall be deemed to be motor fuel. “Motor fuel” also does not include methanol unless blended with other motor fuels for use in an aircraft or for propelling motor vehicles.

*“Motor vehicle”* means and includes all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment, or produce shall not be deemed to be a motor vehicle. “Motor vehicle” shall not include “mobile machinery and equipment.”

*“Naphthas and solvents”* means and includes those liquids which come within the distillation specifications for motor fuel, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

*“Non-ethanol blended gasoline”* means gasoline other than ethanol blended gasoline.

*“Nonterminal storage facility”* means a facility where motor fuel or special fuel, other than liquefied petroleum gas, is stored that is not supplied by a pipeline or a marine vessel. “Nonterminal storage facility” includes a facility that manufactures products such as ethanol, biofuel, blend stocks, or additives which may be used as motor fuel or special fuel, other than liquefied petroleum gas, for operating motor vehicles or aircraft.

*“Person”* means and includes natural persons, partnerships, firms, associations, corporations, representatives appointed by any court, and political subdivisions of this state or any other group or combination acting as a unit and the plural as well as the singular number applies.

*“Public highways”* means and includes any way or place available to the public for purposes of vehicular travel notwithstanding temporarily closed.

*“Racing fuel”* means leaded gasoline of 110 octane or more that does not meet American Society of Testing Materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

*“Regional transit system”* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared-ride basis shall not be construed to be a regional transit system.

*“Restrictive supplier”* means a person not otherwise licensed as an importer who imports motor fuel or undyed special fuel into this state in amounts of less than 4,000 gallons in tank wagons or in small tanks.

*“Special fuel”* means fuel oils, kerosene and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any

substance used for that purpose, except that it does not include motor fuel. Kerosene and methanol shall not be considered to be special fuels, unless the kerosene or methanol is blended with other special fuels for use in a motor vehicle with a diesel engine.

*“Supplier”* means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. “Supplier” includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. “Supplier” does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

*“Taxpayer”* means anyone responsible for paying fuel taxes directly to the department of revenue under Iowa Code chapter 452A.

*“Terminal”* means a motor fuel, alcohol, or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. “Terminal” does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

*“Terminal operator”* means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If coventurers own a terminal, “terminal operator” means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

*“Withdrawn from terminal”* means physical movement from a supplier to a distributor or eligible end user or from an alcohol manufacturer to a nonterminal location and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal. Exchange of product by suppliers while in the distribution channel and the physical movement of alcohol from an alcohol manufacturer to an Iowa licensed supplier’s alcohol storage at a terminal are not to be considered “withdrawn from terminal.”

This rule is intended to implement Iowa Code sections 452A.2 and 452A.59 as amended by 2008 Iowa Acts, Senate File 2400.

**701—67.2(452A) Statute of limitations, supplemental assessments and refund adjustments.** After a return is filed, the department must examine it, determine fuel taxes due, and give notice of assessment to the taxpayer. If no return is filed, the department may determine the tax due and give notice thereof. See rule 701—67.5(452A). The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If the assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and

must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

This rule is intended to implement Iowa Code section 452A.67 as amended by 1999 Iowa Acts, Senate File 136.

**701—67.3(452A) Taxpayers required to keep records.** The records required to be kept by this rule must be preserved for a period of three years and will be open for examination by the department during this period of time. The department, after an audit and examination of the records, may authorize the disposal of the records required to be kept upon written request by the taxpayer. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

**67.3(1) Motor fuel and special fuel supplier.** Every supplier required to file a monthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

- a. Copies of bills of lading or manifests.
- b. Copies of sales invoices.
- c. Sales records.
- d. Copies of filed returns and supporting schedules.
- e. Record of payment.
- f. Export schedules.

**67.3(2) Restrictive supplier.** Every restrictive supplier required to file a monthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

- a. Copies of bills of lading or manifests.
- b. Purchase invoices.
- c. Copies of sales invoices.
- d. Purchase records.
- e. Sales records.
- f. Copies of filed returns and supporting schedules.
- g. Record of payment.

**67.3(3) Importer.** Every importer required to file a semimonthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

- a. Copies of bills of lading or manifests.
- b. Purchase invoices.
- c. Copies of sales invoices.
- d. Purchase records.
- e. Sales records.
- f. Copies of filed returns and supporting schedules.
- g. Record of payment.

**67.3(4) Exporter.** Every exporter is required to keep and preserve the following records relating to the purchase of fuel for export:

- a. Copies of bills of lading or manifests.
- b. Purchase invoices and purchase records.
- c. Copies of reports, returns, and supporting schedules filed with the importing state.
- d. Record of payment.

**67.3(5) Compressed natural gas and liquefied petroleum gas dealers and users.** Every compressed natural gas and liquefied petroleum gas dealer and user is required to keep and preserve the following records:

- a. Copies of purchase invoice or bills of lading.
- b. Copies of sales invoices and sales records.
- c. Record of payment.
- d. Exemption certificates.
- e. Copies of filed returns and supporting schedules.

**67.3(6) Terminal or nonterminal storage facility operator.** Every person required to report under Iowa Code section 452A.15(2) or 2002 Iowa Acts, House File 2622, section 25, as an operator of a terminal or nonterminal storage facility shall keep and preserve the following records:

- a. Records to evidence the acquisition of fuel.
- b. Bills of lading or manifests covering the withdrawal of fuel.
- c. Copies of filed reports and supporting schedules.

**67.3(7) Distributor.** Every distributor handling motor fuel or special fuel is required to preserve and keep the following records:

- a. Delivery tickets.
- b. Sales invoices.
- c. Bills of lading.
- d. Record of payment.

**67.3(8) Blender.** Every blender is required to keep and preserve the following records:

- a. Purchase invoices for motor fuel, special fuel, and alcohol.
- b. Bills of lading.
- c. Copies of filed returns and supporting schedules.
- d. Record of payment.
- e. Copies of sales invoices.

**67.3(9) Dealer.** Every dealer (retailer) is required to keep and preserve the following records:

- a. Purchase invoices.
- b. Purchase records.
- c. Delivery tickets.
- d. Sales invoices.
- e. Sales records.
- f. Record of payment.

**67.3(10) Microfilm and related record systems.** Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as “microfilm” in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, and ledgers, are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 3.02. However, microfilm reproductions of supporting records of detail, such as sales invoices and purchase invoices, may be allowed providing there is no administrative rule or Iowa Code section requiring the original and all of the following conditions are met and accepted by the taxpayer:

- a. Appropriate facilities are provided to ensure the preservation and readability of the films.
- b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.
- c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.
- d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.
- e. Any audit of “detail” on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director’s designated representative.
- f. A posting reference must be on each invoice.
- g. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

**67.3(11) Automatic data processing records.** Automatic data processing (ADP) is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

- a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer’s tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be designed so that the supporting documents, such as sales invoices and purchase invoices, are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source, such as invoice or payment, to a financial statement or tax return or report; or the reverse, that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

- (1) The application being performed;
- (2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and
- (3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

**67.3(12) *Electronic data interchange or EDI technology.*** The purpose of this subrule is to adopt the "Model Recordkeeping and Retention Regulation" report as promulgated by the Federation of Tax Administrators' Steering Committee Task Force on EDI Audit and Legal Issues for Tax Administration (March 1996). This subrule defines the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Iowa Code sections 452A.10, 452A.12, 452A.55, 452A.60, 452A.62, 452A.69, 452A.76, and 452A.80. It is also the purpose of this subrule to address these requirements where all or part of a taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems. A taxpayer must maintain all records that are necessary for determination of the correct tax liability as set forth in this subrule and the other subrules within rule 701—67.3(452A). Upon request, all required records must be made available to the department or its authorized representatives as provided in Iowa Code sections 452A.10 and 452A.62. If a taxpayer retains records required to be retained under this subrule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. Nothing in this subrule will be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this subrule. However, as previously stated, this will not relieve a taxpayer of the obligation to comply with the requirement to make records available to the department.

a. *Definitions.* The following definitions are applicable to this subrule:

"*Database management system*" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"*Electronic data interchange*" or "*EDI technology*" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

"*Hard copy*" means any documents, records, reports, or other data printed on paper.

"*Machine-sensible record*" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

“*Storage-only imaging system*” means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

“*Taxpayer*” as used in this subrule means any person, business, corporation, fiduciary, or other entity that is required to file a return or report with the department of revenue.

*b. Record-keeping requirements — machine-sensible records.* A taxpayer that maintains and retains books, records, and other sources of information in the form of machine-sensible records must comply with the following:

(1) General requirements. A taxpayer must comply with the following general requirements regarding the retention of machine-sensible records:

1. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. The term “standard record format” does not mean that every taxpayer must keep records in an identical manner. Instead, it requires that if a taxpayer utilizes a code system to identify elements of information in each record when creating and maintaining records, the taxpayer is required to maintain a record of the meaning of each code and any code changes so that the department may effectively review the taxpayer’s records.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer that does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct a traditional paper document for tax purposes.

(2) Electronic data interchange requirements. A taxpayer must comply with the following requirements for records received through electronic data interchange:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, for motor fuel tax purposes the retained records should contain the following minimal information: bills of lading or manifests; invoices; sales and purchase records; returns, reports, and supporting schedules; records of payments; export schedules; exemption certificates; and delivery tickets. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy the requirements set forth in the preceding paragraph at any level within the accounting system and need not retain the original EDI transaction records provided that the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains the other records such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its original EDI transaction for tax purposes.

(3) Electronic data processing accounting systems requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule. In addition, pursuant to Iowa Code sections 452A.10, 452A.12, 452A.55, 452A.60, 452A.62, 452A.69, 452A.76, and 452A.80, the department must have access to the taxpayer’s EDI processing, accounting, or other systems for the purposes of verifying or evaluating the integrity and reliability of those systems to provide accurate and complete records.

(4) Business process information. To verify the accuracy of the records being retained, the taxpayer must comply with the following:

1. Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. The description must include the relationship between the records and the tax documents prepared by the taxpayer and include the measures employed to ensure the integrity of the records.

2. The taxpayer must be capable of demonstrating the following:

- The functions being performed as they relate to the flow of data through the system;
- The internal controls used to ensure accurate and reliable processing; and
- The internal controls used to prevent unauthorized addition to, alteration of, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this rule:

- Record formats or layouts;
- Field definitions (including a record of any changes in the system or codes and the meaning of all codes used to represent information);
- File descriptions (e.g., data set name); and
- Detailed charts of accounts and account descriptions.

*c. Record maintenance requirements.* The department recommends, but does not require, that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records. (The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, Edition.) The taxpayer's computer hardware and software must accommodate the extraction and conversion of retained machine-sensible records.

*d. Access to machine-sensible records.* If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon the request of the department.

(1) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that must take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Access shall be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on magnetic medium that is agreed to by the department.

4. The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

*e. Taxpayer's responsibility and discretionary authority.* In conjunction with meeting the requirements of paragraph "b" of this subrule, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with this subrule for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of paragraph "b" of this subrule. The taxpayer shall document the process that created the separate file to show the relationship between that file and the original records. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract will not relieve the taxpayer of its responsibilities under this rule.

*f. Alternative storage media.* For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche, or other storage-only imaging systems and may discard the

original hard-copy documents provided that the rules governing alternative storage media are met. For details regarding alternative storage, see subrule 67.3(9), “Microfilm and related record systems.”

*g. Effect on hard-copy record-keeping requirements.* Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in paragraph “f” above and subrule 67.3(9).

If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

Hard-copy records generated at the time of the transaction with the use of a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

Nothing in this rule shall prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**67.3(13) General requirements.** If a tax liability has been assessed and an appeal is pending to the department, state board of tax review, or district or supreme court, books, papers, records, memoranda, or documents specified in this rule which relate to the period covered by the assessment must be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule 701—67.5(452A), estimate gallonage, applies.

This rule is intended to implement Iowa Code sections 452A.6 and 452A.15 as amended by 2002 Iowa Acts, House File 2622, and sections 452A.8, 452A.9, 452A.10, 452A.17, 452A.59, 452A.60, 452A.62, and 452A.69.

**701—67.4(452A) Audit—costs.** The department has the right and duty to examine or cause to be examined the books, records, memoranda, or documents of a taxpayer for the purpose of verifying the correctness of a return filed or determining the tax liability of any taxpayer. The costs incurred in examining the records of a taxpayer are at the taxpayer’s expense when the records are kept at an out-of-state location. Cost will include meals, lodging, and travel expenses, but will not include salaries of department personnel. (See 1976 O.A.G. 611.)

This rule is intended to implement Iowa Code section 452A.10 and 452A.62 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.55 and 452A.69.

**701—67.5(452A) Estimate gallonage.** It is the duty of the department to collect all taxes on fuel due the state of Iowa. In the event the taxpayer’s records are lacking or inadequate to support any return filed by the taxpayer, or to determine the taxpayer’s liability, the department has the power to estimate the gallonage upon which tax is due. This estimation will be based upon such factors as, but not limited to, the following: (1) prior experience of the taxpayer, (2) taxpayers in similar situations, (3) industry averages, (4) records of suppliers or customers, and (5) other pertinent information the department may possess, obtain or examine.

This rule is intended to implement Iowa Code section 452A.64.

**701—67.6(452A) Timely filing of returns, reports, remittances, applications, or requests.** The returns, reports, remittances, applications, or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any return that is not signed and any return which does not contain substantially all of the pertinent information are not considered “filed” until such time as the taxpayer signs or supplies the information to the department. *Miller Oil Company v. Abrahamson*, 252 Iowa 1058, 109 N.W.2d 610 (1961), *Severs v. Abrahamson*, 255 Iowa 979, 124 N.W.2d 150 (1963). The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted

electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The director may require by rule that reports and returns be filed by electronic transmission. Effective for returns due after July 1, 2006, all licensees must file returns by electronic transmission. All suppliers, restricted suppliers, importers, terminals, blenders, and nonterminal storage facilities with at least 5,000 gallons of product on their return or report must also file the schedules which support the return or report by electronic transmission.

All returns, reports, remittances, applications, or requests should be mailed to: Iowa Department of Revenue, Motor Fuel Unit, Hoover State Office Building, Des Moines, Iowa 50319, unless electronic transmission is required.

In the event a dispute arises as to the time of filing, or a return, report, or remittance is not received by the department, the provisions of Iowa Code section 622.105 are controlling. This rule applies only when the document is not received or the postmark on the envelope is illegible, erroneous, or omitted.

This rule is intended to implement Iowa Code sections 452A.8 and 452A.61.

**701—67.7(452A) Extension of time to file.** The department may grant an extension for the filing of any required return or tax payment or both.

In order for an extension to be granted, the application requesting the extension must be filed, in writing, with the department prior to the due date of the return or remittance. In determining whether an application for extension is timely filed, the provisions of rule 701—67.6(452A) shall apply. The application for extension must be accompanied by an explanation of the circumstances justifying such extension, and in no event will the extension period exceed 30 days.

In the event an extension is granted, the penalties under Iowa Code section 452A.65 applicable to late-filed returns or remittances will not accrue until the expiration of the extension period, but the interest on tax due under the same section will accrue as of the original filing date.

This rule is intended to implement Iowa Code section 452A.61.

**701—67.8(452A) Penalty and interest.** See rules 701—10.6(421) and 701—10.2(421) for failure to timely file a return or for failure to timely pay the tax. See rule 701—10.8(421) for penalty exceptions. See rule 701—10.72(452A) for interest on refunds.

**701—67.9(452A) Penalty and enforcement provisions.** See rule 701—10.71(421).

**701—67.10(452A) Application of remittance.** All payments are to be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due. If a taxpayer remits a payment on or before the due date, but the payment is insufficient to discharge the tax liability, the entire amount of the payment applies to the tax, and the penalty and interest are based on the unpaid portion of the tax. If the department determines there is additional tax due from a taxpayer, interest and penalty shall accrue on that amount from the date it should have been reported and paid.

This rule is intended to implement Iowa Code section 452A.59 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.65 and 452A.66.

**701—67.11(452A) Reports, returns, records—variations.** The department will prescribe and furnish forms upon which reports, returns, and applications are to be made to the department under Iowa Code chapter 452A. Claims for refund will be made on forms provided by the department or in any other manner as prescribed by the director. Licensees may substitute forms for their use, other than official forms, if all the requirements in department rule 701—8.3(17A) are met.

If the information required in these documents is presented to the department on forms or in a manner other than the prescribed form, or approved substitute form, the return, application, or claim for refund or credit shall not be deemed “filed.” The forms may be furnished by the department (except those pertaining to division III interstate operations which are available from the department of transportation)

and, therefore, the fact that the reporting party does not have the prescribed form is not an excuse for failure to file.

The department may also prescribe the form of the records which the reporting parties are required to keep in support of the reports/returns they file. The department may approve the form of the records which are being kept by any reporting party and must approve the form of record being kept if that form contains all of the information on the prescribed form, the information is compiled in such a manner as to make it easily ascertainable by department personnel, and substantially complies with the prescribed form.

This rule is intended to implement Iowa Code section 452A.60 as amended by 1999 Iowa Acts, Senate File 136.

**701—67.12(452A) Form of invoice.** Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A, the invoice must:

1. Be prepared by someone other than the purchaser and include the seller's name, address, and identification number.
2. Include the purchaser's name and address.
3. Contain a serial number of three or more digits.
4. Include the calendar date of purchase.
5. Indicate the type of fuel purchased. Diesel fuel must be designated as dyed or undyed.
6. Indicate the quantity of fuel purchased in gross gallons.
7. Indicate the total purchase price and show separately the amount of state and federal fuel tax included in the purchase price or include a statement that all state and applicable federal taxes are included in the purchase price.
8. For ethanol blended gasoline or biodiesel blended fuel, state its designation as provided in Iowa Code section 214A.2.
9. Be prepared on paper which will prevent erasure or alteration or on another form approved by the department.

This rule is intended to implement Iowa Code section 452A.10, section 452A.12 as amended by 2009 Iowa Acts, Senate File 478, section 140, and section 452A.60.  
[ARC 8225B, IAB 10/7/09, effective 11/11/09]

**701—67.13(452A) Credit card invoices.** Credit card invoices are acceptable if they meet substantially all the requirements of rule 701—67.12(452A). (1968 O.A.G. 592)

For refund purposes, presentation of a credit card invoice or billing statement is prima facie evidence that the fuel tax has been paid.

This rule is intended to implement Iowa Code section 452A.60 as amended by 1995 Iowa Acts, chapter 155.

**701—67.14(452A) Original invoice retained by purchaser—certified copy if lost.** Whenever an invoice is required to be kept under Iowa Code chapter 452A, it must be the original copy which is kept. If the original copy is either lost or destroyed, a copy, certified by the seller as being a true copy of the original, will be acceptable. A copy of any invoice which is required to be kept by the purchaser must be kept by the seller for the same period of time.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.60 as amended by 1995 Iowa Acts, chapter 155.

**701—67.15(452A) Taxes erroneously or illegally collected.** Licensees, including licensed suppliers, restrictive suppliers, importers, and blenders, are entitled to a return of taxes, penalty, and interest erroneously or illegally collected by the department. The request for the return of the taxes must be (1) in writing, (2) filed with the department within one year of the time the tax was paid if paid prior to July 1, 2002, and within three years of the time the tax was paid if the tax was paid on or after July 1, 2002, (3) filed by the licensee who remitted the tax to the department, and (4) accompanied by documentation supporting the claim for refund. If the erroneous collection was the result of a computational error

on the part of the taxpayer and that error is discovered by the department during an examination of the taxpayer's records within three years of the overpayment, the taxes will be refunded and a written request will not be necessary. If the request includes the return of erroneously or illegally collected (assessed) penalty or interest, the interest or penalty shall be refunded in the same proportion as the tax. A refund requested under Iowa Code section 452A.72 will be reduced by sales tax if applicable. There is no minimum refund amount for refunds claimed under the provisions of Iowa Code section 452A.72. See sales tax rule 701—18.37(422,423).

**67.15(1)** Motor fuel and undyed special fuel suppliers must inform the department upon which bill(s) of lading, by number, and upon which monthly return(s) the tax was erroneously paid. The gallonage upon which a refund is requested on motor fuel or undyed special fuel must be reduced by the distribution allowance provided in Iowa Code section 452A.5. An amended return must be filed for the tax period in which the error occurred.

**67.15(2)** Restrictive suppliers, importers, and blenders must inform the department upon which bill(s) of lading or invoice, by number, and upon which monthly or semimonthly return(s) the tax was erroneously paid and an explanation of the erroneous payment. An amended return must be filed for the tax period in which the error occurred.

This rule is intended to implement Iowa Code section 452A.72 as amended by 2002 Iowa Acts, Senate File 2305.

**701—67.16(452A) Credentials and receipts.** Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges are to be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee of the department, the taxpayer should require the employee to issue an official receipt. Such receipt must show the taxpayer's name, address, and permit or license number; the purpose of the payment; and the amount of the payment. The taxpayer should retain all receipts, and the only receipts which the department will accept as evidence of a cash payment are the official receipts.

This rule is intended to implement Iowa Code section 452A.59 as amended by 1995 Iowa Acts, chapter 155.

**701—67.17(452A) Information confidential.** Iowa Code section 452A.63, which makes all information obtained from reports, returns, or records required to be filed or kept under Iowa Code chapter 452A confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to the appropriate public officials enumerated in Iowa Code section 452A.63. These public officials include (1) member(s) of the Iowa General Assembly, (2) committees of either house of the Iowa legislature, (3) state officers, (4) persons who have responsibility for the enforcement of Iowa Code chapter 452A, (5) officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and (6) officials of other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department. An exception to this rule is that the appropriate state agency may make available to the public the total gallons of motor fuel, undyed special fuel, and ethanol-blended gasoline withdrawn from terminals or imported into the state by suppliers, restrictive suppliers, and importers. The public request must be made within 45 days following the last day of the month in which the tax is required to be paid. See rule 701—6.3(17A) for procedures for requesting information.

This rule is intended to implement Iowa Code section 452A.63 as amended by 1999 Iowa Acts, Senate File 136.

**701—67.18(452A) Delegation to audit and examine.** Pursuant to statutory authority, the director of revenue delegates to the coadministrators of the compliance division the power to examine reports, returns, and records, make audits, and determine the correct amount of tax, interest, penalties, and fines due, and to take all actions authorized to collect the same, subject to review by or appeal to the director

of revenue. The power so delegated may further be delegated by the coadministrators of the division to auditors, clerks, examiners, and employees of the division.

This rule is intended to implement Iowa Code sections 452A.62 and 452A.76.

**701—67.19(452A) Practice and procedure before the department of revenue.** The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

**701—67.20(452A) Time for filing protest.** Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, must file a protest with the clerk of the hearings section for the department pursuant to rule 701—7.41(17A) within 60 days of the issuance of the assessment, denial, or other department action contested. If a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payments pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing claims.

This rule is intended to implement Iowa Code section 452A.64.

**701—67.21(452A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 422.52(3) and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

**67.21(1) When required.**

*a.* Classes of business. When the director determines, based on departmental records, other state or federal agency statistics, or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

*b.* New applications for fuel tax permits. Notwithstanding the provisions of paragraph “a” above, the director has determined that importers will be required to post a bond in the amount of \$25,000 and other applicants for a new fuel tax permit will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would likely not be able to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph “c” below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in “c” or such person had a previous fuel tax permit revoked. The applicant is “substantially similar” to the extent that said applicant is owned or controlled by persons who owned or controlled the previous licensee. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

*c.* Existing licensees—amount of bond or security. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—67.24(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27, penalty waiver.

(1) Suppliers will be requested to post a bond or security when they have had one or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover six months' fuel tax liability or \$5,000, whichever is greater.

(2) Restrictive suppliers will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$2,000, whichever is greater.

(3) Blenders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$2,000, whichever is greater.

(4) L.P.G. and C.N.G. dealers and users will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$500, whichever is greater.

*d.* Eligible purchasers and end users will be required to post a bond or security when they have failed to pay the tax to a supplier. They will not be allowed to register as an eligible purchaser or end user again until the bond or security requirement has been complied with.

The bond or security will be an amount sufficient to cover six months' fuel tax based on previous purchases.

*e.* Waiver of bond. If a licensee has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the licensee maintains a good filing record for a period of two years, the licensee may request that the department waive the continued bond or security requirement. Importer bonds will not be waived.

**67.21(2) *Type of security or bond.*** When it is determined that a licensee or applicant for a fuel tax permit is required to post collateral to secure the collection of the fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities, or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, cashier's check, money order, or certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a licensee elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the licensee is a corporation, an officer of the corporation may assume personal responsibility for the payment of fuel tax. Security requirements for the officer will be evaluated as provided in 67.21(1) above as if the officer applied for a fuel tax license as an individual.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.

**701—67.22(452A) Tax refund offset.** The department may apply any fuel tax refund against any other liability outstanding.

This rule is intended to implement Iowa Code sections 452A.17 and 421.17.

**701—67.23(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses.**

**67.23(1) *Requirements for license.*** In order to become licensed as a fuel supplier, restrictive supplier, importer, exporter, blender, dealer, or user, the person must file a written application with the department. The license is valid until revoked or canceled, and is nonassignable. The application is to include, but not be limited to, the following information:

- a.* The name under which the licensee will transact business in the state.
- b.* The location of the principal place of business of the licensee and the mailing address if different.
- c.* The social security number or federal identification number of the licensee.
- d.* The type of ownership.

- e. The name and complete residency address of the owner(s) of the business or, if a corporation or association, the names and addresses of the principal officers.
- f. The type of license being requested.
- g. Exporters only — the state and license number for that state in which the fuel is being exported.
- h. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's E-mail address or the person's fax signature will constitute a valid signature.

**67.23(2) *Assignment of a license.*** The following are nonexclusive situations that are considered assignments, and the acquiring person must apply for a new license.

- a. A sale of the taxpayer's business, even if the new owner operates under the same name.
- b. A change of the name under which the licensee conducts business.
- c. A merger or other business combination which results in a new or different entity.

**67.23(3) *Denial of a license.*** The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax and will deny a permit of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. See rule 701—13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. If the application for a license is denied, see rule 701—7.55(17A) for rights to appeal.

**67.23(4) *Revocation of a license.*** The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax and will revoke a license of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If a licensee is a corporation, the department may revoke the license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. The department may also revoke the license of any licensee who abuses the privileges for which the license was issued, who files a false return, or who fails to file a return (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department. See rule 701—7.55(17A) for rights to appeal.

**67.23(5) *Efficient administration of motor fuel laws.*** When in the opinion of the director it is necessary for the efficient administration of Iowa Code chapter 452A, the director may regard persons or facilities in possession of motor fuel, special fuel, biofuel, alcohol, or alcohol derivative substances as blenders, dealers, eligible purchasers, exporters, importers, restrictive suppliers, suppliers, terminal operators, or nonterminal storage facility operators. The department will notify the person or facility of the various requirements under the motor fuel tax laws and will ensure that a license is issued.

This rule is intended to implement Iowa Code sections 452A.4 and 452A.6.

**701—67.24(452A) *Reinstatement of license canceled for cause.*** A license canceled for cause will be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 452A.68 to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel tax license the initial time, the licensee will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file returns, and to post a bond and have refrained from activities requiring a

license under sections 452A.4 and 452A.6 during the waiting period as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the licensee must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74 for a period not to exceed 90 days as a condition for the restoration of a license or the issuance of a new license after cancellation for cause. The department may require a statement that the licensee has fulfilled all requirements of said order canceling the license for cause and the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a report or return timely.

Failure to pay tax timely (including unhonored payments, failure to pay and late payments).

Failure to file a return and pay tax as shown on the return (counts as one offense).

The hearing officer or director of revenue may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six or seven offenses.

Ten days for eight or nine offenses.

Thirty days for ten offenses or more.

The hearing officer or director of revenue may order a waiting period not to exceed:

Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause. See 701—subrule 7.24(1) for rights to appeal.

This rule is intended to implement Iowa Code section 452A.68 as amended by 1999 Iowa Acts, Senate File 136.

**701—67.25(452A) Fuel used in implements of husbandry.** Dyed special fuel is exempt from tax. Motor fuel or undyed special fuel is subject to refund when used in implements of husbandry as defined in Iowa Code section 321.1(32). A vehicle as defined in Iowa Code section 321.1(90) is not an implement of husbandry. The department of revenue, the state department of transportation, the department of public safety, and any other peace officer as requested by such department is empowered to enforce the use of special fuel or motor fuel in any illegal manner, including the inspection and testing of fuel in the fuel supply tank of an implement of husbandry.

This rule is intended to implement Iowa Code section 452A.76 as amended by 1995 Iowa Acts, chapter 155.

**701—67.26(452A) Excess tax collected.** If a licensee collects tax on exempt fuel or collects more tax than is due, the licensee must return the excess tax paid to the purchaser if the tax has not been paid to the department. If the tax has been paid to the department, the department will return the excess tax paid to the consumer upon appropriate documentation.

This rule is intended to implement 1999 Iowa Acts, Senate File 136, section 66.

**701—67.27(452A) Retailer gallons report.** The department is required to compile information reported to it by retail dealers regarding the number of gallons of the various fuel classifications sold by retail dealers in the previous calendar year and submit a report to the governor and the legislative services

agency by April 1 of each year. Each retail dealer is required to file a report with the department detailing the number of motor fuel gallons sold during the previous calendar year on both a companywide basis and a site-by-site basis as required by the department. The retail dealer report is due by January 31 following the close of the calendar year.

The report filed by the department will include information in the aggregate relating to total sales of gasoline, ethanol blended gasoline, diesel fuel and biofuels. The report will also include appropriate percentage sales of various fuel products. The report will not include individual retail dealer information, trade secret information or confidential information.

This rule is intended to implement Iowa Code section 452A.33 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

[Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 1/1/96]

[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]

[Filed 9/5/97, Notice 7/30/97—published 9/24/97, effective 10/29/97]

[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]

[Filed 12/11/98, Notice 11/4/98—published 12/30/98, effective 2/3/99]

[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]

[Filed 10/15/99, Notice 9/8/99—published 11/3/99, effective 12/8/99]

[Filed 10/12/01, Notice 9/5/01—published 10/31/01, effective 12/5/01]

[Filed 3/15/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]

[Filed 10/25/02, Notice 9/4/02—published 11/13/02, effective 12/18/02]

[Filed 10/24/03, Notice 9/17/03—published 11/12/03, effective 12/17/03]

[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]

[Filed 11/16/05, Notice 10/12/05—published 12/7/05, effective 1/11/06]

[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]

[Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]

[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]

[Filed ARC 8225B (Notice ARC 8043B, IAB 8/12/09), IAB 10/7/09, effective 11/11/09]

[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

## **TRANSPORTATION DEPARTMENT[761]**

Rules transferred from agency number [820] to [761] to conform with the reorganization numbering scheme in general IAC Supp. 6/3/87.

### *GENERAL*

#### CHAPTER 1

##### ORGANIZATION OF THE DEPARTMENT OF TRANSPORTATION

- 1.1(307) Definitions
- 1.2(17A) Mission statement
- 1.3(17A) Location and business hours
- 1.4(17A) Information and forms
- 1.5(307) History
- 1.6(17A,307,307A) Commission
- 1.7(17A,307) Director of transportation
- 1.8(17A,307) Divisions

#### CHAPTER 2

##### PROVISIONS APPLICABLE TO ALL RULES

- 2.1(307) Definitions

#### CHAPTER 3

Reserved

#### CHAPTER 4

##### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- 4.1(22,304) General provisions
- 4.2(22) Statement of policy and purpose
- 4.3(22) Access to records
- 4.4(22) Access to confidential records
- 4.5(22) Consent to release a confidential record to a third party
- 4.6(22) Requests for confidential treatment
- 4.7(22) Procedure by which additions, dissents, or objections may be entered into records
- 4.8(22) Notice to suppliers of information
- 4.9(22) Confidential records

#### CHAPTERS 5 to 9

Reserved

#### CHAPTER 10

##### ADMINISTRATIVE RULES

- 10.1(17A) General
- 10.2(17A) Rule making
- 10.3(17A) Petitions for rule making

#### CHAPTER 11

##### WAIVER OF RULES

- 11.1(17A) Purpose and scope
- 11.2(17A) Authority to grant waiver
- 11.3(17A) Criteria, considerations and limitations
- 11.4(17A) Decision on waiver
- 11.5(17A) Petition for waiver
- 11.6(17A) Action on petition
- 11.7(17A) Modification or cancellation of waiver
- 11.8(17A) Records

CHAPTER 12  
DECLARATORY ORDERS

- 12.1(17A) Definitions
- 12.2(17A) Petition for declaratory order
- 12.3(17A) Notice of petition
- 12.4(17A) Action on petition
- 12.5(17A) Effect of a declaratory order

CHAPTER 13  
CONTESTED CASES

- 13.1(17A) Definitions
- 13.2(17A) Applicability
- 13.3(17A) Initiation of contested case
- 13.4(17A) Submission of request for informal settlement or hearing
- 13.5(17A) Informal settlement
- 13.6(17A) Contested case decision
- 13.7(17A) Appeal
- 13.8(17A) Motion for review
- 13.9(17A) Rehearings
- 13.10(17A) Maintenance of records
- 13.11(17A) Use of legal assistants or paralegals
- 13.12(17A) Communications
- 13.13(17A) Default
- 13.14 to 13.19 Reserved
- 13.20(17A) Additional procedures when the department is not a party

CHAPTERS 14 to 19  
Reserved

CHAPTER 20  
PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES

- 20.1(307) Scope of chapter
- 20.2(307) Definitions
- 20.3(307) Procurement policy
- 20.4(307) Formal advertising procedures and requirements
- 20.5(307) Limited solicitation of bids
- 20.6 and 20.7 Reserved
- 20.8(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services

CHAPTERS 21 to 24  
Reserved

CHAPTER 25  
COMPETITION WITH PRIVATE ENTERPRISE

- 25.1(23A) Interpretation
- 25.2(23A) Exemptions

CHAPTER 26  
Reserved

CHAPTER 27  
INTEREST ON RETAINED FUNDS

27.1(573) Interest on retained funds

CHAPTER 28  
IOWA TRANSPORTATION MAP

28.1(307) Definition  
28.2(307) Information  
28.3(307) Policy

CHAPTERS 29 to 39  
Reserved

CHAPTER 40  
RECOVERY OF DAMAGES TO HIGHWAYS OR HIGHWAY STRUCTURES

40.1(321) Scope  
40.2(321) Definitions  
40.3(321) Information  
40.4(321) Accident scene  
40.5(321) Repair of facilities  
40.6(321) Recovery of damages

CHAPTERS 41 to 99  
Reserved

*HIGHWAYS*

CHAPTER 100  
Reserved

CHAPTER 101  
FARM-TO-MARKET REVIEW BOARD

101.1(306) Purpose  
101.2(306) Definitions  
101.3(306) Composition and membership of the farm-to-market review board  
101.4(306) Collection of system modification requests and frequency of meetings  
101.5(306) Procedure for requesting modifications to the farm-to-market road system  
101.6(306) Review criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system  
101.7(306) Voting and approval of requested modifications  
101.8(306) Report of board decision to applicant county  
101.9(306) Reapplication for modification  
101.10(306) Judicial review  
101.11(306) Adoption and modification of rules  
101.12(306) Severability clause

CHAPTER 102  
SECONDARY ROAD FUND DISTRIBUTION COMMITTEE

102.1(312) Purpose  
102.2(312) Initial formulas  
102.3 and 102.4 Reserved  
102.5(312) Composition and membership of the secondary road fund distribution committee  
102.6(312) Terms of office and rotation of seats  
102.7(312) Committee meetings  
102.8 and 102.9 Reserved

- 102.10(312) Considerations for a new or modified distribution formula
- 102.11(312) Process for approval of a new or modified distribution formula
- 102.12(312) Judicial review
- 102.13(312) Severability clause

CHAPTERS 103 and 104  
Reserved

CHAPTER 105  
HOLIDAY REST STOPS

- 105.1(307) Purpose
- 105.2(307) General
- 105.3(321) Conditions
- 105.4(321) Holiday rest stops on interstate highways
- 105.5(307) Holiday rest stops on primary highways

CHAPTER 106  
PROMOTION OF IOWA AGRICULTURAL PRODUCTS AT REST AREAS

- 106.1(307) Purpose
- 106.2(307) Definitions
- 106.3(307) Information
- 106.4(307) Request
- 106.5(307) Time frame
- 106.6(307) Conditions
- 106.7(307) Site location

CHAPTERS 107 to 109  
Reserved

*RIGHT-OF-WAY AND ENVIRONMENT*

CHAPTER 110  
HIGHWAY PROJECT PLANNING

- 110.1(17A) Availability of information

CHAPTER 111  
REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

- 111.1(316) Acquisition and relocation assistance manual

CHAPTER 112  
PRIMARY ROAD ACCESS CONTROL

- 112.1(306A) General information
- 112.2(306A) Definitions
- 112.3(306A) General requirements for control of access
- 112.4(306A) General requirements for entrances where access rights have not been acquired
- 112.5(306A) Additional requirements for Type "A" entrances
- 112.6(306A) Drainage requirements
- 112.7(306A) Access to Priority I, II, III and IV highways
- 112.8(306A) Access to Priority V highways, rural areas
- 112.9(306A) Access to Priority V highways, fringe or built-up areas, and Priority VI highways,  
all areas
- 112.10 Reserved
- 112.11(306A) Policy on acquisition of access rights
- 112.12(306A) Policy on location of predetermined access locations

- 112.13(306A) Policy on special access connections where access rights have been previously acquired
- 112.14(306A) Recreational trail connections

CHAPTERS 113 and 114  
Reserved

CHAPTER 115  
UTILITY ACCOMMODATION

- 115.1(306A) General information
- 115.2(306A) Definitions
- 115.3 Reserved
- 115.4(306A) General requirements for occupancy of the right-of-way
- 115.5(306A) General design provisions
- 115.6(306A) Scenic enhancement
- 115.7(306A) Liability
- 115.8(306A) Utility accommodation permit
- 115.9(306A) Traffic protection
- 115.10(306A) Construction responsibilities and procedures
- 115.11(306A) Vertical overhead clearance requirements
- 115.12(306A) Utility facility attachments to bridges
- 115.13(306A) Underground utility facilities
- 115.14(306A) Freeways
- 115.15(306A) Transverse installations on freeways
- 115.16(306A) Longitudinal installations on freeways
- 115.17(306A) Nonfreeway primary highways
- 115.18(306A) Longitudinal installations on nonfreeway primary highways
- 115.19(306A) Maintenance and emergency work
- 115.20(306A) Abandonment or removal of utility facilities
- 115.21 to 115.24 Reserved
- 115.25(306A) Utility facility adjustments for highway improvement projects
- 115.26(306A) Notice of project
- 115.27(306A) First plan submission, preliminary work plan and agreement
- 115.28(306A) Second plan submission, final work plan and permit application
- 115.29(306A) Notice of work
- 115.30(306A) Miscellaneous adjustment provisions

CHAPTER 116  
JUNKYARD CONTROL

- 116.1(306C) Definitions
- 116.2(306C) Junkyards prohibited—exceptions
- 116.3(306C) Screening or removal
- 116.4(306C) Acquisition
- 116.5(306C) Screening
- 116.6(306C) Nuisance—injunction
- 116.7(17A) Hearings and appeals
- 116.8(306C) Contact information

CHAPTER 117  
OUTDOOR ADVERTISING

- 117.1(306B,306C) Definitions
- 117.2(306B,306C) General provisions
- 117.3(306B,306C) General criteria

- 117.4(306B,306C) Interstate special provisions for on-premises signs
- 117.5(306B,306C) Location, size and spacing requirements
- 117.6(306C) Outdoor advertising permits and fees required
- 117.7(306C) Official signs and notices, public utility signs, and service club and religious notices
- 117.8(306B,306C) Removal procedures
- 117.9(306B,306C) Acquisition of advertising devices that have been issued provisional permits
- 117.15(306C) Development directory signing

#### CHAPTER 118 LOGO SIGNING

- 118.1(306C) Introduction
- 118.2(306C) Definitions
- 118.3(306C) Erection and location of specific service signs and placement of business signs
- 118.4(306C) Eligibility for placement of business signs on mainline specific service signs
- 118.5(306C) Application, drawing, and fees
- 118.6(306C) Business sign blank specifications
- 118.7(306C) Business sign face specifications
- 118.8(306C) RV symbol

#### CHAPTER 119 TOURIST-ORIENTED DIRECTIONAL SIGNING

- 119.1(321) Definitions
- 119.2(321) General
- 119.3(321) General eligibility requirements for an activity or site
- 119.4(321) Specific eligibility requirements for the type of activity or site
- 119.5(321) Application and approval procedure
- 119.6(321) Installation, maintenance, replacement and removal

#### CHAPTER 120 PRIVATE DIRECTIONAL SIGNING

- 120.1(306C) Definitions
- 120.2(306C) General requirements
- 120.3(306C) Size requirements
- 120.4(306C) Lighting requirements
- 120.5(306C) Spacing and location requirements
- 120.6(306C) Message content
- 120.7(306C) Eligibility for private directional signs
- 120.8(306C) Application and approval procedures
- 120.9(306C) Fees
- 120.10(306C) Erection and maintenance

#### CHAPTER 121 ADOPT-A-HIGHWAY PROGRAM

- 121.1(307) Purpose
- 121.2(307) Information and location
- 121.3(307) Program guidelines
- 121.4(307) Sponsors
- 121.5(307) Eligible activities
- 121.6(307) Procedure

CHAPTER 122  
KEEP IOWA BEAUTIFUL PROGRAM

|            |                     |
|------------|---------------------|
| 122.1(314) | Purpose             |
| 122.2(314) | Information         |
| 122.3(314) | Allocation of funds |
| 122.4      | Reserved            |
| 122.5(314) | Community projects  |
| 122.6      | Reserved            |
| 122.7(314) | Statewide projects  |

CHAPTERS 123 and 124  
Reserved

CONSTRUCTION

CHAPTER 125  
GENERAL REQUIREMENTS AND COVENANTS FOR HIGHWAY  
AND BRIDGE CONSTRUCTION

|             |                                |
|-------------|--------------------------------|
| 125.1(307A) | Standard specifications        |
| 125.2       | Reserved                       |
| 125.3(307A) | Availability of specifications |

CHAPTERS 126 to 129  
Reserved

TRAFFIC OPERATIONS

CHAPTER 130  
SIGNING MANUAL

|            |        |
|------------|--------|
| 130.1(321) | Manual |
|------------|--------|

CHAPTER 131  
SIGNING ON PRIMARY ROADS

|                  |  |
|------------------|--|
| 131.1(321)       | Destination signs at an intersection                     |
| 131.2(321)       | Erection of signs for numbered business routes           |
| 131.3(321)       | Erection of signs for schools                            |
| 131.4(321)       | Erection of camping service signs on interstate highways |
| 131.5(321)       | Erection of signs for sanitary landfills                 |
| 131.6(321)       | Erection of signs for special events                     |
| 131.7(321)       | Erection of signs for organized off-highway camps        |
| 131.8(321)       | Erection of signs for county conservation parks          |
| 131.9(321)       | Erection of no parking signs                             |
| 131.10(321)      | Signing for named routes                                 |
| 131.11 to 131.14 | Reserved   |
| 131.15(321)      | Information and address                                  |

CHAPTER 132  
IOWA SCENIC BYWAY PROGRAM

|             |                                   |
|-------------|-----------------------------------|
| 132.1(306D) | Purpose, overview and information |
| 132.2(306D) | Definition                        |
| 132.3(306D) | Designations                      |
| 132.4(306D) | General requirements              |
| 132.5(306D) | Application and approval process  |
| 132.6(306D) | Reevaluation                      |
| 132.7(306D) | Promotional and tourism efforts   |

## CHAPTERS 133 to 135

Reserved

## CHAPTER 136

## LIGHTING

- 136.1(319) Lighting of primary-secondary intersections
- 136.2(319) Destination lighting
- 136.3 to 136.5 Reserved
- 136.6(306) Warrants and design requirements for lighting

## CHAPTERS 137 to 139

Reserved

## CHAPTER 140

TRAFFIC SIGNALS AND BEACONS  
ON PRIMARY ROADS

- 140.1(321) Erection of traffic signals and beacons on primary highways

## CHAPTER 141

Reserved

## CHAPTER 142

## SPEED ZONING ON PRIMARY HIGHWAYS

- 142.1(321) Adjustment of speed zones on primary highways

## CHAPTER 143

## TRAFFIC SIGNAL SYNCHRONIZATION

- 143.1(364) Definitions
- 143.2(364) Applicability
- 143.3 Reserved
- 143.4(364) Required synchronization

## CHAPTERS 144 to 149

Reserved

## PRIMARY ROAD EXTENSIONS

## CHAPTER 150

## IMPROVEMENTS AND MAINTENANCE ON PRIMARY ROAD EXTENSIONS

- 150.1(306) Definitions
- 150.2(306) Improvements and maintenance on extensions of freeways
- 150.3(306) Improvements and maintenance on extensions of nonfreeway primary highways
- 150.4(306) General requirements for primary road extensions

## CHAPTER 151

CITY REQUESTS FOR CLOSURE OF  
PRIMARY ROAD EXTENSIONS

- 151.1(321) Closing primary road extensions

## CHAPTERS 152 to 159

Reserved

## SPECIAL HIGHWAY PROGRAMS

## CHAPTER 160

## COUNTY AND CITY BRIDGE CONSTRUCTION FUNDS

- 160.1(312) Source of funds
- 160.2(312) Administration of funds

## CHAPTER 161

FEDERAL-AID HIGHWAY BRIDGE REPLACEMENT  
AND REHABILITATION PROGRAM

- 161.1(307) Source of funds
- 161.2(307) Administration of funds

## CHAPTER 162

## BRIDGE SAFETY FUND

- 162.1(83GA,SF376) Purpose and source of funds
- 162.2(83GA,SF376) Definitions
- 162.3(83GA,SF376) General information
- 162.4(83GA,SF376) Eligibility

## CHAPTER 163

## RISE PROGRAM

- 163.1(315) Definitions
- 163.2(315) Purpose of RISE program
- 163.3(315) Administration of RISE program
- 163.4(315) Source, allocation, and use of RISE funds
- 163.5(315) Project financing and funding shares
- 163.6(315) Eligibility of applicants and joint applications
- 163.7(315) Project activities eligible and ineligible for RISE funds
- 163.8(315) Immediate opportunity projects
- 163.9(315) Local development projects
- 163.10 Reserved
- 163.11(315) Project administration

## CHAPTER 164

## TRAFFIC SAFETY IMPROVEMENT PROGRAM

- 164.1(312) Definitions
- 164.2(312) Information and forms
- 164.3(312) Program administration
- 164.4(312) Applicant eligibility
- 164.5(312) Project eligibility
- 164.6(312) Eligible project costs
- 164.7(312) Ineligible project costs
- 164.8(312) Applications
- 164.9(312) Processing the application
- 164.10(312) Project agreement

## CHAPTER 165

## RECREATIONAL TRAILS PROGRAM

- 165.1(312) Definitions
- 165.2(312) Information and forms
- 165.3 and 165.4 Reserved
- 165.5(312) Program administration
- 165.6 to 165.8 Reserved

|                   |                             |
|-------------------|-----------------------------|
| 165.9(312)        | Applicant eligibility       |
| 165.10 and 165.11 | Reserved                    |
| 165.12(312)       | Project eligibility         |
| 165.13 and 165.14 | Reserved                    |
| 165.15(312)       | Eligible project costs      |
| 165.16            | Reserved                    |
| 165.17(312)       | Ineligible project costs    |
| 165.18            | Reserved                    |
| 165.19(312)       | Advance eligibility waivers |
| 165.20 and 165.21 | Reserved                    |
| 165.22(312)       | Application                 |
| 165.23(312)       | Application procedure       |
| 165.24 and 165.25 | Reserved                    |
| 165.26(312)       | Evaluation and approval     |
| 165.27 to 165.29  | Reserved                    |
| 165.30(312)       | Project agreement           |
| 165.31 and 165.32 | Reserved                    |
| 165.33(312)       | Noncompliance               |

CHAPTERS 166 to 169  
Reserved

LOCAL SYSTEMS

CHAPTER 170

ALLOCATION OF FARM-TO-MARKET ROAD FUNDS

170.1(310) Temporary allocation

CHAPTER 171

Reserved

CHAPTER 172

AVAILABILITY OF INSTRUCTIONAL MEMORANDUMS  
TO COUNTY ENGINEERS

172.1(307A) Instructional memorandums to county engineers

CHAPTER 173

PREPARATION OF SECONDARY ROAD CONSTRUCTION PROGRAMS,  
BUDGETS, AND COUNTY ENGINEERS' ANNUAL REPORTS

|            |                                 |
|------------|---------------------------------|
| 173.1(309) | County construction program     |
| 173.2(309) | County secondary road budget    |
| 173.3(309) | County engineer's annual report |
| 173.4(309) | Contact information             |

CHAPTER 174

REIMBURSABLE SERVICES AND SUPPLIES

|            |                                    |
|------------|------------------------------------|
| 174.1(307) | Contact information                |
| 174.2(307) | Reimbursable services and supplies |

CHAPTERS 175 to 177  
Reserved

CHAPTER 178  
PROJECT COST REPORTING REQUIREMENTS  
FOR CITIES AND COUNTIES

|            |  |
|------------|--|
| 178.1(314) | Purpose  |
| 178.2(314) | Contact information                                    |
| 178.3(314) | Definitions  |
| 178.4(314) | Detailed instructions furnished to cities and counties |
| 178.5(314) | Project reporting                                      |

CHAPTER 179  
Reserved

CHAPTER 180  
PUBLIC IMPROVEMENT QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES

|             |  |
|-------------|--|
| 180.1(314)  | Purpose  |
| 180.2(314)  | Contact information  |
| 180.3(314)  | Definitions  |
| 180.4(314)  | Types of projects  |
| 180.5(314)  | Solicitation of quotations                                 |
| 180.6(314)  | Submission of competitive quotation by governmental entity |
| 180.7(314)  | Form and content of competitive quotations                 |
| 180.8(314)  | Evaluation of competitive quotations                       |
| 180.9(314)  | Award of contract and subsequent procedures                |
| 180.10(314) | Retained funds   |

CHAPTER 181  
STATEWIDE STANDARD FOR PERMITTING  
CERTAIN IMPLEMENTS OF HUSBANDRY

|            |                    |
|------------|--------------------|
| 181.1(321) | Statewide standard |
|------------|--------------------|

CHAPTERS 182 to 200  
Reserved

*INTERMODAL*

CHAPTER 201  
INTERMODAL PILOT PROJECT PROGRAM

|             |                                    |
|-------------|------------------------------------|
| 201.1(473)  | General information                |
| 201.2(473)  | Definitions                        |
| 201.3(473)  | Eligibility                        |
| 201.4(473)  | Financial assistance               |
| 201.5(473)  | Application procedure              |
| 201.6(473)  | Staff analysis                     |
| 201.7(473)  | Staff recommendation               |
| 201.8(473)  | Commission action                  |
| 201.9(473)  | Contract preparation and execution |
| 201.10(473) | Monitoring                         |

CHAPTERS 202 to 399  
Reserved

*VEHICLES*

## CHAPTER 400

## VEHICLE REGISTRATION AND CERTIFICATE OF TITLE

|                   |   |
|-------------------|---|
| 400.1(321)        | Definitions   |
| 400.2(321)        | Vehicle registration and certificate of title—general provisions  |
| 400.3(321)        | Application for certificate of title or registration for a vehicle  |
| 400.4(321)        | Supporting documents required   |
| 400.5(321)        | Where to apply for registration or certificate of title   |
| 400.6(17A)        | Addresses, information and forms  |
| 400.7(321)        | Information appearing on title or registration  |
| 400.8(321)        | Release form for cancellation of security interest  |
| 400.9             | Reserved  |
| 400.10(321)       | Assignment of security interest   |
| 400.11(321)       | Sheriff's levy, restitution lien, and forfeiture lien noted as security interests   |
| 400.12(321)       | Replacement certificate of title  |
| 400.13(321)       | Bond required before title issued   |
| 400.14(321)       | Transfer of ownership   |
| 400.15(321)       | Cancellation of a certificate of title  |
| 400.16(321)       | Application for certificate of title or original registration for a specially constructed, reconstructed, street rod or replica motor vehicle |
| 400.17 and 400.18 | Reserved  |
| 400.19(321)       | Temporary use of vehicle without plates or registration card  |
| 400.20(321)       | Registration of motor vehicle weighing 55,000 pounds or more  |
| 400.21(321)       | Registration of vehicles on a restricted basis  |
| 400.22(321)       | Transfers of ownership by operation of law  |
| 400.23(321)       | Junked vehicle  |
| 400.24(321)       | New vehicle registration fee  |
| 400.25(321)       | Fees established by the department  |
| 400.26(321)       | Anatomical gift   |
| 400.27(321,322)   | Vehicles held for resale or trade by dealers  |
| 400.28(321)       | Special trucks  |
| 400.29            | Reserved  |
| 400.30(321)       | Registration of vehicles registered in another state or country   |
| 400.31            | Reserved  |
| 400.32(321)       | Vehicles owned by nonresident members of the armed services   |
| 400.33 and 400.34 | Reserved  |
| 400.35(321)       | Registration of vehicles equipped for persons with disabilities   |
| 400.36(321)       | Land and water-type travel trailers registration fee  |
| 400.37(321)       | Motorcycle primarily designed or converted to transport property  |
| 400.38            | Reserved  |
| 400.39(321)       | Conversion of motor vehicles  |
| 400.40(321)       | Manufactured or mobile home converted to or from real property  |
| 400.41            | Reserved  |
| 400.42(321)       | Church bus registration fee   |
| 400.43(321)       | Storage of vehicles   |
| 400.44(321)       | Penalty on registration fees  |
| 400.45(321)       | Suspension, revocation or denial of registration  |
| 400.46(321)       | Termination of suspension of registration   |
| 400.47(321)       | Raw farm products   |
| 400.48 and 400.49 | Reserved  |
| 400.50(321,326)   | Refund of registration fees   |

|                  |  |
|------------------|--|
| 400.51(321)      | Assigned identification numbers  |
| 400.52(321)      | Odometer statement   |
| 400.53(321)      | Stickers   |
| 400.54(321)      | Registration card issued for trailer-type vehicles   |
| 400.55(321)      | Damage disclosure statement  |
| 400.56(321)      | Hearings   |
| 400.57           | Reserved   |
| 400.58(321)      | Motorized bicycles   |
| 400.59(321)      | Registration documents lost or damaged in transit through the United States postal service |
| 400.60(321)      | Credit of registration fees  |
| 400.61(321)      | Reassignment of registration plates  |
| 400.62(321)      | Storage of registration plates, certificate of title forms and registration forms          |
| 400.63(321)      | Disposal of surrendered registration plates  |
| 400.64(321)      | County treasurer's report of motor vehicle collections and funds                           |
| 400.65 to 400.69 | Reserved   |
| 400.70(321)      | Removal of registration and plates by peace officer under financial liability coverage law |

CHAPTER 401  
SPECIAL REGISTRATION PLATES

|                  |   |
|------------------|---|
| 401.1(321)       | Definition  |
| 401.2(321)       | Application, issuance and renewal   |
| 401.3            | Reserved  |
| 401.4(321)       | Gift certificates   |
| 401.5(321)       | Amateur radio call letter plates  |
| 401.6(321)       | Personalized plates   |
| 401.7(321)       | Collegiate plates   |
| 401.8(321)       | Medal of Honor plates   |
| 401.9(321)       | Firefighter plates  |
| 401.10(321)      | Emergency medical services plates   |
| 401.11(321)      | Natural resources plates  |
| 401.12           | Reserved  |
| 401.13(321)      | Disabled veteran plates   |
| 401.14           | Reserved  |
| 401.15(321)      | Processed emblem application and approval process   |
| 401.16(321)      | Special plates with processed emblems—general   |
| 401.17(321)      | State agency-sponsored processed emblem plates  |
| 401.18(321)      | Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, combat medical badge, fallen peace officers and civil war sesquicentennial plates |
| 401.19(321)      | Legion of Merit plates  |
| 401.20(321)      | Persons with disabilities plates  |
| 401.21(321)      | Ex-prisoner of war plates   |
| 401.22(321)      | National guard plates   |
| 401.23(321)      | Pearl Harbor plates   |
| 401.24(321)      | Purple Heart, Silver Star and Bronze Star plates  |
| 401.25(321)      | U.S. armed forces retired plates  |
| 401.26 to 401.30 | Reserved  |
| 401.31(321)      | Veteran plates  |
| 401.32(321)      | Surrender of plates   |
| 401.33(321)      | Validation fees   |

- 401.34(321) Reassignment of plates
- 401.35(321) Revocation of special registration plates
- 401.36(321) Refund of fees

CHAPTERS 402 to 404  
Reserved

CHAPTER 405  
SALVAGE

- 405.1(321) Applicability
- 405.2(321) Definitions
- 405.3(321) Salvage title
- 405.4 and 405.5 Reserved
- 405.6(321) Iowa salvage title required
- 405.7(321) Converting salvage title to regular title
- 405.8(321) Foreign vehicles
- 405.9(321) Records check
- 405.10(321) Designations
- 405.11 to 405.14 Reserved
- 405.15(321) Salvage theft examination

CHAPTERS 406 to 409  
Reserved

CHAPTER 410  
SPECIAL MOBILE EQUIPMENT

- 410.1(321) General
- 410.2(321E) Special mobile equipment transported on a registered vehicle

CHAPTER 411  
PERSONS WITH DISABILITIES PARKING PERMITS

- 411.1(321L) Administration
- 411.2(321L) Application for persons with disabilities parking permit
- 411.3(321L) Removable windshield placards
- 411.4(321L) Persons with disabilities special registration plate parking stickers
- 411.5(321L) Persons with disabilities special registration plates
- 411.6 Reserved
- 411.7(321L) Revocation
- 411.8(321L) Return of parking permit

CHAPTERS 412 to 414  
Reserved

CHAPTER 415  
DRIVER'S PRIVACY PROTECTION—CERTIFICATES  
OF TITLE AND VEHICLE REGISTRATION

- 415.1(321) Applicability
- 415.2(321) Adoption
- 415.3(321) Definitions
- 415.4(321) Requirements and procedures

CHAPTERS 416 to 423  
Reserved

CHAPTER 424  
TRANSPORTER PLATES

|                 |                    |
|-----------------|--------------------|
| 424.1(321)      | General            |
| 424.2 and 424.3 | Reserved           |
| 424.4(321)      | Transporter plates |

CHAPTER 425  
MOTOR VEHICLE AND TRAVEL TRAILER DEALERS,  
MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS

|                   |  |
|-------------------|--|
| 425.1(322)        | Introduction                                 |
| 425.2             | Reserved                                     |
| 425.3(322)        | Definitions                                  |
| 425.4 to 425.9    | Reserved                                     |
| 425.10(322)       | Application for dealer's license             |
| 425.11            | Reserved                                     |
| 425.12(322)       | Motor vehicle dealer's place of business     |
| 425.13            | Reserved                                     |
| 425.14(322)       | Travel trailer dealer's place of business    |
| 425.15 and 425.16 | Reserved                                     |
| 425.17(322)       | Extension lot license                        |
| 425.18(322)       | Supplemental statement of changes            |
| 425.19            | Reserved                                     |
| 425.20(322)       | Fleet vehicle sales and retail auction sales |
| 425.21 to 425.23  | Reserved                                     |
| 425.24(322)       | Miscellaneous requirements                   |
| 425.25            | Reserved                                     |
| 425.26(322)       | Fairs, shows and exhibitions                 |
| 425.27 and 425.28 | Reserved                                     |
| 425.29(322)       | Classic car permit                           |
| 425.30(322)       | Motor truck display permit                   |
| 425.31(322)       | Firefighting and rescue show permit          |
| 425.32 to 425.39  | Reserved                                     |
| 425.40(322)       | Salespersons of dealers                      |
| 425.41 to 425.49  | Reserved                                     |
| 425.50(322)       | Manufacturers, distributors, and wholesalers |
| 425.51 and 425.52 | Reserved                                     |
| 425.53(322)       | Wholesaler's financial liability coverage    |
| 425.54 to 425.59  | Reserved                                     |
| 425.60(322)       | Right of inspection                          |
| 425.61            | Reserved                                     |
| 425.62(322)       | Denial, suspension or revocation             |
| 425.63 to 425.69  | Reserved                                     |
| 425.70(321)       | Dealer plates                                |
| 425.71            | Reserved                                     |
| 425.72(321)       | Demonstration permits                        |

CHAPTERS 426 to 429  
Reserved

CHAPTER 430  
MOTOR VEHICLE LEASING LICENSES

|             |             |
|-------------|-------------|
| 430.1(321F) | General     |
| 430.2(321F) | Application |

430.3(321F) Supplemental statements  
 430.4(321F) Separate licenses required

CHAPTER 431  
 VEHICLE RECYCLERS

431.1(321H) General  
 431.2(321H) Criteria for a vehicle recycler license  
 431.3(321H) Application  
 431.4(321H) Firm name  
 431.5(321H) Denial, suspension or revocation of license  
 431.6(321) Right of inspection

CHAPTERS 432 to 449

Reserved

CHAPTER 450  
 MOTOR VEHICLE EQUIPMENT

450.1 Reserved  
 450.2(321) Equipment requirements for specially constructed, reconstructed, street rod, and replica motor vehicles, other than motorcycles and motorized bicycles  
 450.3(321) Mud and snow tire  
 450.4(321) Minimum requirements for constructing and equipping specially constructed or reconstructed motorcycles or motorized bicycles  
 450.5 Reserved  
 450.6(321) Safety requirements for the movement of implements of husbandry on a roadway  
 450.7(321) Front windshields, windows or sidewings

CHAPTER 451  
 EMERGENCY VEHICLE PERMITS

451.1(321) Information  
 451.2(321) Authorized emergency vehicle certificate

CHAPTER 452  
 REFLECTIVE DEVICES ON SLOW-MOVING VEHICLES

452.1 and 452.2 Reserved  
 452.3(321) Alternative reflective device

CHAPTER 453  
 Reserved

CHAPTER 454  
 TOWING WRECKED OR DISABLED VEHICLES

454.1(321) Definitions

CHAPTERS 455 to 479  
 Reserved

CHAPTER 480  
 ABANDONED VEHICLES

480.1(321) Definitions  
 480.2(321) Location  
 480.3(321) General requirements  
 480.4(321) Abandoned vehicle report  
 480.5(321) Time limits

## CHAPTERS 481 to 499

Reserved

*MOTOR CARRIERS*

## CHAPTER 500

## INTERSTATE REGISTRATION AND OPERATION OF VEHICLES

|                 |  |
|-----------------|--|
| 500.1(326)      | Definitions  |
| 500.2(17A,326)  | General information  |
| 500.3(17A,326)  | Waiver of rules  |
| 500.4(326)      | Renewal for IRP registration   |
| 500.5(321)      | Deadline for placing a vehicle in storage                                      |
| 500.6(321,326)  | Penalty for late filing of renewal   |
| 500.7(326)      | IRP payment methods  |
| 500.8(326)      | IRP plate  |
| 500.9(326)      | Fleet additions and temporary authority  |
| 500.10(326)     | Fleet deletions  |
| 500.11(326)     | Voluntary cancellation of registration   |
| 500.12(326)     | Policy on registration credit  |
| 500.13(326)     | Penalty for late filing of vehicle schedule                                    |
| 500.14(326)     | Renewal and vehicle schedule late payment penalty                              |
| 500.15(321)     | Deadline for payment of first-half fee   |
| 500.16(321,326) | Second-half late payment penalty   |
| 500.17(326)     | Duplicate credentials  |
| 500.18(326)     | Suspension for nonpayment of registration fees                                 |
| 500.19(326)     | Suspension of registration if payment is dishonored by a financial institution |
| 500.20(326)     | Making claim for refund  |
| 500.21(326)     | Registration expiration and enforcement dates                                  |
| 500.22(326)     | Registration of vehicles with non-Iowa titles                                  |
| 500.23(326)     | Record retention   |
| 500.24(326)     | Trip permits   |
| 500.25(326)     | Electronic information   |

## CHAPTERS 501 to 504

Reserved

## CHAPTER 505

## INTERSTATE MOTOR VEHICLE FUEL LICENSES AND PERMITS

|             |                         |
|-------------|-------------------------|
| 505.1(452A) | Definitions             |
| 505.2(452A) | General information     |
| 505.3(452A) | General stipulations    |
| 505.4(452A) | Quarterly reports       |
| 505.5(452A) | Audits—required reports |
| 505.6(452A) | Hearings                |

## CHAPTERS 506 to 510

Reserved

## CHAPTER 511

## SPECIAL PERMITS FOR OPERATION AND MOVEMENT OF VEHICLES AND LOADS OF EXCESS SIZE AND WEIGHT

|             |                                  |
|-------------|----------------------------------|
| 511.1(321E) | Definitions                      |
| 511.2(321E) | Location and general information |
| 511.3(321E) | Movement under permit            |

|                  |  |
|------------------|--|
| 511.4(321E)      | Permits  |
| 511.5(321,321E)  | Fees and charges   |
| 511.6(321E)      | Insurance and bonds  |
| 511.7(321,321E)  | Annual permits   |
| 511.8(321,321E)  | Annual oversize/overweight permits   |
| 511.9(321,321E)  | All-systems permits  |
| 511.10(321,321E) | Multitrip permits  |
| 511.11(321,321E) | Single-trip permits  |
| 511.12(321,321E) | Maximum axle weights and maximum gross weights for vehicles and loads moved under permit |
| 511.13(321,321E) | Movement of vehicles with divisible loads exceeding statutory size or weight limits      |
| 511.14(321E)     | Towing units   |
| 511.15(321E)     | Escorting  |
| 511.16(321,321E) | Permit violations  |

## CHAPTER 512

Reserved

## CHAPTER 513

## COMPACTED RUBBISH VEHICLE PERMITS

|            |                      |
|------------|----------------------|
| 513.1(321) | Definitions          |
| 513.2(321) | General stipulations |
| 513.3(321) | Application          |
| 513.4(321) | Replacement permit   |
| 513.5(321) | Permit violations    |

## CHAPTERS 514 to 519

Reserved

## CHAPTER 520

## REGULATIONS APPLICABLE TO CARRIERS

|            |   |
|------------|---|
| 520.1(321) | Safety and hazardous materials regulations  |
| 520.2(321) | Definitions                                 |
| 520.3(321) | Motor carrier safety regulations exemptions |
| 520.4(321) | Hazardous materials exemptions              |
| 520.5(321) | Safety fitness                              |
| 520.6(321) | Out-of-service order                        |
| 520.7(321) | Driver's statement                          |
| 520.8(321) | Agricultural operations                     |

## CHAPTERS 521 to 523

Reserved

## CHAPTER 524

## FOR-HIRE INTRASTATE MOTOR CARRIER AUTHORITY

|             |   |
|-------------|---|
| 524.1(325A) | Purpose and applicability                                   |
| 524.2(325A) | General information   |
| 524.3(325A) | Applications and supporting documents                       |
| 524.4(325A) | Issuance of credentials                                     |
| 524.5(325A) | Duplicate motor carrier permit or motor carrier certificate |
| 524.6(325A) | Amendment to a motor carrier permit or certificate          |
| 524.7(325A) | Insurance—suspension  |
| 524.8(325A) | Self-insurance for motor carriers of passengers             |
| 524.9(325A) | Safety self-certification                                   |

|              |  |
|--------------|--|
| 524.10(325A) | Financial statement  |
| 524.11(325A) | Safety education seminar   |
| 524.12(325A) | Marking of motor vehicles  |
| 524.13(325A) | Bills of lading or freight receipts  |
| 524.14(325A) | Lease of a vehicle   |
| 524.15(325A) | Tariffs  |
| 524.16(325A) | Transfer of motor carrier regular-route passenger certificate or motor carrier permit<br>for household goods |
| 524.17(325A) | Suspension, revocation or reinstatement  |
| 524.18(325A) | Hearings   |

## CHAPTERS 525 to 528

Reserved

## CHAPTER 529

## FOR-HIRE INTERSTATE MOTOR CARRIER AUTHORITY

|             |  |
|-------------|--|
| 529.1(327B) | Motor carrier regulations                |
| 529.2(327B) | Registering interstate authority in Iowa |
| 529.3(327B) | Waiver of rules                          |

## CHAPTERS 530 to 599

Reserved

*DRIVER LICENSES*

## CHAPTER 600

## GENERAL INFORMATION

|                 |                            |
|-----------------|----------------------------|
| 600.1(321)      | Definitions                |
| 600.2(17A)      | Information and location   |
| 600.3(321)      | Persons exempt             |
| 600.4(321)      | Persons not to be licensed |
| 600.5 to 600.15 | Reserved                   |
| 600.16(321)     | Seat belt exemptions       |

## CHAPTER 601

## APPLICATION FOR LICENSE

|                 |  |
|-----------------|--|
| 601.1(321)      | Application for license                                    |
| 601.2(321)      | Surrender of license and nonoperator's identification card |
| 601.3 and 601.4 | Reserved   |
| 601.5(321)      | Proofs submitted with application                          |
| 601.6(321)      | Parental consent   |
| 601.7(321)      | REAL ID driver's license                                   |

## CHAPTER 602

## CLASSES OF DRIVER'S LICENSES

|                 |   |
|-----------------|---|
| 602.1(321)      | Driver's licenses                                   |
| 602.2(321)      | Information and forms                               |
| 602.3           | Reserved  |
| 602.4(321)      | Definitions of immediate family                     |
| 602.5 to 602.10 | Reserved  |
| 602.11(321)     | Class C noncommercial driver's license              |
| 602.12(321)     | Class D noncommercial driver's license (chauffeur)  |
| 602.13(321)     | Class M noncommercial driver's license (motorcycle) |
| 602.14          | Reserved  |

|             |  |
|-------------|--|
| 602.15(321) | Minor's restricted license               |
| 602.16      | Reserved                                 |
| 602.17(321) | Minor's school license                   |
| 602.18(321) | Motorcycle instruction permit            |
| 602.19(321) | Noncommercial instruction permit         |
| 602.20      | Reserved                                 |
| 602.21(321) | Special noncommercial instruction permit |
| 602.22      | Reserved                                 |
| 602.23(321) | Chauffeur's instruction permit           |
| 602.24(321) | Motorized bicycle license                |
| 602.25(321) | Minor's restricted license               |
| 602.26(321) | Minor's school license                   |

## CHAPTER 603

Reserved

## CHAPTER 604

## LICENSE EXAMINATION

|                  |   |
|------------------|---|
| 604.1(321)       | Authority and scope   |
| 604.2(321)       | Definitions   |
| 604.3(17A)       | Information and forms   |
| 604.4 to 604.6   | Reserved  |
| 604.7(321)       | Examination   |
| 604.8 and 604.9  | Reserved  |
| 604.10(321)      | Vision screening  |
| 604.11(321)      | Vision standards  |
| 604.12(321)      | Vision referrals  |
| 604.13(321)      | Vision screening results  |
| 604.14 to 604.19 | Reserved  |
| 604.20(321)      | Knowledge test  |
| 604.21(321)      | Knowledge test requirements and waivers                                   |
| 604.22(321)      | Knowledge test results  |
| 604.23 to 604.29 | Reserved  |
| 604.30(321)      | Driving test  |
| 604.31(321)      | Driving test requirements and waivers for noncommercial driver's licenses |
| 604.32 to 604.34 | Reserved  |
| 604.35(321)      | Determination of gross vehicle weight rating                              |
| 604.36 to 604.39 | Reserved  |
| 604.40(321)      | Failure to pass examination   |
| 604.41 to 604.44 | Reserved  |
| 604.45(321)      | Reinstatement   |
| 604.46 to 604.49 | Reserved  |
| 604.50(321)      | Special reexaminations  |

## CHAPTER 605

## LICENSE ISSUANCE

|                |                            |
|----------------|----------------------------|
| 605.1(321)     | Scope                      |
| 605.2(321)     | Contents of license        |
| 605.3(321)     | License class              |
| 605.4(321)     | Endorsements               |
| 605.5(321)     | Restrictions               |
| 605.6 to 605.8 | Reserved                   |
| 605.9(321)     | Fees for driver's licenses |

|                   |                                      |
|-------------------|--------------------------------------|
| 605.10(321)       | Waiver or refund of license fees     |
| 605.11(321)       | Duplicate license                    |
| 605.12(321)       | Address changes                      |
| 605.13 and 605.14 | Reserved                             |
| 605.15(321)       | License extension                    |
| 605.16(321)       | Military extension                   |
| 605.17 to 605.19  | Reserved                             |
| 605.20(321)       | Fee adjustment for upgrading license |
| 605.21 to 605.24  | Reserved                             |
| 605.25(321)       | License renewal                      |

## CHAPTER 606

Reserved

## CHAPTER 607

## COMMERCIAL DRIVER LICENSING

|                   |   |
|-------------------|---|
| 607.1(321)        | Scope   |
| 607.2(17A)        | Information                                   |
| 607.3(321)        | Definitions                                   |
| 607.4 and 607.5   | Reserved                                      |
| 607.6(321)        | Exemptions                                    |
| 607.7(321)        | Records                                       |
| 607.8 and 607.9   | Reserved                                      |
| 607.10(321)       | Adoption of federal regulations               |
| 607.11 to 607.14  | Reserved                                      |
| 607.15(321)       | Application                                   |
| 607.16(321)       | Commercial driver's license (CDL)             |
| 607.17(321)       | Endorsements                                  |
| 607.18(321)       | Restrictions                                  |
| 607.19            | Reserved                                      |
| 607.20(321)       | Commercial driver's instruction permit        |
| 607.21 to 607.24  | Reserved                                      |
| 607.25(321)       | Examination for a commercial driver's license |
| 607.26(321)       | Vision screening                              |
| 607.27(321)       | Knowledge tests                               |
| 607.28(321)       | Skills test                                   |
| 607.29 and 607.30 | Reserved                                      |
| 607.31(321)       | Test results                                  |
| 607.32 to 607.34  | Reserved                                      |
| 607.35(321)       | Issuance of commercial driver's license       |
| 607.36            | Reserved                                      |
| 607.37(321)       | Commercial driver's license renewal           |
| 607.38(321)       | Transfers from another state                  |
| 607.39(321)       | Disqualification                              |
| 607.40(321)       | Sanctions                                     |
| 607.41 to 607.44  | Reserved                                      |
| 607.45(321)       | Reinstatement                                 |
| 607.46 to 607.48  | Reserved                                      |
| 607.49(321)       | Restricted commercial driver's license        |
| 607.50            | Reserved                                      |
| 607.51(321)       | Determination of gross vehicle weight rating  |

## CHAPTERS 608 and 609

Reserved

## CHAPTER 610

RELEASE OF COMPUTERIZED DRIVER'S LICENSE  
AND NONOPERATOR'S IDENTIFICATION CARD RECORDS

- 610.1(321) Applicability
- 610.2(321) Definitions
- 610.3(321) Copying files to computer tape cartridges
- 610.4(321,321A) Certified abstract of operating records

## CHAPTER 611

DRIVER'S PRIVACY PROTECTION—DRIVER'S LICENSE  
AND NONOPERATOR'S IDENTIFICATION CARD

- 611.1(321) Applicability
- 611.2(321) Adoption
- 611.3(321) Definitions
- 611.4(321) Requirements and procedures

## CHAPTERS 612 to 614

Reserved

## CHAPTER 615

## SANCTIONS

- 615.1(321) Definitions
- 615.2(321) Scope
- 615.3(17A) Information and address
- 615.4(321) Denial for incapability
- 615.5 and 615.6 Reserved
- 615.7(321) Cancellations
- 615.8 Reserved
- 615.9(321) Habitual offender
- 615.10 Reserved
- 615.11(321) Periods of suspension
- 615.12(321) Suspension of a habitually reckless or negligent driver
- 615.13(321) Suspension of a habitual violator
- 615.14(321) Suspension for incapability
- 615.15(321) Suspension for unlawful use of a license
- 615.16(321) Suspension for out-of-state offense
- 615.17(321) Suspension for a serious violation
- 615.18(321) Suspension under the nonresident violator compact
- 615.19(321) Suspension for a charge of vehicular homicide
- 615.20(321) Suspension for moving violation during probation
- 615.21(321) Suspension of a minor's school license and minor's restricted license
- 615.22(321) Suspension for nonpayment of fine, penalty, surcharge or court costs
- 615.23(321) Suspensions for juveniles
- 615.24(252J,261,272D) Suspension upon receipt of a certificate of noncompliance
- 615.25 Reserved
- 615.26(321) Suspension or revocation for violation of a license restriction
- 615.27 and 615.28 Reserved
- 615.29(321) Mandatory revocation
- 615.30(321) Revocation for out-of-state offense
- 615.31 Reserved

|                   |   |
|-------------------|---|
| 615.32(321)       | Extension of revocation period                                      |
| 615.33(321)       | Revocation of a minor's license                                     |
| 615.34 and 615.35 | Reserved  |
| 615.36(321)       | Effective date of suspension, revocation, disqualification or bar   |
| 615.37(321)       | Service of notice   |
| 615.38(17A,321)   | Hearing and appeal process  |
| 615.39(321)       | Surrender of license  |
| 615.40(321)       | License reinstatement or reissue                                    |
| 615.41            | Reserved  |
| 615.42(321)       | Remedial driver improvement action under Iowa Code section 321.180B |
| 615.43(321)       | Driver improvement program  |
| 615.44(321)       | Driver improvement interview  |
| 615.45(321)       | Temporary restricted license (work permit)                          |

## CHAPTERS 616 to 619

Reserved

## CHAPTER 620

## OWI AND IMPLIED CONSENT

|                  |  |
|------------------|--|
| 620.1            | Reserved   |
| 620.2(321J)      | Information and location   |
| 620.3(321J)      | Issuance of temporary restricted license                                     |
| 620.4(321J)      | Hearings and appeals   |
| 620.5(321J)      | Reinstatement  |
| 620.6(321J)      | Issuance of temporary restricted license after revocation period has expired |
| 620.7 to 620.9   | Reserved   |
| 620.10(321J)     | Revocation for deferred judgment   |
| 620.11 to 620.14 | Reserved   |
| 620.15(321J)     | Substance abuse evaluation and treatment or rehabilitation services          |
| 620.16(321J)     | Drinking drivers course  |

## CHAPTERS 621 to 624

Reserved

## CHAPTER 625

DRIVER'S LICENSES FOR UNDERCOVER  
LAW ENFORCEMENT OFFICERS

|            |                       |
|------------|-----------------------|
| 625.1(321) | Purpose               |
| 625.2(321) | Application           |
| 625.3(321) | Issuance              |
| 625.4(321) | Renewal not permitted |
| 625.5(321) | Cancellation          |
| 625.6(321) | Records               |

## CHAPTERS 626 to 629

Reserved

## CHAPTER 630

## NONOPERATOR'S IDENTIFICATION

|            |                          |
|------------|--------------------------|
| 630.1(321) | General information      |
| 630.2(321) | Application and issuance |
| 630.3(321) | Duplicate card           |
| 630.4(321) | Cancellation             |

## CHAPTERS 631 to 633

Reserved

## CHAPTER 634

## DRIVER EDUCATION

|            |  |
|------------|--|
| 634.1(321) | Information and location                           |
| 634.2(321) | Definition   |
| 634.3      | Reserved   |
| 634.4(321) | Driver education course standards and requirements |
| 634.5      | Reserved   |
| 634.6(321) | Teacher qualifications                             |
| 634.7(321) | Behind-the-wheel instructor's certification        |
| 634.8(321) | Private and commercial driver education schools    |

## CHAPTER 635

## MOTORCYCLE RIDER EDUCATION (MRE)

|            |   |
|------------|---|
| 635.1(321) | Definitions                                   |
| 635.2(321) | Approved course in motorcycle rider education |
| 635.3(321) | Instructors                                   |
| 635.4(321) | Responsibilities of sponsors                  |
| 635.5(321) | Use of motorcycle rider education fund        |
| 635.6(321) | Information and location                      |
| 635.7(321) | License issuance                              |

## CHAPTER 636

## MOTORIZED BICYCLE RIDER EDUCATION

|            |                                |
|------------|--------------------------------|
| 636.1(321) | Information and location       |
| 636.2(321) | Definitions                    |
| 636.3      | Reserved                       |
| 636.4(321) | Agencies or institutions       |
| 636.5(321) | Private or commercial sponsors |
| 636.6      | Reserved                       |
| 636.7(321) | Course requirements            |
| 636.8(321) | Teacher qualifications         |
| 636.9(321) | Evaluation                     |

## CHAPTERS 637 to 639

Reserved

## CHAPTER 640

## FINANCIAL RESPONSIBILITY

|             |  |
|-------------|--|
| 640.1(321A) | General provisions                               |
| 640.2(321A) | Hearing and appeal process                       |
| 640.3(321A) | Accident reporting requirements                  |
| 640.4(321A) | Security required following accident             |
| 640.5(321A) | Judgments  |
| 640.6(321A) | Proof of financial responsibility for the future |
| 640.7(321A) | Transfer of suspended registration               |

## CHAPTER 641

## FINANCIAL LIABILITY COVERAGE CARDS

|            |  |
|------------|--|
| 641.1(321) | Purpose and applicability                    |
| 641.2(321) | Definitions                                  |
| 641.3(321) | Content of financial liability coverage card |

- 641.4(321) Responsibilities of insurer
- 641.5(321) Acquisition of additional or replacement motor vehicles
- 641.6(321) New policies

## CHAPTERS 642 to 699

Reserved

*AERONAUTICS*

## CHAPTER 700

## AERONAUTICS ADMINISTRATION

- 700.1(328) Definitions
- 700.2(17A) Location and submission of documents
- 700.3(17A) Hearing and appeal process

## CHAPTERS 701 to 709

Reserved

## CHAPTER 710

## AIRPORT IMPROVEMENT PROGRAM

- 710.1(328) Purpose
- 710.2(328) Definitions
- 710.3(17A) Location and information
- 710.4(330) Federal airport improvement funds
- 710.5(328) State airport improvement funds

## CHAPTERS 711 to 714

Reserved

## CHAPTER 715

## COMMERCIAL AIR SERVICE MARKETING PROGRAM

- 715.1(328) Purpose
- 715.2(328) Definitions
- 715.3(328) Program administration
- 715.4(328) Eligible project activities
- 715.5(328) Ineligible project activities
- 715.6(328) Project selection criteria
- 715.7(328) Application
- 715.8(328) Project administration

## CHAPTER 716

## COMMERCIAL AIR SERVICE VERTICAL INFRASTRUCTURE PROGRAM

- 716.1(328) Purpose
- 716.2(328) Definitions
- 716.3(328) Information
- 716.4(328) Eligible airports
- 716.5(328) Eligible project activities
- 716.6 Reserved
- 716.7(328) Work plan
- 716.8(328) Project administration

## CHAPTER 717

## GENERAL AVIATION AIRPORT VERTICAL INFRASTRUCTURE PROGRAM

- 717.1(328) Purpose
- 717.2(328) Definitions

|             |                                      |
|-------------|--------------------------------------|
| 717.3(328)  | Information and forms                |
| 717.4(328)  | Applicant eligibility                |
| 717.5(328)  | Eligible project activities          |
| 717.6       | Reserved                             |
| 717.7(328)  | Funding                              |
| 717.8(328)  | Project priorities                   |
| 717.9(328)  | Project applications                 |
| 717.10(328) | Review and approval                  |
| 717.11(328) | Project agreement and administration |

## CHAPTERS 718 and 719

Reserved

## CHAPTER 720

## IOWA AIRPORT REGISTRATION

|                  |                                |
|------------------|--------------------------------|
| 720.1(328)       | Scope                          |
| 720.2(328)       | Definitions                    |
| 720.3(328)       | Airport site approval required |
| 720.4(328)       | Public-use airport             |
| 720.5(328)       | Private-use airport            |
| 720.6(328)       | Revocation or denial           |
| 720.7 to 720.9   | Reserved                       |
| 720.10(328)      | Minimum safety standards       |
| 720.11 to 720.14 | Reserved                       |
| 720.15(328)      | Airport closing                |

## CHAPTERS 721 to 749

Reserved

## CHAPTER 750

## AIRCRAFT REGISTRATION

|                  |                              |
|------------------|------------------------------|
| 750.1(328)       | Purpose                      |
| 750.2(328)       | Definitions                  |
| 750.3(17A)       | Information and forms        |
| 750.4 to 750.8   | Reserved                     |
| 750.9(328)       | Registration                 |
| 750.10(328)      | First registration procedure |
| 750.11 to 750.14 | Reserved                     |
| 750.15(328)      | Aircraft not airworthy       |
| 750.16 to 750.19 | Reserved                     |
| 750.20(328)      | Renewal notice               |
| 750.21 to 750.28 | Reserved                     |
| 750.29(328)      | Penalty on registration fees |
| 750.30(328)      | Lien                         |

## CHAPTERS 751 to 799

Reserved

*RAILROADS*

## CHAPTER 800

## ITEMS OF GENERAL APPLICATION FOR RAILROADS

|            |                                      |
|------------|--------------------------------------|
| 800.1(307) | Definitions                          |
| 800.2(17A) | Location and submission of documents |

|                  |                                  |
|------------------|----------------------------------|
| 800.3(327C)      | Accounts                         |
| 800.4(327C)      | Annual reports                   |
| 800.5 to 800.14  | Reserved                         |
| 800.15(327F)     | Train speed ordinances           |
| 800.16 to 800.19 | Reserved                         |
| 800.20(327G)     | Removal of tracks from crossings |

## CHAPTER 801

Reserved

## CHAPTER 802

## REPORTING OF RAILROAD ACCIDENTS/INCIDENTS

|             |   |
|-------------|---|
| 802.1(327C) | Written reports                                 |
| 802.2(327C) | Immediate reporting of personal injury or death |

## CHAPTERS 803 to 809

Reserved

## CHAPTER 810

## RAILROAD SAFETY STANDARDS

|             |  |
|-------------|--|
| 810.1(327C) | Track standards  |
| 810.2(327C) | Track inspection                                       |
| 810.3       | Reserved   |
| 810.4(327F) | First aid and medical treatment for railroad employees |
| 810.5(327F) | Worker transportation                                  |

## CHAPTER 811

## HIGHWAY-RAILROAD GRADE CROSSING WARNING DEVICES

|            |           |
|------------|-----------|
| 811.1(307) | Standards |
|------------|-----------|

## CHAPTER 812

CLASSIFICATIONS AND STANDARDS FOR  
HIGHWAY-RAILROAD GRADE CROSSINGS

|            |   |
|------------|---|
| 812.1(307) | Purpose   |
| 812.2(307) | Classification                                    |
| 812.3(307) | Warning device standards and their implementation |
| 812.4(307) | Effect of rules                                   |

## CHAPTER 813

## CLOSE-CLEARANCE WARNING SIGNS ALONG RAILROAD TRACKS

|                 |                            |
|-----------------|----------------------------|
| 813.1(327F)     | Purpose and scope          |
| 813.2(327F)     | Applicability              |
| 813.3(327F)     | Information                |
| 813.4(327F)     | Definitions                |
| 813.5(327F)     | Close-clearance dimensions |
| 813.6(327F)     | Signing requirements       |
| 813.7 and 813.8 | Reserved                   |
| 813.9(327F)     | Enforcement                |
| 813.10(327F)    | Reimbursement              |

## CHAPTERS 814 to 819

Reserved

CHAPTER 820  
HIGHWAY GRADE CROSSING SAFETY FUND

|             |  |
|-------------|--|
| 820.1(327G) | Definitions  |
| 820.2(327G) | Purpose  |
| 820.3(327G) | Information and submissions  |
| 820.4(327G) | Participation in the maintenance costs of eligible warning devices |
| 820.5(327G) | Reimbursement  |

CHAPTER 821  
HIGHWAY-RAILROAD GRADE CROSSING SURFACE  
REPAIR FUND

|             |   |
|-------------|---|
| 821.1(327G) | Definitions   |
| 821.2(327G) | General information   |
| 821.3(327G) | Procedures for the use of grade crossing surface repair funds |

CHAPTER 822  
RAILROAD REVOLVING LOAN AND GRANT FUND PROGRAM

|              |                                       |
|--------------|---------------------------------------|
| 822.1(327H)  | Introduction                          |
| 822.2(327H)  | Definitions                           |
| 822.3(327H)  | Information                           |
| 822.4(327H)  | Purpose of program                    |
| 822.5(327H)  | Funding                               |
| 822.6(327H)  | Project criteria                      |
| 822.7(327H)  | Applicant eligibility                 |
| 822.8(327H)  | Eligible and ineligible project costs |
| 822.9        | Reserved                              |
| 822.10(327H) | Project application                   |
| 822.11(327H) | Project evaluation and approval       |
| 822.12(327H) | Project agreement and administration  |

CHAPTERS 823 to 899  
Reserved

*PUBLIC TRANSIT*

CHAPTERS 900 to 909  
Reserved

CHAPTER 910  
COORDINATION OF PUBLIC TRANSIT SERVICES

|                 |  |
|-----------------|--|
| 910.1(324A)     | Definitions  |
| 910.2(17A)      | Information and location                               |
| 910.3(324A)     | Statewide transportation coordination advisory council |
| 910.4(324A)     | Certification process                                  |
| 910.5(324A)     | Standards for compliance                               |
| 910.6(324A)     | Noncompliance  |
| 910.7(324A)     | Noncompliant sanctions                                 |
| 910.8(17A,324A) | Revocation   |

CHAPTER 911  
SCHOOL TRANSPORTATION SERVICES PROVIDED  
BY REGIONAL TRANSIT SYSTEMS

|                 |                         |
|-----------------|-------------------------|
| 911.1(321)      | Purpose and information |
| 911.2(321,324A) | Definitions             |

|             |  |
|-------------|--|
| 911.3(321)  | Services to students as part of the general public |
| 911.4(321)  | Contracts for nonexclusive school transportation   |
| 911.5(321)  | Adoption of federal regulations                    |
| 911.6(321)  | Driver standards                                   |
| 911.7(321)  | Vehicle standards                                  |
| 911.8(321)  | Maintenance  |
| 911.9(321)  | Safety equipment                                   |
| 911.10(321) | Operating policies                                 |

## CHAPTERS 912 to 919

Reserved

## CHAPTER 920

## STATE TRANSIT ASSISTANCE

|             |                        |
|-------------|------------------------|
| 920.1(324A) | Statement of policy    |
| 920.2(324A) | General information    |
| 920.3(324A) | Definitions            |
| 920.4(324A) | Types of projects      |
| 920.5(324A) | Standards for projects |
| 920.6(324A) | Processing             |

## CHAPTER 921

## ADVANCED ALLOCATIONS OF STATE TRANSIT ASSISTANCE FUNDING

|             |   |
|-------------|---|
| 921.1(324A) | Scope of chapter  |
| 921.2(324A) | Basic types of advance allocations  |
| 921.3(324A) | Application for advance allocations   |
| 921.4(324A) | Application approval  |
| 921.5(324A) | Consideration in determining the approval of advance allocation application |
| 921.6       | Reserved  |
| 921.7(324A) | Reports, and suspension and termination of allocations                      |
| 921.8(324A) | Income derived from interest-bearing accounts and investments               |
| 921.9(324A) | “Joint Participation Agreement” close and audits                            |

## CHAPTER 922

## FEDERAL TRANSIT ASSISTANCE

|             |  |
|-------------|--|
| 922.1(324A) | Projects for nonurbanized areas and private nonprofit transportation providers |
|-------------|--|

## CHAPTER 923

## CAPITAL MATCH REVOLVING LOAN FUND

|                   |                     |
|-------------------|---------------------|
| 923.1(71GA,ch265) | General information |
| 923.2(71GA,ch265) | Definitions         |
| 923.3(71GA,ch265) | System eligibility  |
| 923.4(71GA,ch265) | Project eligibility |
| 923.5(71GA,ch265) | Procedure           |

## CHAPTER 924

## PUBLIC TRANSIT INFRASTRUCTURE GRANT PROGRAM

|             |                             |
|-------------|-----------------------------|
| 924.1(324A) | Purpose                     |
| 924.2(324A) | Definitions                 |
| 924.3(324A) | Information and forms       |
| 924.4       | Reserved                    |
| 924.5(324A) | Applicant eligibility       |
| 924.6(324A) | Project eligibility         |
| 924.7(324A) | Eligible project activities |

|                   |                                      |
|-------------------|--------------------------------------|
| 924.8(324A)       | Ineligible project activities        |
| 924.9             | Reserved                             |
| 924.10(324A)      | Funding                              |
| 924.11(324A)      | Project applications                 |
| 924.12 and 924.13 | Reserved                             |
| 924.14(324A)      | Project priorities                   |
| 924.15(324A)      | Review and approval                  |
| 924.16(324A)      | Project agreement and administration |

## VEHICLES

## CHAPTER 400

## VEHICLE REGISTRATION AND CERTIFICATE OF TITLE

[Prior to 6/3/87, Transportation Department[820]—(07,D)Ch 11]

**761—400.1(321) Definitions.** The definitions in Iowa Code section 321.1 are hereby made part of this chapter. In addition, the following words and phrases, when used in Iowa Code chapter 321 or this chapter, shall have the meanings respectively ascribed to them, except when the context otherwise requires.

*“Certificate of title”* means a document issued by the appropriate official which contains a statement of the owner’s title, the name and address of the owner, a description of the vehicle, a statement of all security interests and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only,” and “title” shall be synonymous with the term “Certificate of title.”

*“Dealer’s or manufacturer’s stock or inventory”* means a vehicle owned by a dealer which is being held for sale or trade and for which the dealer has a duly assigned ownership document as required by Iowa Code section 321.45.

*“Farm trailer”* means a trailer used exclusively by a farmer in the conduct of the farmer’s agricultural operation. The term shall not include a “semitrailer.”

*“Half-year fee”* means the first semiannual installment of an annual registration fee. The term “half-year registration” shall be synonymous with the term “half-year fee.”

*“Hearse”* means a motor vehicle used exclusively to transport a deceased person.

*“Lien”* means an interest in a vehicle which secures payment or performance of an obligation. The term “security interest” shall be synonymous with the term “lien.”

*“Manufacturer’s certificate of origin”* means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

1. The terms “manufacturer’s statement,” “importer’s statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer’s certificate of origin.”

2. In addition to the requirements of Iowa Code subsection 321.45(1), the certificate shall contain a description of the vehicle which includes the make, model, style and vehicle identification number. The description of a motorized bicycle shall also specify the maximum speed.

3. For 1992 and subsequent model year vehicles, the form used for manufacturers’ certificates of origin shall be the universal form adopted in 1990 by the American Association of Motor Vehicle Administrators (AAMVA). This requirement does not apply to trailer-type vehicles. A copy of this universal form is on file in the office of vehicle services at the address in subrule 400.6(1).

*“Model year,”* except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For purposes of titling and registration, the model year shall advance one year each January 1.

*“Registered”* means that the appropriate registration fee has been paid for a vehicle and a registration card evidencing payment has been issued to the owner.

*“Registration card”* means a document issued to the owner of a vehicle by the appropriate agency whose duty it is to register vehicles, which contains the name and address of the owner and a description of the vehicle, and which is issued to the owner when the vehicle has been registered. The terms “registration certificate,” “registration receipt” and “registration renewal receipt” are synonymous with the term “registration card.”

*“Security interest”* means an interest in a vehicle which secures payment or performance of an obligation. The term “lien” shall be synonymous with the term “security interest.”

“*Social security number*” means a social security number issued by the United States government.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23, 321.24, 321.40, 321.45, 321.50, 321.117, 321.123, 321.134 and 321.157.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.2(321) Vehicle registration and certificate of title—general provisions.**

**400.2(1) *Vehicles subject to registration.*** A vehicle subject to registration under the laws of Iowa shall be required to be registered at the time the vehicle is first operated or moved upon a highway in this state.

**400.2(2) *Vehicles exempt from titling or registration.*** A certificate of title shall not be issued for a vehicle which is exempt from the titling or registration provisions of Iowa Code chapter 321, unless issuance of a certificate of title is specifically authorized in chapter 321.

**400.2(3) *Issuance of a certificate of title upon payment of registration fees.*** Except as otherwise provided in Iowa Code chapter 321 or this chapter of rules, the current year registration fee and any delinquent registration fees and penalties, if any, shall be paid prior to issuance of a certificate of title.

**400.2(4) *Trailers with an empty weight of 2000 pounds or less.*** Certificates of title shall not be issued for trailers with an empty weight of 2000 pounds or less. However, these trailers shall be subject to the registration fees provided in Iowa Code section 321.123.

**400.2(5) *Vehicles owned by the government.*** A certificate of title shall be issued for a vehicle owned by the government when the vehicle is first registered. However, vehicles owned by the government shall be exempted from registration and titling fees. Also, a certificate of title shall not be issued for a government-owned vehicle if a certificate of title would not be issued if the vehicle were owned by someone other than the government.

**400.2(6) *Vehicles leased by the government.*** Vehicles leased by the government for a period of 60 days or more are exempted from payment of registration fees. A copy of the lease agreement, certificate of lease, or other evidence that the vehicle is being leased by the government shall be required in order to obtain this exemption. However, the lessor is not exempted from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321 and these rules, including payment of the appropriate certificate of title fee.

**400.2(7) *Special mobile equipment.*** Rescinded IAB 3/7/90, effective 4/11/90.

**400.2(8) *Private school buses, fire trucks, authorized emergency vehicles, and transit buses.*** In accordance with Iowa Code sections 321.18, 321.19 and 321.22, private school buses, fire trucks not owned or operated for a pecuniary profit, certain authorized emergency vehicles owned and operated by nonprofit organizations, and urban and regional transit system buses are exempt from the payment of registration fees. However, these vehicles are not exempt from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321, including payment of the appropriate certificate of title fee.

This rule is intended to implement Iowa Code sections 321.18 to 321.22, 321.24 and 321.123.

**761—400.3(321) Application for certificate of title or registration for a vehicle.**

**400.3(1) *Application form.*** To apply for a certificate of title or registration for a vehicle, the owner of the vehicle shall complete an application form prescribed by the department. Application shall be made in accordance with Iowa Code chapter 321, these rules, and other applicable provisions of law.

**400.3(2) *Full legal name.*** Full legal names shall be given on the application. Civilian or military titles and nicknames shall not be used.

**400.3(3) *Information about owner, lessee and primary user.***

*a.* Iowa Code sections 321.20 and 321.109 list the information that must be disclosed by the owner, lessee and primary user on the application.

*b.* A firm, association, corporation, or trust that is not required to have a federal employer identification number shall disclose the social security number, Iowa driver’s license number or Iowa nonoperator’s identification card number of an authorized representative of the firm, association,

corporation, or trust. The authorized representative of a trust is the trustee unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604.

**400.3(4) *Plate number and validation number.*** If the owner has registration plates that have been assigned to the owner and affixed to the vehicle, the owner shall list the plate number on the application form. The validation number from the validation sticker shall also be listed.

**400.3(5) *Birth or registration month.*** If the vehicle is owned by one individual, the individual's month of birth shall be listed on the application form and shall determine the registration year. If the vehicle is owned by two or three individuals, the month of birth of one of the individuals shall be listed and shall determine the registration year. If the vehicle is owned by a partnership, corporation, association, or governmental subdivision, the birth or registration month shall be left blank on the application; the county treasurer shall determine the month of registration.

**400.3(6) *Model year.*** The application shall include the model year of the vehicle.

**400.3(7) *Purchase information.*** The application shall include the date of purchase or acquisition and, if the vehicle was not purchased from a dealer, the purchase price.

**400.3(8) *Vehicle color.*** The application shall include the vehicle color.

**400.3(9) *Foreign registered vehicle.*** If the vehicle is registered in a foreign jurisdiction, the application shall include the date the vehicle was brought into Iowa.

**400.3(10) *Signature of applicant.*** The owner shall sign the application form in ink.

**400.3(11) *Dealer certification.***

*a.* If the vehicle is a new vehicle which has been sold to the owner by a dealer, as defined in Iowa Code section 321.1, the dealer shall certify the following on the application form: sale price of the vehicle, the amounts allowed for property traded-in, nontaxable charges and rebates, the tax price of the vehicle, the date that a "Registration Applied For" card was issued, and the registration fee collected.

*b.* The certification shall include the dealer's number and name and shall be signed by the dealer or an authorized representative of the dealer.

**400.3(12) *Weigh ticket.*** If application is being made to lower the tonnage on any motor truck, bus or truck tractor, the county treasurer may require a copy of a stamped weigh ticket issued by any public scale.

**400.3(13) *Credits.*** See rule 761—400.60(321) for:

Credit for unexpired registration fee.

Credit for transfer to spouse, parent or child.

Credit from/to proportional registration.

Assignment of credit and registration plates from lessor to lessee.

**400.3(14) *Leased vehicle.*** As required by Iowa Code section 423.7A, the lessor shall list the lease price of the vehicle on the application form.

**400.3(15) *Affidavit of correction.*** As provided in Iowa Code section 321.23A, the county treasurer or the department may accept an affidavit of correction on a form prescribed by the department.

*a.* The affidavit may be used only to correct those errors, erasures or alterations listed on the affidavit.

*b.* The affidavit must contain the signatures of all parties to the original error, erasure or alteration.

*c.* Only an original, notarized affidavit shall be accepted.

*d.* The affidavit must be surrendered with the document that contains the error, erasure or alteration to be corrected.

*e.* The affidavit may be accepted to correct errors, erasures or alterations on either an Iowa title or a foreign title.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.109, 321.122 and 423.7A.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.4(321) Supporting documents required.** This rule describes the basic supporting documents to be submitted by an applicant for a certificate of title or registration.

**400.4(1) *New vehicle.*** If application is made for a new vehicle, a manufacturer's certificate of origin, properly assigned to the applicant, shall be submitted. A manufacturer's certificate of origin shall not be accepted if the assignment to the applicant is made by any person other than the manufacturer, importer, distributor or a licensed motor vehicle dealer franchised to sell that line make of vehicle.

*a.* The first person, including a dealer not franchised to sell that line make of vehicle, who is assigned the manufacturer's certificate of origin shall obtain a certificate of title and register the vehicle.

*b.* An uncanceled security interest noted on the reverse side of a manufacturer's certificate of origin (MCO) shall be noted as a separate security interest on the certificate of title, in addition to any security interest acknowledged by the applicant, unless the applicant indicates in the security interest area on the title application that the security interest is the same as the one noted on the reverse side of the MCO.

*c.* If a 1980 or subsequent model year vehicle is manufactured by a person other than the original manufacturer, both the original manufacturer's certificate of origin and the final manufacturer's certificate of origin shall be submitted. All assignments or reassignments of ownership of the vehicle shall be made on the final manufacturer's certificate of origin. The face of the original manufacturer's certificate of origin shall be stamped in bold type with the statement: "Final manufacturer's MCO has been issued on this vehicle." The original manufacturer's vehicle identification number shall be listed on the final manufacturer's certificate of origin.

**400.4(2) *Used vehicle registered or titled in this state.*** The last issued certificate of title, properly assigned to the applicant, shall be submitted. An uncanceled security interest noted on the face of the certificate of title shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant. If the vehicle is not subject to titling provisions, the last issued registration receipt or bill of sale, properly assigned to the applicant, shall be submitted.

**400.4(3) *Used vehicle from a foreign jurisdiction.*** If the vehicle was subject to the issuance of a certificate of title in the foreign jurisdiction, the certificate of title issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted.

*a.* A security interest, noted on the face of the foreign certificate of title, which has not been canceled, shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant.

*b.* A certificate of title issued in a foreign jurisdiction may be assigned to a motor vehicle dealer in another jurisdiction, and the dealer may reassign the certificate of title to the applicant. An assignment or reassignment form issued by a foreign jurisdiction may be used with a foreign title to complete an assignment or reassignment of ownership from a foreign motor vehicle dealer to the applicant, provided the ownership chain is complete.

*c.* An Iowa licensed motor vehicle dealer who acquires a vehicle registered in another state or country may reassign the foreign certificate of title to the applicant, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

*d.* A person who registers a foreign vehicle under Iowa Code subsection 321.23(3) shall be issued a nontransferable-nonnegotiable registration. To transfer ownership of the vehicle, the owner must first obtain an Iowa certificate of title except as follows: If ownership is transferred to an Iowa licensed motor vehicle dealer as provided in Iowa Code subsection 321.23(3), the foreign certificate of title may be assigned to the dealer; the owner is not required to obtain an Iowa title. The dealer may then reassign the foreign title, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

*e.* If the vehicle was not subject to the issuance of a certificate of title in the foreign jurisdiction, the registration document issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted.

(1) If the foreign registration document is not issued in the applicant's name and does not contain an assignment of ownership form, a bill of sale conveying ownership from the owner as listed on the foreign registration document to the applicant shall be submitted with the foreign registration document.

(2) Upon receipt of the foreign registration document, the county treasurer shall issue a nontransferable—nonnegotiable registration unless the foreign registration document has been approved by the department.

(3) Acceptance of the foreign registration document shall be determined by the department on an individual basis, if the county treasurer of the county where the certificate of title is to be issued cannot determine whether the document is acceptable.

*f.* If a trailer weighing 2000 lbs. or less is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, a bill of sale conveying ownership to the applicant, if acquired by a resident from a nonresident, or an affidavit of ownership signed by the applicant, if the applicant is establishing residence in this state, shall be submitted.

*g.* If a motor vehicle is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, the bonding procedures as provided in Iowa Code section 321.24 shall be followed.

**400.4(4)** *Used vehicle acquired by a resident of this state from a government agency.* If the vehicle was acquired from an agency of the federal government, the applicant shall surrender the government bill of sale, Form 97 or 97A, properly assigned to the applicant. If the vehicle was acquired from the state of Iowa or a subdivision of government the applicant shall surrender the Iowa certificate of title issued in the name of the agency, properly assigned to the applicant.

**400.4(5)** *Manufactured or mobile home.* If the vehicle described on the application is a manufactured or mobile home with an Iowa title, the applicant shall submit a tax clearance form to show that no taxes are owing, unless the title has been issued to a manufactured or mobile home retailer licensed under Iowa Code chapter 103A. The form may be obtained by any owner of record of the manufactured or mobile home from the county treasurer.

**400.4(6)** *Vehicle acquired by a resident of this state by operation of law.* If the vehicle was acquired by the applicant by operation of law as specified in Iowa Code section 321.47, the last issued certificate of title shall be submitted by the applicant, or when that is not possible, presentation of satisfactory proof of the applicant's ownership and right of possession to the vehicle shall be submitted by the applicant. Proof of ownership may consist of a foreclosure sale affidavit, artisan's or storage lien affidavit, affidavit of death intestate, abandoned vehicle sales receipt, peace officers bill of sale or court order. See also subrules 400.14(4) and 400.14(5).

**400.4(7)** *Foreign ownership document issued in a language other than English.* A foreign ownership document issued in a language other than English may be required to be reproduced in writing in English and certified to be a correct translation by a person qualified to translate that particular language. The English translation and certification shall be submitted with the foreign ownership document.

**400.4(8)** *Titles from foreign jurisdictions.*

*a.* Except as provided in paragraph "b" of this subrule, a certificate of title issued by a foreign jurisdiction shall not be accepted if the title contains an alteration or erasure.

*b.* An affidavit of correction form issued by a foreign jurisdiction that corrects the certificate of title issued by the foreign jurisdiction shall be accepted only for the reason listed on the affidavit of correction form. However, acceptance of an affidavit of correction form that corrects an odometer statement or a designation shall be determined by the department on an individual basis.

**400.4(9)** *Applications in the name of trusts.* An application in the name of a trust shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust as defined in Iowa Code section 633A.4604. The application shall be signed by each trustee unless otherwise specified in the trust agreement or the certification of trust. The signature shall be followed by the words "as trustee."

**400.4(10)** *Supporting document retained by county treasurer.* All supporting documents shall be retained by the county treasurer.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, and 321.67.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

#### **761—400.5(321) Where to apply for registration or certificate of title.**

**400.5(1)** Except as otherwise provided, application for the registration of a vehicle or a certificate of title for a vehicle, or transfers thereof, shall be made to the county treasurer as described in Iowa Code

chapter 321. When none of the primary users of a non-resident-owned vehicle are located in Iowa, the vehicle may be registered by the county treasurer of any county.

**400.5(2)** Application shall be made to the department's office of vehicle services for the following:

*a.* Titling and registration of vehicles owned by the government. This requirement does not apply to manufactured or mobile homes subject to a public bidder sale as explained in Iowa Code subsection 321.46(2).

*b.* Registration of vehicles leased by the government for a period of 60 days or more.

*c.* Registration of urban and regional transit system buses.

*d.* Registration of fire trucks not owned and operated for a pecuniary profit.

*e.* Registration of certain authorized emergency vehicles owned and operated by nonprofit organizations.

*f.* Registration of private school buses.

*g.* Registration of vehicles under the provisions of Iowa Code subsection 321.23(4), relating to restricted-use vehicles.

**400.5(3)** Application for a certificate of title for a vehicle subject to proportional registration under Iowa Code chapter 326 may be made to either the county treasurer or to the department's office of motor carrier services. The office of motor carrier services may be contacted at the addresses listed in subrule 400.6(2) or by telephone at (515)237-3264.

**400.5(4)** Application for proportional registration shall be made to the department's office of motor carrier services. See 761—Chapter 500.

This rule is intended to implement Iowa Code sections 321.18 to 321.23, 321.46(2), and 321.170.

**761—400.6(17A) Addresses, information and forms.** Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or from:

**400.6(1)** Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

**400.6(2)** Office of Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382.

**400.6(3)** The Internet at the following address: <http://www.iowadot.gov/mvd>.

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

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.7(321) Information appearing on title or registration.** In addition to the requirements of Iowa Code sections 321.24, 321.52, 321.69, 321.71 and 322G.12, a certificate of title or registration receipt or both shall contain the following information when applicable:

**400.7(1)** Registration expiration date.

**400.7(2)** Registration month, as explained in rule 761—400.3(321).

**400.7(3)** Name and address of last titled owner.

**400.7(4)** Description of the vehicle, including the following items. These items may be represented on the title and registration by code letters or numbers.

*a.* Vehicle identification number.

*b.* Type, such as automobile, trailer, truck, etc.

*c.* Style.

*d.* Make, model, and model year.

*e.* Series of a motor home, which will be shown on the title as “motor home a,” “motor home b” or “motor home c.”

*f.* Number of engine cylinders.

*g.* Color.

*h.* Weight and registered gross weight.

*i.* The square footage of floor space of a manufactured or mobile home or travel trailer, as determined by measuring the exterior.

*j.* The odometer mileage and whether the mileage is “actual,” “not actual,” or “exceeds mechanical limits.”

**400.7(5)** Previous Iowa title number or the name of the foreign jurisdiction if the previous title is a foreign title.

**400.7(6)** Plate number and previous registration number.

**400.7(7)** List price or value.

**400.7(8)** Penalties and title, registration and security interest receipt numbers.

**400.7(9)** The following phrase stamped on the reassignment portion of a manufactured or mobile home title: “Dealer reassignment not authorized on this certificate of title.”

**400.7(10)** The designation required by 761—Chapter 405. A vehicle may have no more than one designation. The referenced rules explain which designation takes precedence when more than one designation could apply.

**400.7(11)** Full legal name of owner.

*a.* When the name of an owner changes from that which is printed on the title or registration issued to the owner, the owner shall submit to the county treasurer on a form prescribed by the department an application for a certificate of title or registration for a vehicle. The application must be accompanied by one of the following documents:

(1) Court order for a name change. The court order must contain the full name, date of birth, and court seal.

(2) Divorce decree.

(3) Marriage certificate.

*b.* Paragraph “*a*” of this subrule does not apply to owners that are firms, associations, corporations, or trusts.

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.52, 321.69, 321.71, 321.124 and 322G.12.

#### **761—400.8(321) Release form for cancellation of security interest.**

**400.8(1)** A secured party may use a form prescribed by the department to note the cancellation of a security interest.

**400.8(2)** The secured party may also note the cancellation in a statement written on the secured party’s letterhead if the statement contains the following information: county that issued the title; title number; security interest number; vehicle identification number; vehicle owner’s name; secured party’s name, street address, city, state and ZIP code; date the security interest was canceled; and signature of an authorized representative of the secured party.

**400.8(3)** The secured party shall forward the original cancellation form or statement to the department or to the county treasurer of the county where the title was issued. Facsimiles and photocopies are not acceptable.

**400.8(4)** The secured party shall note the cancellation on the face of the title, attach a copy of the release form to the title as evidence of cancellation, and forward the title to the next secured party or, if there is no other secured party, to the person designated by the owner or, if there is no person designated, to the owner.

This rule is intended to implement Iowa Code section 321.50.

**761—400.9(321) Security interest notation, 30-day limit.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.10(321) Assignment of security interest.** A security interest noted on a certificate of title may be assigned to another secured party without losing the seniority of the security interest by complying with the procedure in Iowa Code section 321.50 or with the following procedure:

**400.10(1) Notice of assignment.** The secured party listed on the title certificate shall make the following notation in the cancellation portion of the certificate of title where security interest is noted

“Assigned to (name of assignee).” The date, name of secured party and signature of the person noting the assignment shall be completed in the cancellation portion pertaining to the security interest.

**400.10(2)** *Application for notation of security interest.* The assignee shall complete an application for notation of a security interest on the form provided by the department. The application form shall be signed by the assignee in the space where the signature of the owner is ordinarily required. The signature of the owner shall not be required on an assignment of a security interest.

**400.10(3)** *Submission of documents to county treasurer.* The certificate of title, application for notation of security interest and appropriate notation fee shall be submitted to the county treasurer of the county where the certificate of title was issued or will be issued.

*a.* If there are additional security interests noted on the certificate of title, the seniority of the assignee’s security interest may be preserved by issuance of a certificate of title in lieu of the original, on which the assignee’s security interest shall be noted in the same seniority as the assignor’s.

*b.* A receipt for notation of security interest form shall be processed and the new receipt number shall be listed in the appropriate space provided. The original notation date shall also be listed and the words “by assignment” shall be listed following the name of the assignee.

This rule is intended to implement Iowa Code section 321.50.

**761—400.11(321) Sheriff’s levy, restitution lien, and forfeiture lien noted as security interests.**

**400.11(1)** A sheriff’s levy may be noted as a security interest on a certificate of title if the sheriff so desires. To apply for a notation of a security interest, the sheriff or the sheriff’s deputy shall complete an application form prescribed by the department. The sheriff or sheriff’s deputy shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. The appropriate notation fee shall be submitted with the application form to the county treasurer of the county where the certificate of title was issued. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

**400.11(2)** A restitution or forfeiture lien may be noted as a security interest on a certificate of title if the county attorney so desires. To apply for a notation of a security interest, the county attorney or designee shall complete an application form prescribed by the department. The county attorney or designee shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. A lien notation fee is not required. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

This rule is intended to implement Iowa Code section 321.50 and chapter 809A.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.12(321) Replacement certificate of title.**

**400.12(1)** When a certificate of title is lost, destroyed or altered, the owner or lienholder shall apply for a replacement certificate of title. If a security interest noted on the certificate of title was released by the secured party on a separate form, but the secured party has not delivered the original certificate of title to the appropriate party, the owner may apply for a replacement certificate of title as provided in Iowa Code section 321.42.

**400.12(2)** Application for a replacement certificate of title shall be made on a form prescribed by the department. All owners of the vehicle as listed on the certificate of title shall sign the application form. If an owner is deceased, the signatures and documents specified in subrules 400.14(4) and 400.14(5) shall be required in lieu of the deceased owner’s signature. A person entitled to vehicle ownership under the laws of descent and distribution shall sign the required forms and shall insert the words “heir at law” following the signature.

This rule is intended to implement Iowa Code section 321.42.

**761—400.13(321) Bond required before title issued.** An applicant for a certificate of title who cannot provide the supporting documents required in rule 761—400.4(321) shall be required to file a bond as a condition to obtaining a title and registration plates.

**400.13(1) Procedures.** This subrule describes the procedures to be followed to obtain a “bonded” certificate of title. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

*a.* The applicant shall submit a bond application to the office of vehicle services on a form prescribed by the department. The application shall be accompanied by evidence of ownership of the vehicle.

*b.* The department shall search the state files to determine if there is an owner of record for the vehicle and if the vehicle has been reported stolen or embezzled.

(1) If a record is found, the applicant shall complete a request for release of personal information form explaining that the applicant is the current owner and is requesting a duplicate title. The department shall mail the release by first-class mail to the owner of record, at the owner’s last-known address.

(2) If the department receives no response from the owner of record within ten days after the date of mailing or the owner of record does not want the owner’s personal information released, the department will continue processing the bond application.

*c.* If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall determine the current value of the vehicle and notify the applicant to deposit cash or file a surety bond with the department in an amount equal to one and one-half times the current value of the vehicle.

*d.* After the cash deposit or surety bond has been deposited, a motor vehicle investigator of the department may examine the vehicle to verify the information submitted on the application is correct. After verifying the information, the investigator shall give to the applicant a document authorizing the county treasurer to issue a title for and register the vehicle. Should the vehicle not meet the equipment requirements of Iowa Code chapter 321, the investigator shall authorize the county treasurer to issue a title and registration but instruct the county treasurer to immediately suspend the registration until such time as the vehicle meets these equipment requirements. If applicable, the investigator shall also affix an assigned identification number to the vehicle and give to the applicant an assigned vehicle identification number (VIN) form.

*e.* The applicant shall then submit the authorization document and, if applicable, the VIN form to the county treasurer and make application for a certificate of title and registration.

**400.13(2) Disapproval.** If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, then the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

**400.13(3) Junked vehicle.** A certificate of title shall not be reinstated for a vehicle that has been issued a junking certificate unless the junking certificate was issued in error, as explained in rule 761—400.23(321), or the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code sections 321.24 and 321.52.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.14(321) Transfer of ownership.** The following procedures shall apply for all titling and registration purposes:

**400.14(1) Transfer of vehicle owned by two or three persons.**

*a.* If the names of the owners of a vehicle on the certificate of title or on the manufacturer’s certificate of origin are joined by the word “or,” as in “John Doe, Jane Doe or Mary Doe,” then the signature of any of these owners is sufficient to transfer title or to junk the vehicle.

b. If ownership of a vehicle is stated as a name or names followed by the words “Doing Business As” or the initials “DBA” and another name, only the name of an owner followed by the signature of an authorized representative of an owner is required to transfer title or to junk the vehicle.

EXAMPLE: Ownership is stated as “John Smith and Mary Smith DBA Smith Repair.” Jane Doe is an authorized representative of John Smith and Mary Smith. To transfer ownership, Jane Doe may sign as “John Smith and Mary Smith DBA Smith Repair, by Jane Doe,” “John Smith and Mary Smith by Jane Doe,” or Smith Repair by Jane Doe.”

c. In all other cases the signature of each named owner is required.

**400.14(2)** *Assignment of title to two or three persons.* If a certificate of title or a manufacturer’s certificate of origin is assigned to two or three persons with their names joined by the word “or,” as in “John Doe, Jane Doe or Mary Doe,” then a certificate of title may be issued to any one of these persons, or to any two or all three of these persons with their names joined by the word “or.” However, a certificate of title shall only be issued to persons who have signed the application for title.

**400.14(3)** *Organizational ownership.*

a. When a vehicle is owned by a partnership, corporation, association, governmental unit, or private organization, the signature of its authorized representative is required.

b. When a vehicle is owned by a trust, the signature of each trustee is required, unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604. The signature shall be followed by the words “as trustee.” In addition, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust.

**400.14(4)** *Death with a will.* When ownership is transferred according to a decedent’s will, a certified copy of the court order or the letter of appointment appointing the person assigning the title as executor of the will shall be required.

**400.14(5)** *Death without a will.* When ownership is transferred from a decedent without a will and there is no administration of the estate, an affidavit of death intestate form signed by the clerk of court shall be required. When ownership is transferred from a decedent without a will but there is an administration of the estate, a copy of the court order or the letter of appointment appointing the person assigning the title as administrator shall be required.

**400.14(6)** *Power of attorney.* An attorney in fact may act for the owner(s) if the appointment is shown on a power of attorney form. Power of attorney forms are available from the department but other forms may be accepted if they contain all necessary information. The power of attorney form or a certified true copy shall be kept by the county treasurer and attached to the document to which it applies.

This rule is intended to implement Iowa Code sections 321.20, 321.24, 321.45, 321.47, 321.49, and 321.67.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

#### **761—400.15(321) Cancellation of a certificate of title.**

**400.15(1)** The department shall cancel a certificate of title when authorized by any provision of law or when it has reasonable grounds to believe that the title has not been surrendered to the county treasurer as provided in Iowa Code section 321.52 or when the vehicle has been stolen or embezzled from the rightful owner or seized under the provisions of Iowa Code section 321.84, and the person holding the certificate of title, purportedly issued for the vehicle, has no immediate right to possession of the vehicle.

**400.15(2)** The decision to issue a new certificate of title or to allow the previous title to be reinstated through a replacement title application process or to take any other action regarding ownership of the vehicle for which the current title has been canceled shall be determined after an investigation and recommendation by a motor vehicle investigator of the department.

This rule is intended to implement Iowa Code section 321.101.

**761—400.16(321) Application for certificate of title or original registration for a specially constructed, reconstructed, street rod or replica motor vehicle.****400.16(1) Definitions applicable to this rule.**

*a. "Ownership document for the vehicle"* means the certificate of title, the manufacturer's certificate of origin, the junking certificate, or other evidence of ownership acceptable to the department.

*b. "Ownership documents for essential parts"* means bills of sale for all essential parts used to construct or reconstruct the vehicle. Each bill of sale shall contain a description of the part, the manufacturer's identification number of the part, if any, and the name, address, and telephone number of the seller.

**400.16(2) Procedures.** This subrule describes the procedures for obtaining department approval to title and register a specially constructed, reconstructed, street rod or replica motor vehicle. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

*a.* The applicant shall apply to the county treasurer for a certificate of title and registration. The county treasurer, upon receiving an application that indicates the vehicle is a specially constructed, reconstructed, street rod or replica motor vehicle, shall forward the application to a motor vehicle investigator of the department.

*b.* The investigator shall contact the applicant in person or by telephone and schedule a time and place for an examination of the vehicle and the ownership documents. The applicant, when appearing with the vehicle for the examination, shall submit to the investigator the ownership document for the vehicle, the ownership documents for essential parts, and a weigh ticket indicating the weight of the vehicle. However, a weigh ticket is not required for motorcycles, trucks, truck tractors, road tractors or trailer-type vehicles.

*c.* If the investigator determines that the vehicle complies with 761—Chapter 450, that the integral parts and components have been identified as to ownership, and that the application has been completed properly:

(1) The investigator shall approve the application, affix to the vehicle an assigned vehicle identification number, and return the application and ownership documents to the applicant. The investigator shall also give to the applicant an assigned vehicle identification number (VIN) form that the applicant shall submit with the application to the county treasurer.

(2) If the vehicle is a passenger-type motor vehicle, the department shall determine its weight and value. The vehicle weight shall be fixed at the next even 100 pounds above the actual weight of the vehicle fully equipped, as provided in Iowa Code section 321.162. The weight and value shall constitute the basis for determining the annual registration fee under Iowa Code section 321.109, except as provided in Iowa Code section 321.113.

(3) The applicant shall then submit the approved application, ownership document for the vehicle, and VIN form to the county treasurer and continue with the regular title and registration process.

**400.16(3) Disapproval.** If the department determines that the vehicle does not comply with 761—Chapter 450, that the integral parts or components have not been identified as to ownership, or that the application has not been completed properly, then the department shall not approve the vehicle for titling and registration.

**400.16(4) Model year.** The model year of a specially constructed, reconstructed, street rod or replica motor vehicle is the year the vehicle is approved by the department as a specially constructed, reconstructed, street rod or replica motor vehicle.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.52, 321.109 and 321.162.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.17(321) Remanufactured vehicle.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.18(321)** Rescinded IAB 3/26/97, effective 4/30/97.

**761—400.19(321) Temporary use of vehicle without plates or registration card.**

**400.19(1)** *Temporary use of vehicle without plates.* A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who does not possess registration plates which may be assigned to and displayed on the vehicle may operate or permit the operation of the vehicle not to exceed 30 days from the date of purchase or transfer without registration plates displayed thereon, if ownership evidence is carried in the vehicle.

**400.19(2)** *Temporary use of vehicle without registration card.* A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who has possession of plates which may be attached to the vehicle acquired may operate or permit the operation of the vehicle not to exceed 45 days from the date of purchase or transfer without a registration card, if ownership evidence is carried in the vehicle.

**400.19(3)** *Ownership evidence.* Ownership evidence under this rule shall consist of the certificate of title or registration receipt, or a photocopy thereof, properly assigned to the person who has acquired the vehicle, or a bill of sale conveying ownership of the vehicle to the person who has acquired the vehicle. The ownership evidence shall be shown to any peace officer upon request.

This rule is intended to implement Iowa Code sections 321.25, 321.33 and 321.46.

**761—400.20(321) Registration of motor vehicle weighing 55,000 pounds or more.** When applying for registration or renewal of registration for a motor vehicle weighing 55,000 pounds or more, the owner shall present to the department or to the county treasurer proof of compliance with the federal heavy vehicle use tax required by 26 U.S.C. Section 4481 and 26 CFR Part 41.

**400.20(1)** If the motor vehicle is used exclusively in the transportation of harvested forest products, the owner may present a written statement certifying that usage and the usage will be recorded.

**400.20(2)** If the motor vehicle is used primarily for farming purposes, the owner may present a written statement certifying that usage and the usage will be recorded.

This rule is intended to implement Iowa Code sections 307.30 and 321.20.

**761—400.21(321) Registration of vehicles on a restricted basis.** The department may register a vehicle which does not meet the equipment requirements of Iowa Code chapter 321, due to the particular use for which it is designed or intended. Registration may be accomplished upon payment of the appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition.

**400.21(1)** Operation of the vehicle may be restricted to a roadway to which a specific lawful speed limit applies, as specified in Iowa Code section 321.285, if the maximum speed of the vehicle is such that the operation of the vehicle would impede or block the normal and reasonable movement of traffic.

**400.21(2)** The department may also restrict the operation of the vehicle to daylight hours if operation of the vehicle during hours other than daylight would create a hazard.

**400.21(3)** A certificate of restriction shall be issued in conjunction with registration of the vehicle, listing the restrictions that apply to the operation of the vehicle.

*a.* Registration laws applicable to motor vehicles in general shall also apply to vehicles registered under a restricted registration.

*b.* The department may approve exceptions to those equipment requirements of Iowa Code chapter 321 which cannot be met due to the particular use for which the vehicle is designed or intended.

**400.21(4)** The department shall not register an all-terrain vehicle. The department shall not register a vehicle built on or after January 1, 1968, unless it was manufactured primarily for use on public streets, roads and highways except a vehicle operated exclusively by a person with a disability, which may be registered if the department, in its discretion, determines that the vehicle is not in an unsafe condition. This subrule does not apply to a specially constructed, reconstructed, street rod or replica motor vehicle as defined in Iowa Code section 321.1.

This rule is intended to implement Iowa Code sections 321.1 and 321.234A and subsections 321.23(4), 321.30(2), and 321.101(1).

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.22(321) Transfers of ownership by operation of law.** When ownership of a vehicle is transferred by operation of law under Iowa Code section 321.47, the following, in addition to rule 761—400.4(321), shall apply:

**400.22(1)** The new certificate of title and registration shall be issued, upon receipt of the proper documentation, by the county treasurer of the county where the transferee resides.

**400.22(2)** If the vehicle is not currently registered in this state, the registration fee and penalties due shall be computed in accordance with the following:

*a.* If the vehicle is ordered confiscated or forfeited by a court under a judgment or forfeiture, the fee shall be computed on the remaining unexpired months in the registration year from the date of the court order.

*b.* If the vehicle is sold on a peace officer's bill of sale as an unclaimed, stolen, embezzled or abandoned vehicle, or as a vehicle seized under Iowa Code section 321.84, the fee shall be computed on the remaining unexpired months in the registration year from the date of the sale.

*c.* If the vehicle is sold or transferred under a judgment or order entered by a court in a civil action or proceeding, or is transferred under any provision of Iowa Code section 321.47 which is not covered in this subrule, the fee shall include any delinquent fees which have accrued during previous registration periods and accrued penalties. Penalties shall continue to accrue until paid.

*d.* If the vehicle was last titled or registered in a foreign state, the fee shall be based on the month the vehicle becomes subject to registration in this state, except as provided in paragraphs 400.22(2) "a" and "b" above.

This rule is intended to implement Iowa Code sections 321.47, 321.105, 321.106, 321.134, and 321.135.

**761—400.23(321) Junked vehicle.**

**400.23(1) *Junking certificate.*** The owner of a vehicle that is to be junked or dismantled shall obtain a junking certificate in accordance with Iowa Code subsection 321.52(3).

**400.23(2) *Retitling a junked vehicle.*** The department may authorize issuance of a new certificate of title to the vehicle owner named on the junking certificate only if the department determines that the junking certificate was issued in error.

*a.* The reasons a junking certificate was issued in error include but are not limited to the following:

(1) The owner inadvertently surrendered the wrong certificate of title. The owner shall submit to the department a photocopy of the ownership document for each vehicle and a signed statement explaining the circumstances that resulted in the error.

(2) A junking certificate was obtained in error and the vehicle continues to be registered. The owner shall submit to the department a photocopy of the current registration and a signed statement explaining the circumstances that resulted in the error.

(3) The owner intended to apply for a salvage title under Iowa Code subsection 321.52(4) but inadvertently submitted an application for a junking certificate. The owner shall submit to the department a bill of sale or other documentation from the previous owner stating that the vehicle was rebuildable when purchased and a signed statement explaining the owner's original intention to obtain a salvage title. The department shall inspect the vehicle to verify the rebuildable condition.

*b.* If the department determines that the junking certificate was issued in error, the department shall authorize the proper county treasurer to issue a certificate of title for the vehicle after payment by the owner of appropriate fees and taxes, including the return of any credit or refund for registration fees paid to the owner because of the error.

*c.* If the department determines that the junking certificate was not issued in error and denies the application for reinstatement of the certificate of title for the vehicle, the owner may apply for a certificate of title under the bonding procedure in rule 761—400.13(321) if the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code subsection 321.52(3).

**761—400.24(321) New vehicle registration fee.** The registration fee shall be computed on the month of purchase of a new vehicle, except that the registration fee on a new vehicle acquired outside of this state shall be based on the month that the vehicle was brought into Iowa.

This rule is intended to implement Iowa Code sections 321.105 and 321.135.

**761—400.25(321) Fees established by the department.** If the department cannot obtain the retail list price and weight for a particular motor vehicle model registered under Iowa Code subsection 321.109(1), the department shall determine a list price and weight.

This rule is intended to implement Iowa Code sections 321.109, 321.157 and 321.159.

**761—400.26(321) Anatomical gift.** Voluntary contributions collected by the county treasurer or the department to the anatomical gift public awareness and transplantation fund shall be in whole dollar amounts. The county treasurer and the department shall remit contributions collected to the department of public health quarterly.

This rule is intended to implement Iowa Code section 321.44A.

**761—400.27(321,322) Vehicles held for resale or trade by dealers.** A motor vehicle dealer, as defined in Iowa Code section 321.1, is authorized to hold a motor vehicle for resale or trade under the following conditions.

**400.27(1) Assignment to dealer.** The certificate of title or manufacturer's certificate of origin for the vehicle shall be assigned to the dealer by the seller. The seller shall complete the assignment portion of the form, including the date of sale or trade and the name and address of the dealer, and shall sign the form. The date of the sale or trade shown in the assignment portion of the form shall be the date the dealer acquired the vehicle.

**400.27(2) New certificate of title and registration not required.**

*a.* A motor vehicle currently registered in Iowa may be held by a dealer without obtaining a new certificate of title or a new registration if the dealer holds for that vehicle a certificate of title or a manufacturer's certificate of origin properly assigned to the dealer.

*b.* A motor vehicle may also be held by a dealer without obtaining a new certificate of title or a new registration if the dealer has a title from a state that permits its titles to be reassigned by Iowa dealers and if a vacant reassignment space is available on the title.

**400.27(3) New certificate of title required.** A dealer shall obtain a new certificate of title, but is not required to pay registration fees for a vehicle if:

*a.* The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers.

*b.* The vehicle was assigned to the dealer using an affidavit of foreclosure form prescribed by the department or issued by a foreign jurisdiction.

*c.* The reassignment area of the certificate of title has been used.

*d.* Reserved.

*e.* The vehicle registration fee was delinquent in Iowa at the time the vehicle was acquired by the dealer. The delinquent fees and penalty shall be paid by the dealer from the first day the registration was due to the month the application for title is submitted.

*f.* In accordance with 761—Chapter 405, the dealer is required to obtain a salvage certificate of title.

**400.27(4) New certificate of title and registration fee required.** A dealer shall obtain both a new certificate of title and pay a registration fee for a vehicle if:

*a.* The vehicle has a foreign certificate of title but has never been registered and the dealer is not licensed under Iowa Code chapter 322 to sell that line make of vehicle. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

*b.* The vehicle was placed in storage by the previous owner. The registration fee due shall be a full registration year fee.

c. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers or all reassignment spaces on the title are full and the application for a new certificate of title is submitted more than 30 days after the date the vehicle entered Iowa. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

d. The vehicle was in the dealer's inventory and the dealer's license was revoked as provided in Iowa Code chapter 322 or 322C or surrendered in lieu of revocation. The dealer shall obtain title and registration within 30 days from the date of revocation or surrender of the license. The registration fee due shall be prorated for the remaining unexpired months of the registration year.

**400.27(5) *Registration fee required.*** A vehicle owned by a dealer and used as a work or service vehicle, or offered for lease, rent or hire, shall become subject to a registration fee in the month that the vehicle is first used for that purpose. The registration fee shall be due annually unless the vehicle is transferred to the dealer's inventory. To transfer the vehicle, the dealer shall surrender the registration plates that were issued for the vehicle.

**400.27(6) *Violations.***

a. Failure to comply with this rule is a violation of Iowa Code subsection 321.104(2).

b. Failure to obtain a certificate of title when required shall result in a title penalty of \$10, as specified in Iowa Code subsection 321.49(1).

This rule is intended to implement Iowa Code sections 321.45, 321.46, 321.48, 321.49, 321.67, 321.70, 321.104 and chapter 322.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.28(321) Special trucks.** The owner of a truck tractor registered as a special truck shall certify to the owner's county treasurer annually at the time of renewal that the truck tractor is not operated more than 15,000 miles annually.

This rule is intended to implement Iowa Code subsection 321.1(76) and section 321.121.

**761—400.29(321) Vehicles previously registered under Iowa Code chapter 326.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.30(321) Registration of vehicles registered in another state or country.**

**400.30(1)** The registration fee for a vehicle from another state or country shall be due in the month that the vehicle becomes subject to registration in Iowa.

**400.30(2)** A vehicle registered in another state or country shall become subject to registration in Iowa and payment of the Iowa registration fee in:

a. The month of sale or transfer to an Iowa resident, or

b. The month that a nonresident owner establishes Iowa residency or accepts employment in Iowa of 90 days duration or longer. The county treasurer or the department may require from the applicant a written statement giving the date that the applicant established residency in Iowa.

**400.30(3)** Rescinded IAB 2/6/02, effective 3/13/02.

This rule is intended to implement Iowa Code sections 321.18, 321.20, 321.53 to 321.55, 321.101 and 321.135.

**761—400.31** Rescinded, effective 12/1/83.

**761—400.32(321) Vehicles owned by nonresident members of the armed services.**

**400.32(1)** A vehicle owner who is a nonresident and a member of the armed services shall not be required to register the vehicle in Iowa if it is properly registered in the person's state of residence.

**400.32(2)** A vehicle owner who is a nonresident and a member of the armed services may register the vehicle in Iowa under the following conditions:

a. The vehicle is owned entirely by nonresidents.

b. The fee for a passenger-type vehicle registered under Iowa Code section 321.109 shall be based only on the weight of the vehicle; the part of the fee based on value shall be excluded. The fees for all other vehicles shall be determined as specified in Iowa Code chapter 321.

c. The application for vehicle registration shall include a certification by the person's commanding officer of the person's state of residence and assignment to Iowa.

**400.32(3)** If ownership of a passenger-type vehicle is transferred to another person, the vehicle shall be subject to registration in Iowa.

This rule is intended to implement Iowa Code sections 321.53 to 321.55 and 321.109.

**761—400.33(321) Disabled veterans exemption from payment of registration fees.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.34(321) Multipurpose vehicle registration fee.** Rescinded IAB 11/7/07, effective 12/12/07.

**761—400.35(321) Registration of vehicles equipped for persons with disabilities.** The registration fee shall be reduced for an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less with permanent equipment for assisting a person with a disability or for an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less used by a person who uses a wheelchair as the person's only means of mobility. To qualify for the reduction, the owner of the vehicle must provide a written self-certification at the first registration and at each renewal:

**400.35(1)** That the automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less has permanently installed equipment manufactured for and necessary to assist a person with a disability, as defined in Iowa Code section 321L.1, to enter or exit the vehicle, or

**400.35(2)** That the owner or a member of the owner's household uses a wheelchair as the person's only means of mobility.

This rule is intended to implement Iowa Code sections 321.109, 321.124 and 321L.1.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.36(321) Land and water-type travel trailers registration fee.** The registration fee for trailer-type vehicles designed to be used as a travel trailer and for use upon water shall be registered as a travel trailer. The exterior measurements used to determine the registration fee shall not include any pen deck area or area occupied by a trailer hitch.

This rule is intended to implement Iowa Code sections 321.1 and 321.123.

**761—400.37(321) Motorcycle primarily designed or converted to transport property.** A motorcycle primarily designed or converted to transport less than 1000 pounds of property shall be registered as a motorcycle. A motorcycle primarily designed or converted to transport 1000 pounds of property or more shall be registered as a motor truck.

This rule is intended to implement Iowa Code sections 321.1 and 321.117.

**761—400.38(321)** Rescinded IAB 3/26/97, effective 4/30/97.

**761—400.39(321) Conversion of motor vehicles.**

**400.39(1)** An automobile converted to a truck with a carrying capacity of 1000 pounds or more shall be registered as a reconstructed motor vehicle.

**400.39(2)** A vehicle manufactured as a truck tractor shall not be registered as a motor home.

This rule is intended to implement Iowa Code sections 321.23, 321.124 and 321.111.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.40(321) Manufactured or mobile home converted to or from real property.**

**400.40(1) Conversion to real property.** When a manufactured or mobile home is converted to real property under Iowa Code section 435.26, the assessor shall collect its vehicle certificate of title. The assessor shall note the conversion on the face of the certificate of title above the assessor's signature, date the notation and deliver the title to the county treasurer. The county treasurer shall note the conversion on the vehicle record in the county treasurer's office, cancel the record, keep the certificate of title and

notify the department of the cancellation. The department shall cancel its record for that manufactured or mobile home.

**400.40(2) Reconversion from real property.**

*a.* When a manufactured or mobile home is reconverted from real property by adding a vehicular frame, the owner may apply to the county treasurer for a certificate of title.

*b.* The owner shall submit a record of existing liens obtained from a local abstractor. The record shall identify the owner of the property, list all liens and encumbrances against the property, and shall be signed by the abstractor.

*c.* The owner shall also submit written consent to the reconversion from any person holding a mortgage on the real property (mortgagee). An existing mortgage shall be noted as a security interest on the certificate of title.

*d.* The county treasurer shall submit written notice of the reconversion to the county assessor's office.

This rule is intended to implement Iowa Code sections 321.1, 435.1, 435.26, 435.26A and 435.27.

**761—400.41(321) Special registration plates.** Rescinded IAB 3/1/95, effective 4/5/95.

**761—400.42(321) Church bus registration fee.** The church bus registration fee shall not apply if the bus is used in a manner other than provided by law or if ownership of the bus is transferred to a person who is not entitled to register the vehicle as a church bus.

**400.42(1)** When the church bus registration fee does not apply, the bus shall be registered under the provisions of Iowa Code section 321.122.

**400.42(2)** When Iowa Code section 321.122 applies and the bus is currently registered as a church bus, the registration fee shall be prorated for the remaining unexpired months of the registration year.

This rule is intended to implement Iowa Code sections 321.119 and 321.122.

**761—400.43(321) Storage of vehicles.**

**400.43(1)** The owner of a vehicle upon which the registration fee is not delinquent may surrender all registration plates for the vehicle to the county treasurer where the vehicle is registered and shall have the right to register the vehicle later upon payment of the annual registration fee due at the time of removal of the vehicle from storage. Payment of a registration fee shall not be required when the vehicle is removed from storage within the current registration year provided that registration fees have not been refunded. Plates that have been surrendered shall be destroyed. When a vehicle is removed from storage, the fee is \$5 for a set of replacement plates.

**400.43(2)** The owner of a motor vehicle which is placed in storage when the owner enters the military service of the United States shall comply with Iowa Code subsection 321.126(3), and subrule 400.43(1) does not apply.

This rule is intended to implement Iowa Code sections 321.126 and 321.134.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.44(321) Penalty on registration fees.**

**400.44(1) Monthly basis.** The penalty on the delinquent payment of a registration fee shall be computed on a monthly basis, rounded to the nearest whole dollar.

**400.44(2) Vehicle purchased.** The penalty on the registration fee shall accrue from the first day of the month following the date of purchase, unless the application for a certificate of title is submitted within 30 days after the date of purchase.

**400.44(3) Vehicle moved into Iowa.** The penalty on the registration fee shall accrue on the first day of the month following 30 days from the date a vehicle is moved into Iowa.

**400.44(4) When delinquency extends beyond the current year.** When the penalty on a delinquent registration fee extends beyond the current year, the penalty shall continue to accrue until paid. Penalty shall only accrue on the fee applicable at the time the delinquency accrued and shall not be applicable to subsequent registration fees which have not been paid.

**400.44(5) *Statement of nonuse.*** If the owner of a vehicle, on which the registration fees have not been paid for more than three complete registration years, certifies to the county treasurer of the owner's residence that the vehicle has not been moved or operated upon the highway since the year it was last registered, the county treasurer may register the vehicle upon payment of the current year's registration fee.

**400.44(6) *Waiver of penalties for military members.*** Registration penalties shall be waived as provided in Iowa Code section 321.134, subsection 5, if the owner provides a copy of an official government document verifying that the applicant is in the military service of the United States and has been relocated as a result of being placed on active duty on or after September 11, 2001.

This rule is intended to implement Iowa Code sections 321.39, 321.46, 321.47, 321.49, 321.134 and 321.135.

**761—400.45(321) Suspension, revocation or denial of registration.**

**400.45(1)** The department shall suspend or revoke registration and plates under Iowa Code section 321.101 when a written request is received from a peace officer or the county treasurer's office that issued the registration and plates.

*a.* A request from a peace officer shall be submitted on a form prescribed by the department.

*b.* A request from a county treasurer's office shall be signed by the county treasurer or designee.

**400.45(2)** When the registration of a vehicle has been revoked as provided in Iowa Code sections 321.101 and 321.101A, the registration fee and penalty shall accrue as if the plates had never been issued, unless waiver of registration fees and penalties is specifically provided for in Iowa Code chapter 321.

**400.45(3)** In accordance with Iowa Code sections 252J.8 and 261.126, the department shall suspend or deny the issuance or renewal of registration and plates upon receipt of a certificate of noncompliance from the child support recovery unit or the college student aid commission.

*a.* The suspension or denial shall become effective 30 days after notice to the vehicle owner and continue until the department receives a withdrawal of the certificate of noncompliance from the child support recovery unit or the college student aid commission.

*b.* If a person who is the named individual on a certificate of noncompliance subsequently purchases a vehicle, the vehicle shall be titled and registered, but the registration shall be immediately suspended.

This rule is intended to implement Iowa Code sections 252J.1, 252J.8, 252J.9, 261.126, 321.127, 321.101 and 321.101A.

**761—400.46(321) Termination of suspension of registration.** Upon termination of the suspension of registration of a vehicle, the county treasurer shall issue new plates for the vehicle. If the new plates replace a current series of plates, there shall be a replacement fee as provided in Iowa Code section 321.42. If the vehicle is not currently registered at the time the suspension is lifted, the registration fee and penalties due shall be determined as follows:

**400.46(1)** If the registration fee was delinquent at the time that the suspension became effective, the penalty shall continue to accrue on the registration fee until the suspension became lifted and the registration fee is paid. In addition, if the suspension was for failure to pay an additional registration fee, the additional registration fee shall be paid before the suspension is lifted.

**400.46(2)** If the registration fee was not delinquent when the suspension became effective and the suspension is lifted after the beginning of another registration year, the annual registration fee for that year shall be due in the month the suspension is lifted. The penalty shall accrue on the registration fee the first day of the month following the month that the suspension was lifted. The annual registration fee on a recovered stolen vehicle for which the registration has been suspended shall be prorated for the remaining unexpired months of the registration year.

**400.46(3)** If the registration fee was not delinquent at the time that the suspension became effective and the suspension is lifted during the same registration period, no additional registration fees shall be due

unless the suspension was for failure to pay an additional registration fee, in which event the additional registration fee shall be paid before the suspension is lifted.

This rule is intended to implement Iowa Code sections 321.42, 321.105 and 321.134.

**761—400.47(321) Raw farm products.** A vehicle may be operated with a gross weight of 25 percent in excess of the gross weight for which it is registered when transporting a load of raw farm products or soil fertilizers under Iowa Code section 321.466. In addition, the following products shall be considered raw farm products. This list shall not be deemed conclusive and shall not exclude other commodities which might be considered raw farm products:

|                                  |                          |
|----------------------------------|--------------------------|
| Animals which are dead           | Hides                    |
| Berries, fresh                   | Honey, comb or extracted |
| Blood                            | Melons                   |
| Corn, ear corn including hybrids | Milk, raw                |
| Corn, shelled                    | Nursery stock            |
| Corn, cobs                       | Potatoes                 |
| Cream, separated                 | Peat                     |
| Eggs, fresh or frozen in shell   | Poultry, live            |
| Flax                             | Saw logs                 |
| Flaxseed                         | Sod                      |
| Fodder                           | Soybeans                 |
| Fruit, fresh                     | Straw, baled or loose    |
| Grain, threshed or unthreshed    | Vegetables, fresh        |
| Hair                             | Wood, cord or stove wood |
| Hay, baled or loose              | Wool                     |

This rule is intended to implement Iowa Code section 321.466, subsections (5) and (6).

**761—400.48(321) Special mobile equipment.** Rescinded IAB 3/7/90, effective 4/11/90.

**761—400.49(321) Special mobile equipment transported on a registered vehicle.** Rescinded IAB 3/7/90, effective 4/11/90.

**761—400.50(321,326) Refund of registration fees.**

**400.50(1) Vehicles registered by county treasurer.**

*a.* The department shall refund fees for vehicles registered by the county treasurer pursuant to Iowa Code section 321.126.

*b.* A claim for refund shall be made on a form prescribed by the department. Except as provided in Iowa Code section 321.126, the claim may be submitted to the county treasurer's office in any county.

*c.* Registration plates shall be submitted with the claim if the vehicle is placed in storage or registered for proportional registration, if the owner of the vehicle moves out of state, or if the plates have not been assigned to a replacement vehicle. If one or both plates have been lost or stolen, the claimant shall certify this fact in writing.

*d.* For a vehicle that was junked, the date on the junking certificate shall determine the date the vehicle was junked.

*e.* If the claim for refund is for excess credit or no replacement vehicle:

(1) The county treasurer shall enter into the state motor vehicle computer system the information required to process the refund. The information shall be entered within three days of receipt of the claim for refund.

(2) The claim for refund shall be approved or denied by the office of vehicle services.

*f.* All other claims for refund shall be forwarded to the office of vehicle services for processing.

**400.50(2) Vehicles registered by department.** Forms and instructions for claiming a refund on apportioned registration fees under Iowa Code section 326.15 may be obtained from the office of motor carrier services at the address in subrule 400.6(2). The claim for refund shall be filed at the same address.

**400.50(3) Disapproved claim.** Rescinded IAB 11/23/05, effective 12/28/05.

This rule is intended to implement Iowa Code sections 25.1, 321.126 to 321.128 and 326.15.

**761—400.51(321) Assigned identification numbers.** The department is authorized to issue to the owner an assigned vehicle identification number for a vehicle, an assigned component part number for a component part, and an assigned product identification number for a fence-line feeder, grain cart, or tank wagon. An identification number shall be assigned only if the department is satisfied as to the true identity and ownership of the vehicle, component part, fence-line feeder, grain cart or tank wagon. When an assigned vehicle identification number has been issued for a vehicle, the vehicle shall be registered and titled under that number. An assigned component part number or an assigned product identification number shall be used only for identification purposes.

**400.51(1) Issuance of an identification number.** The department shall issue an assigned vehicle identification number, assigned component part number or assigned product identification number, as applicable, only if:

- a. The original number has been destroyed, removed or obliterated.
- b. The vehicle has had a cab, body, or frame change and the replacement cab, body, or frame is within the manufacturer's interchangeability parts specifications catalog and is compatible with the make, model, and year of the vehicle. If the replacement cab, body, or frame change is not within the manufacturer's interchangeability parts specifications catalog or is not compatible with the make, year, and model of the vehicle, the vehicle shall be considered reconstructed and subject to rule 761—400.16(321).
- c. The vehicle is a specially constructed, reconstructed, street rod or replica motor vehicle. See rule 761—400.16(321) for the requirements and procedures applicable to specially constructed, reconstructed, street rod or replica motor vehicles.

**400.51(2) Procedures.**

a. *Request.* Whenever an assigned identification number is required under subrule 400.51(1) and the request does not apply to a specially constructed, reconstructed, street rod or replica motor vehicle, the owner of the vehicle, component part, fence-line feeder, grain cart or tank wagon, or the person holding lawful custody, shall contact the department's office of motor vehicle enforcement and request the assignment of a number.

b. *Examination.* A motor vehicle investigator shall contact the owner and schedule a time and place for examination of the vehicle, component part, fence-line feeder, grain cart or tank wagon and ownership documents.

If the vehicle has had a cab, body, or frame change, the owner shall have, for evidence of ownership for the replacement cab, body, or frame, a bill of sale with a description of the part, complete with the manufacturer's identification number, if any, and the name, address, and telephone number of the seller. The bill of sale, the vehicle, and the cab, body, or frame that has been replaced shall be made available for examination at the time and place scheduled.

c. *Assigned vehicle identification number.*

(1) The investigator upon approval of the request shall affix to the vehicle an assigned vehicle identification number and give to the owner an assigned vehicle identification number (VIN) form.

(2) The owner shall submit the VIN form, the certificate of title, and the registration receipt issued for the vehicle to the county treasurer. If the certificate of title is in the possession of a secured party, the county treasurer shall notify the secured party to return the certificate of title to the county treasurer for the purpose of issuing a corrected title. Upon receipt of the notification, the secured party shall submit the certificate of title within ten days. The county treasurer, upon receipt of the certificate of title, the registration receipt and the VIN form, shall issue a corrected title and registration receipt listing as the vehicle identification number the assigned vehicle identification number.

*d. Assigned component part number.* The investigator upon approval of the request shall affix to the component part an assigned component part number and give to the owner a component part form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

*e. Assigned product identification number.* The investigator upon approval of the request shall affix an assigned product identification number to the fence-line feeder, grain cart or tank wagon and give to the owner an assigned product identification number form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

**400.51(3) Fees.** A certificate of title fee and a fee for a notation of a security interest, if applicable, shall be collected by the county treasurer upon issuance of a corrected certificate of title.

This rule is intended to implement Iowa Code sections 321.1, 321.43 and 321.92.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

#### **761—400.52(321) Odometer statement.**

**400.52(1)** Pursuant to Iowa Code section 321.71 and 49 U.S.C. Section 32705, an odometer disclosure statement shall be submitted with an application for certificate of title for a motor vehicle. The statement shall provide a current odometer reading and reflect whether the mileage is “actual,” “not actual” or “exceeds mechanical limits.”

**400.52(2)** If the transferor failed to provide an odometer disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts on a form prescribed by the department. The sworn statement shall be accepted by the county treasurer or the department in lieu of the required odometer disclosure statement. The subsequent title issued from the sworn statement will record “not actual” mileage.

**400.52(3)** A model year formula for odometer statements shall be the current year minus ten. The resulting number represents the first model year for which a motor vehicle is exempt from the odometer statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.71.

#### **761—400.53(321) Stickers.**

**400.53(1) Placement of validation sticker.** The validation sticker shall be affixed to the lower left corner of the rear registration plate. EXCEPTIONS: For motorcycle and small trailer plates, the validation sticker shall be affixed to the upper left corner of the plate. For natural resources plates, the sticker may be affixed to the lower right corner of the rear plate.

**400.53(2) Special fuel user identification sticker.** If the vehicle uses a special fuel as defined in Iowa Code section 452A.2, a special fuel user identification sticker shall be issued. This sticker shall be displayed on the cover of the fuel inlet of the motor vehicle or on the outside panel of the motor vehicle within 3 inches of the fuel inlet so as to be in view when fuel is delivered into the motor vehicle.

**400.53(3) Persons with disabilities parking sticker.** A persons with disabilities special registration plate parking sticker shall be affixed to the lower right corner of the rear registration plate.

**400.53(4) Special truck sticker.** An owner of a special truck, registered pursuant to Iowa Code section 321.121, who has been issued either regular registration plates or special registration plates other than special truck registration plates must obtain from the county treasurer a sticker which distinguishes the vehicle as a special truck. The sticker shall be affixed to the lower right corner of the rear registration plate. EXCEPTION: If the vehicle displays front and rear plates, two stickers shall be issued with one sticker affixed to the lower right corner of the front plate and rear plate. For natural resources plates, the stickers must be affixed to the lower left corner of the front and rear plates.

This rule is intended to implement Iowa Code sections 321.34, 321.40, 321.41, 321.121 as amended by 2011 Iowa Acts, Senate File 312, section 3, and 321.166.  
[ARC 9833B, IAB 11/2/11, effective 12/7/11]

**761—400.54(321) Registration card issued for trailer-type vehicles.** The registration card issued for trailer-type vehicles shall be carried in the vehicle which is described on the card or the registration card may be carried in the driver's compartment of the towing vehicle. If the registration card is carried in the vehicle which is described on such card, the registration card shall be enclosed in a registration card holder and the holder shall be attached to the vehicle so that the registration card may be viewed by any peace officer upon request.

This rule is intended to implement Iowa Code section 321.32.

**761—400.55(321) Damage disclosure statement.**

**400.55(1)** If the transferor failed to provide a damage disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts. The transferee shall also complete section 2 of a separate damage disclosure statement and sign on the buyer's line. The sworn statement and damage disclosure statement completed by the transferee shall be accepted by the county treasurer or the department in lieu of the damage disclosure statement required from the transferor.

**400.55(2)** A model year formula for damage disclosure statements shall be the current year minus eight. The resulting number represents the first model year for which a motor vehicle is exempt from the damage disclosure statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.69.

**761—400.56(321) Hearings.** The department shall send notice by certified mail to a person whose certificate of title, vehicle registration, license, or permit is to be revoked, suspended, canceled, or denied. The notice shall be mailed to the person's mailing address as shown on departmental records and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle services at the address in subrule 400.6(1). The request for a contested case shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation, or denial.

This rule is intended to implement Iowa Code sections 17A.10 to 17A.19, 321.101 and 321.102.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.57(321) Non-resident-owned vehicles.** Rescinded IAB 2/6/02, effective 3/13/02.

**761—400.58(321) Motorized bicycles.** The following rules shall apply to motorized bicycles.

**400.58(1) Maximum speed.** If the department has reasonable cause to believe that a particular vehicle or model is capable of speeds exceeding 30 miles per hour, the department may conduct independent tests to determine the maximum speed of the vehicle or model. If the department determines that the maximum speed of the particular vehicle or model exceeds 30 miles per hour, the vehicle or model shall not be registered as a motorized bicycle.

**400.58(2) Identification of a vehicle as a motorized bicycle.** Registration plates issued for motorcycles shall also be issued for motorized bicycles.

This rule is intended to implement Iowa Code sections 321.1 and 321.166.

**761—400.59(321) Registration documents lost or damaged in transit through the United States postal service.** To obtain without cost the reissuance of registration documents that were sent by the county treasurer to the owner through the United States postal service and which were lost or damaged in transit, the owner of the vehicle shall file application for reissuance within 60 days of the date the documents were issued by the county treasurer.

This rule is intended to implement Iowa Code section 321.42.

**761—400.60(321) Credit of registration fees.**

**400.60(1)** *Credit for unexpired registration fee.* The applicant may claim credit, as specified in Iowa Code subsection 321.46(3), toward the registration fee for one newly acquired replacement vehicle.

*a.* The credit may be claimed only when the owner of the newly acquired vehicle is applying for a certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) for the newly acquired vehicle.

*b.* For a junked vehicle, the date on the junking certificate shall determine the date the vehicle was junked.

*c.* Excess credit shall not be applied toward the registration fee for a second vehicle.

*d.* Credit shall be allowed for one or two vehicles which have been sold, traded or junked toward one replacement vehicle. Credit shall be based on the remaining unexpired months of the registration year(s) of the vehicle(s) sold, traded or junked.

**400.60(2)** *Credit for transfer to spouse, parent or child.* Credit shall be allowed toward a new registration for a vehicle being transferred to the applicant from the applicant's spouse, parent or child, or from a former spouse pursuant to a dissolution of marriage decree, if application for the certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) is made within 30 days after the date of transfer. If the owner is deceased, credit may be transferred under rule 761—400.14(321) of this chapter.

**400.60(3)** *Credit from/to proportional registration.*

*a.* Pursuant to Iowa Code section 321.46A, an owner may claim credit toward the registration fees due when changing a vehicle's registration from proportional registration under Iowa Code chapter 326 to registration under Iowa Code chapter 321. The owner shall surrender proof of proportional registration to the county treasurer. Credit shall be allowed for the unexpired complete calendar months remaining in the registration year from the date the application is filed with the county treasurer.

*b.* Pursuant to Iowa Code sections 321.126 and 321.127, the owner or lessee of a motor vehicle may claim credit for the proportional registration fees due when changing the vehicle's registration from registration by the county treasurer to proportional registration. Application for proportional registration shall be submitted to the department's office of motor carrier services; see 761—Chapter 500.

**400.60(4)** *Assignment of credit and registration plates from lessor to lessee.* When a lessee purchases the leased vehicle and within 30 days requests the assignment of the vehicle's fee credit and registration plates, the lessor shall assign the registration fee credit and registration plates for the purchased vehicle to the lessee.

This rule is intended to implement Iowa Code sections 321.46, 321.46A, 321.48, 321.126 and 321.127.

**761—400.61(321) Reassignment of registration plates.**

**400.61(1)** Registration plates may be reassigned if one of the owners listed on the registration receipt before the transfer is also a listed owner following the transfer.

**400.61(2)** Registration plates may be reassigned when credit is allowed toward a new registration for a vehicle being transferred to the owner's spouse, parent, or child, or to a former spouse pursuant to a dissolution of marriage decree. If the owner is deceased, plates may be transferred under rule 761—400.14(321).

**400.61(3)** Registration plates shall not be reassigned between a natural person or persons and a corporation, association, copartnership, company, or firm.

**400.61(4)** Registration plates may be reassigned and credit allowed if two or more corporations, associations, partnerships, or firms merge into one corporation, association, partnership or firm.

**400.61(5)** Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle to a trust created by that owner.

This rule is intended to implement Iowa Code sections 321.34 and 321.46.

**761—400.62(321) Storage of registration plates, certificate of title forms and registration forms.** Registration plates, certificate of title forms and registration forms which are consigned to

county treasurers by the department shall be stored in a secure location. The location may be within the office of the county treasurer which is accessible only to authorized persons or in a storage area located outside the general office area assigned to the county treasurer. Any storage area located outside the general office area assigned to the county treasurer shall be of the construction that it is accessible only to authorized persons, as designated by the county treasurer or department.

This rule is intended to implement Iowa Code sections 321.5, 321.8, and 321.167.

**761—400.63(321) Disposal of surrendered registration plates.** The county treasurer shall either destroy plates that have been surrendered to the county treasurer or return the surrendered plates to Iowa state industries for recycling.

This rule is intended to implement Iowa Code sections 321.5 and 321.171.

**761—400.64(321) County treasurer's report of motor vehicle collections and funds.** The county treasurer shall file the report provided for in Iowa Code section 321.153 in a manner prescribed by the department.

This rule is intended to implement Iowa Code section 321.153.

**761—400.65 to 400.69** Reserved.

**761—400.70(321) Removal of registration and plates by peace officer under financial liability coverage law.** This rule applies to instances when a peace officer issues a citation and removes the registration receipt and registration plates of a motor vehicle registered in this state when the driver of the motor vehicle is unable to provide proof of financial liability coverage. This rule applies regardless of whether the vehicle was also impounded.

**400.70(1)** The peace officer shall forward the registration receipt and evidence of the violation to the county treasurer of the county in which the motor vehicle is registered. Evidence of the violation is one of the following:

*a.* A copy of the citation. The citation must either reference Iowa Code subparagraph 321.20B(4)“a”(3) or 321.20B(4)“a”(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded.

*b.* A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code subparagraph 321.20B(4)“a”(3) or 321.20B(4)“a”(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

**400.70(2)** The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B.

**761—400.71(321) Lemon law designation.** Rescinded IAB 11/7/07, effective 12/12/07.

[761—Chapter 400 appeared as Ch 11, Department of Public Safety, 1973 IDR]

[Filed 7/1/75]

[Filed 11/9/77, Notice 9/21/77—published 11/30/77, effective 1/4/78]

[Filed 5/9/78, Notice 3/22/78—published 5/31/78, effective 7/5/78]

[Filed 10/10/78, Notice 8/23/78—published 11/1/78, effective 12/6/78]

[Filed 11/13/78, Notice 9/20/78—published 11/29/78, effective 1/3/79]

[Filed 4/23/79, Notice 3/7/79—published 5/16/79, effective 6/20/79]

[Filed 8/23/79, Notice 7/11/79—published 9/19/79, effective 10/24/79]

[Filed 8/23/79, Notice 7/11/79—published 9/19/79, effective 12/1/79]

[Filed 2/14/80, Notice 12/26/79—published 3/5/80, effective 4/9/80]

[Filed 12/4/80, Notice 10/15/80—published 12/24/80, effective 1/28/81]

[Filed 12/16/81, Notice 10/28/81—published 1/6/82, effective 2/10/82]

[Filed 9/30/82, Notice 8/18/82—published 10/27/82, effective 12/1/82]

[Filed 1/21/83, Notice 12/8/82—published 2/16/83, effective 3/23/83]  
[Filed emergency 2/17/83—published 3/16/83, effective 3/23/83]  
[Filed 8/4/83, Notice 6/22/83—published 8/31/83, effective 12/1/83]  
[Filed 12/23/83, Notice 11/9/83—published 1/18/84, effective 2/22/84]  
[Filed emergency 7/17/84—published 8/15/84, effective 7/18/84]  
[Filed 9/28/84, Notice 8/15/84—published 10/24/84, effective 11/28/84]  
[Filed emergency 12/6/84—published 1/2/85, effective 12/7/84]  
[Filed 1/9/85, Notice 11/21/84—published 1/30/85, effective 3/6/85]  
[Filed 7/10/85, Notice 5/22/85—published 7/31/85, effective 9/4/85]  
[Filed emergency 9/4/85—published 9/25/85, effective 10/1/85]  
[Filed 11/14/85, Notice 9/25/85—published 12/4/85, effective 1/8/86]  
[Filed emergency 10/9/86—published 11/5/86, effective 10/10/86]  
[Filed 12/18/86, Notice 11/5/86—published 1/14/87, effective 2/18/87]  
[Filed emergency 2/18/87—published 3/11/87, effective 2/18/87]  
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]<sup>◊</sup>  
[Filed 11/5/87, Notice 9/23/87—published 12/2/87, effective 1/6/88]  
[Filed 1/6/88, Notice 11/18/87—published 1/27/88, effective 3/2/88]  
[Filed emergency 6/22/88—published 7/13/88, effective 7/1/88]  
[Filed 2/9/89, Notice 12/28/88—published 3/8/89, effective 4/12/89]  
[Filed 10/5/89, Notice 8/23/89—published 11/1/89, effective 12/6/89]  
[Filed 11/1/89, Notice 9/20/89—published 11/29/89, effective 1/3/90]  
[Filed emergency 11/30/89—published 12/27/89, effective 12/1/89]  
[Filed 2/7/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]  
[Filed emergency 7/5/90—published 7/25/90, effective 7/5/90]  
[Filed 12/5/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]  
[Filed 7/17/91, Notice 5/1/91—published 8/7/91, effective 9/11/91]  
[Filed 10/23/91, Notice 9/18/91—published 11/13/91, effective 12/18/91]  
[Filed 11/6/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]  
[Filed 11/22/91, Notice 10/16/91—published 12/11/91, effective 1/15/92]<sup>◊</sup>  
[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]  
[Filed emergency 3/26/92—published 4/15/92, effective 4/29/92]  
[Filed 12/18/92, Notice 10/28/92—published 1/6/93, effective 2/10/93]  
[Filed 1/14/93, Notice 12/9/92—published 2/3/93, effective 3/10/93]  
[Filed 12/16/93, Notice 11/10/93—published 1/5/94, effective 2/9/94]  
[Filed 2/8/95, Notice 1/4/95—published 3/1/95, effective 4/5/95]  
[Filed 11/29/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]  
[Filed 3/5/97, Notice 1/29/97—published 3/26/97, effective 4/30/97]  
[Filed 3/11/98, Notice 1/28/98—published 4/8/98, effective 5/13/98]  
[Filed 10/28/98, Notice 8/26/98—published 11/18/98, effective 12/23/98]  
[Filed 12/16/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]  
[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 5/12/99]  
[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]  
[Filed 8/4/99, Notice 6/30/99—published 8/25/99, effective 9/29/99]  
[Filed 10/14/99, Notice 9/8/99—published 11/3/99, effective 12/8/99]<sup>◊</sup>  
[Filed 5/3/00, Notice 2/23/00—published 5/31/00, effective 7/5/00]  
[Filed 7/18/01, Notice 5/30/01—published 8/8/01, effective 9/12/01]  
[Filed 1/17/02, Notice 11/28/01—published 2/6/02, effective 3/13/02]  
[Filed 6/19/02, Notice 4/17/02—published 7/10/02, effective 8/14/02]  
[Filed 11/7/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]  
[Filed 11/2/05, Notice 9/14/05—published 11/23/05, effective 12/28/05]  
[Filed 10/11/07, Notice 8/15/07—published 11/7/07, effective 12/12/07]  
[Filed ARC 9048B (Notice ARC 8869B, IAB 6/30/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9833B (Notice ARC 9742B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]

◇ Two or more ARCs

CHAPTER 401  
SPECIAL REGISTRATION PLATES

**761—401.1(321) Definition.** “Special registration plates” means those registration plates issued under Iowa Code sections 321.34 and 321.105 other than regular or sample plates. Special registration plates shall be issued in accordance with Iowa Code sections 321.34 and 321.105, this chapter of rules, and other applicable provisions of law.

**761—401.2(321) Application, issuance and renewal.**

**401.2(1) Original application.**

*a.* Except for collegiate plates, application for letter-number designated special registration plates that do not have eligibility requirements shall be made directly to the county treasurer’s office; no application form is required for these plates.

*b.* Collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form prescribed by the department. Unless otherwise specified, completed application forms for these plates shall be submitted to the department at the following address: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Application forms may be obtained from the office of vehicle services or from any county treasurer’s office. Application forms are also available on the department’s Web site at <http://www.iowadot.gov/mvd>.

*c.* The issuance fee, if any, shall be submitted with the application.

**401.2(2) Issuance.**

*a.* Special registration plates shall be issued only to a person who is an owner or lessee of the vehicle and is entitled to the special registration plates.

*b.* Special registration plates shall not be issued unless the vehicle is currently registered and the registration plates previously issued are surrendered to the county treasurer. Special registration plates are void if they are not assigned to a vehicle within 90 days after the date the department orders them. A new application and a new issuance fee are required if the plates are reordered after the 90-day period.

*c.* and *d.* Rescinded IAB 11/7/07, effective 12/12/07.

**401.2(3) Renewal.** Special registration plates are renewed at the office of the county treasurer of the county of residence of the applicant. The renewal fee, if any, is termed a “validation” fee. The validation fee shall be paid when the regular annual registration fee is due and is in addition to the regular annual registration fee. If renewal is delinquent for more than one month:

*a.* A new application and a new issuance fee are required.

*b.* The department may issue the combination of characters on personalized plates to another applicant.

**401.2(4) Fees.** The issuance and validation fees for the various types of special registration plates that are available are set out in Iowa Code section 321.34.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—401.3** Reserved.

**761—401.4(321) Gift certificates.** Gift certificates for collegiate plates, personalized plates, and special registration plates that have eligibility requirements may be purchased using the prescribed plate application form. Gift certificates for special registration plates that counties have in their inventories may be purchased from county treasurers’ offices.

**761—401.5(321) Amateur radio call letter plates.** Application for amateur radio call letter plates shall be made to the county treasurer on a form prescribed by the department. The number of the amateur radio license issued by the Federal Communications Commission shall be listed on the application.

**761—401.6(321) Personalized plates.**

**401.6(1) Application.** Application for personalized plates shall be submitted to the department on a form prescribed by the department.

**401.6(2) Characters.** The personalized plates shall consist of no less than two nor more than seven characters except that personalized plates for motorcycles and small trailers shall consist of no less than two nor more than six characters.

*a.* The characters “A” to “Z” and “1” to “9” may be used. Zeros shall not be used.

*b.* The personalized plates shall not duplicate combinations of characters reserved or issued for any other vehicle plate series under Iowa Code chapter 321.

*c.* No combination of characters denoting a governmental agency shall be issued.

*d.* The department shall not issue any combination of characters it determines is:

- (1) Sexual in connotation;
- (2) A term of vulgarity, contempt, prejudice, hostility, insult, or racial or ethnic degradation;
- (3) Recognized as a swear word;
- (4) A reference to an illegal substance;
- (5) A reference to a criminal act;
- (6) Offensive; or
- (7) A foreign word falling into any of these categories.

**401.6(3) Renewal.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.6(4) Reassignment.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.6(5) Gift certificate.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.7(321) Collegiate plates.**

**401.7(1) Application.** Application for collegiate plates shall be submitted to the department on a form prescribed by the department. The applicant may request letter-number designated collegiate plates or personalized collegiate plates. Collegiate plates for motorcycles and small trailers are not available.

**401.7(2) Characters.** Personalized collegiate plates shall be issued in accordance with subrule 401.6(2) except that personalized collegiate plates are not available for motorcycles and small trailers.

**401.7(3) Renewal.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.7(4) Reassignment.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.7(5) Gift certificate.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.8(321) Medal of Honor plates.**

**401.8(1) Application for Medal of Honor plates** shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the medal of honor.

**401.8(2) Medal of Honor plates** are limited to five characters. Personalized plates are not available.

**761—401.9(321) Firefighter plates.**

**401.9(1) Initial application for firefighter plates.** Application for firefighter plates shall be submitted to the department on a form prescribed by the department. Both the fire chief and another fire officer of the paid or volunteer fire department shall sign the application form, certifying that the applicant is a current or retired member of the fire department. The signatures must be original and notarized. If the fire chief and fire officer deny an application, the department may conduct an investigation and make a determination to approve or deny the application.

**401.9(2) Renewal of firefighter plates for a current member.** A new application is required in order to renew firefighter plates issued to a current member. The application shall be submitted to the county treasurer’s office.

**401.9(3) Renewal of firefighter plates for a retired member.**

*a.* A new application is not required in order to renew firefighter plates issued to a retired member if the initial application for firefighter plates is made after January 1, 2005.

b. For firefighter plates issued to a retired member prior to January 1, 2005, a new application is required in order to renew firefighter plates until the plates have been renewed once after January 1, 2005. The application shall be submitted to the county treasurer's office.

**401.9(4) Plates.** Firefighter plates are limited to five characters. Personalized plates are not available.

**401.9(5) Definitions.** The following definitions apply to this rule:

*"Current"* means a member who has at least one year of service and is in good standing, as determined by the fire chief.

*"Fire officer"* means a member of the same fire department as the applicant and who is second in command to the fire chief.

*"Retired"* or *"officially retired"* means a former member who has a minimum of ten years' total service in good standing, as determined by the fire chief.

**761—401.10(321) Emergency medical services plates.**

**401.10(1)** Application for emergency medical services (EMS) plates shall be submitted to the Iowa department of public health on a form prescribed by the department of transportation. The department of public health shall determine whether the applicant is a current member of a paid or volunteer emergency medical services agency and, if so, certify this fact on the application form.

**401.10(2)** A vehicle owner whose membership in a paid or volunteer emergency medical services agency is terminated shall within 30 days after termination surrender the EMS plates to the county treasurer in exchange for regular registration plates.

**401.10(3)** EMS plates are limited to five characters. Personalized plates are not available.

**761—401.11(321) Natural resources plates.** Letter-number designated natural resources plates are limited to five characters. Personalized natural resources plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

**761—401.12(321) Natural resources plates—personalized.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.13(321) Disabled veteran plates.**

**401.13(1)** Disabled veteran plates are issued in accordance with Iowa Code sections 321.34, 321.105 and 321.166.

**401.13(2)** To apply for disabled veteran plates for a motor vehicle, the disabled veteran shall submit to the county treasurer a certification from the U.S. Department of Veterans Affairs that the United States government has provided or has assisted in providing the motor vehicle to the disabled veteran. The certification is required when the motor vehicle is first registered. Another certification may be required for the first registration of a newly acquired vehicle or when the veteran moves to another county.

**401.13(3)** The disabled veteran plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the death of the disabled veteran. The motor vehicle to which the plates are assigned shall become subject to the payment of regular registration fees on the first day of the month following the death of the disabled veteran. The registration fees shall be prorated for the remaining unexpired months of the registration year.

**761—401.14** Reserved.

**761—401.15(321) Processed emblem application and approval process.** Following is the application and approval process for special plate requests under Iowa Code subsection 321.34(13).

**401.15(1)** Application to request a new special registration plate with a processed emblem shall be submitted to the department on a form prescribed by the department.

**401.15(2)** The application shall contain:

a. The applicant's name, address, and telephone number.

b. The name of the processed emblem.  
 c. A clear and concise explanation of the purpose of the special plate and all eligibility requirements.

d. The total number of the special plates the applicant anticipates being purchased.

**401.15(3)** The application shall be accompanied by:

a. A color copy of the processed emblem.

(1) The processed emblem shall be limited to 3" × 3½" on the registration plate, but the emblem submitted may be of a larger size.

(2) The processed emblem shall not have any sexual connotation, nor shall it be vulgar, prejudiced, hostile, insulting, or racially or ethnically degrading.

b. A certification by the person who has legal rights to the emblem allowing use of the emblem. This certification shall also include a statement holding the department harmless for using the processed emblem on a registration plate.

**401.15(4)** The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning the processed emblem.

**401.15(5)** Within 60 days after receiving the application, the office of vehicle services shall advise the applicant of the department's approval or denial of the application. The department reserves the right to approve or disapprove any processed emblem.

**401.15(6)** If the department approves the application, the applicant shall be advised that 500 paid special plate applications must be submitted to the department before the new plate will be manufactured and issued. If 500 paid applications are not submitted within one year after the date the department approved the plate, the department may cancel its approval or grant an extension.

**401.15(7)** If the special plate is approved and at a later date it is determined that a false application was submitted, the department shall revoke the special plates. No refunds shall be paid.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—401.16(321) Special plates with processed emblems—general.** Special registration plates with processed emblems are limited to five characters. Personalized special registration plates with processed emblems shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

**761—401.17(321) State agency-sponsored processed emblem plates.**

**401.17(1) Application and approval process for a new plate.** A state agency recommending a new special registration plate with a processed emblem shall submit its request to the department on a form prescribed by the department. The application and approval process is set out in rule 761—401.15(321). The application shall include clear and concise eligibility requirements for plate applicants.

**401.17(2) Plate application.** Once new state agency-sponsored processed emblem plates have been approved, manufactured and issued, the plates may be ordered as described below.

a. When the plates have no eligibility requirements:

(1) Application for letter-number designated plates shall be submitted to the county treasurer.

(2) Application for personalized plates shall be submitted to the department on a form prescribed by the department.

b. When the plates have eligibility requirements, application for either letter-number designated or personalized plates shall be submitted to the sponsoring state agency for approval on a form prescribed by the department. The sponsoring state agency shall forward approved applications to the department.

**401.17(3) Characters.** State agency-sponsored processed emblem plates are limited to five characters. Personalized state agency-sponsored processed emblem plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

**401.17(4) Renewal.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.17(5) Reassignment.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.17(6) Gift certificate.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.18(321) Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, combat medical badge, fallen peace officers and civil war sesquicentennial plates.** Following is the application and approval process for special plate requests under Iowa Code section 321.34 as amended by 2011 Iowa Acts, House File 651, section 2.

**401.18(1) Design.**

*a.* The plates shall be a standard background plate with a distinguishing processed emblem specific to each plate type, consistent with processed emblems approved pursuant to rule 761—401.15(321).

*b.* The distinguishing processed emblem shall be limited to 3" × 3½" on the registration plate.

*c.* A distinguishing processed emblem owned or subject to legal rights of another person will not be used unless the department receives certification from the person that allows use of the emblem. The certification must include a statement holding the department harmless for using the emblem on a registration plate.

*d.* The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning distinguishing processed emblems.

**401.18(2) Production.** None of the special registration plates subject to this rule will be manufactured or issued until 250 paid applications are submitted to the department. This minimum order requirement applies to each of the special registration plates subject to this rule. Each application must be accompanied by a statutory start-up fee.

**401.18(3) Discontinuance.** If 250 paid applications for any special registration plate subject to this rule are not submitted within one year after the date the department makes the plate available for application, the department shall report that fact to the legislature at the next regular session of the general assembly and request authority to discontinue the special registration plate.

**401.18(4) Application process.**

*a.* Applications for either letter-number designated or personalized combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge special registration plates shall be submitted to the department on a form prescribed by the department. The applicant shall attach to the application a copy of an official government document verifying award of the combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal or combat medical badge to the applicant.

*b.* Applications for letter-number designated civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the county treasurer.

*c.* Applications for personalized civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the department on a form prescribed by the department.

**401.18(5) Characters.** Plates are limited to five characters. Personalized plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

**401.18(6) Right of approval.** The department reserves the right to approve or disapprove any application.

[ARC 9833B, IAB 11/2/11, effective 12/7/11]

**761—401.19(321) Legion of Merit plates.** Application for special plates with a Legion of Merit processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the Legion of Merit. Personalized plates with a Legion of Merit processed emblem are not available. Pursuant to Iowa Code section 321.34, an applicant is eligible for one set of Legion of Merit plates at a reduced annual registration fee of \$15 for one vehicle owned. However, an applicant may obtain additional Legion of Merit plates upon payment of the regular annual registration fee.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—401.20(321) Persons with disabilities plates.**

**401.20(1) Application.** Application for special plates with a persons with disabilities processed emblem shall be submitted to the county treasurer on a form prescribed by the department.

a. The application shall include a signed statement written on the physician's, chiropractor's, physician assistant's or advanced registered nurse practitioner's letterhead. The statement shall certify that the owner or the owner's child is a person with a disability, as defined in Iowa Code section 321L.1, and that the disability is permanent.

b. If the person with a disability is a child, the parent or guardian shall complete the proof of residency certification on the application or complete and submit a separate proof of residency Form 411120, certifying that the child resides with the owner.

c. A new application form is not required when an individual's application for issuance of persons with disabilities plates, nonexpiring removable windshield placards or parking stickers has previously been approved.

**401.20(2) Definition.**

"Child" includes, but is not limited to, stepchild, foster child, or legally adopted child who is younger than 18 years of age, or a dependent person 18 years of age or older who is unable to maintain the person's self.

**401.20(3) Renewal.** The owner shall, at renewal time, provide a self-certification stating that the owner or the owner's child is still a person with a disability and, if the person with a disability is the owner's child, that the child still resides with the owner.

**761—401.21(321) Ex-prisoner of war plates.**

**401.21(1)** Application for special plates with an ex-prisoner of war processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was a prisoner of war. If the document is not available, a person who has knowledge that the applicant was a prisoner of war shall sign a statement to that effect on the application form.

**401.21(2)** The surviving spouse of a person who was issued ex-prisoner of war plates may continue to use or apply for the plates. If the surviving spouse remarries, the surviving spouse shall surrender the plates to the county treasurer in exchange for regular registration plates within 30 days after the date on the marriage certificate. Ex-prisoner of war plates may not be reissued once this event occurs.

**401.21(3)** Personalized plates with an ex-prisoner of war processed emblem are not available.

**761—401.22(321) National guard plates.** Application for special plates with a national guard processed emblem shall be submitted to the department on a form prescribed by the department. The unit commander of the applicant shall sign the application form confirming that the applicant is a member of the Iowa national guard.

**761—401.23(321) Pearl Harbor plates.** Application for special plates with a Pearl Harbor processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

**761—401.24(321) Purple Heart, Silver Star and Bronze Star plates.** Application for special plates with a Purple Heart, Silver Star, or Bronze Star processed emblem shall be submitted to the department on a form prescribed by the department. To verify receipt of the medal, the applicant shall attach a copy of one of the following:

1. The official military order confirming the medal.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

**761—401.25(321) U.S. armed forces retired plates.** Application for special plates with a United States armed forces retired processed emblem shall be submitted to the department on a form prescribed by the department. A person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces. To verify retirement from the United States armed forces, the applicant shall attach a copy of one of the following:

1. The official military order confirming retirement from the armed forces.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

**761—401.26** Reserved.

**761—401.27(321) Iowa heritage plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.28(321) Education plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.29(321) Love our kids plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.30(321) Motorcycle rider education plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.31(321) Veteran plates.** Application for special plates with a veteran processed emblem shall be submitted to the commission of veterans affairs on a form prescribed by the department of transportation. The commission of veterans affairs shall determine whether the applicant is a veteran and, if so, certify this fact on the application form.

**761—401.32(321) Surrender of plates.** Special registration plates issued to a person who is no longer eligible for the plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the date of the event that made the person ineligible. If the vehicle was exempt from the payment of regular registration fees due to the type of special registration plates issued, the vehicle shall become subject to the payment of regular registration fees on the first day of the month following the date of the event that made the person ineligible. The regular registration fees shall be prorated for the remaining unexpired months of the registration year.

**761—401.33(321) Validation fees.** Validation fees shall not be prorated. The annual validation fee is due when there is a change in registration month.

**761—401.34(321) Reassignment of plates.**

**401.34(1)** A vehicle owner or lessee who has special registration plates assigned to a currently registered vehicle may request that the plates be reassigned to another currently registered vehicle owned or leased by that person or owned or leased by another person. However, special registration plates that have eligibility requirements may not be reassigned to a vehicle owned or leased by another person.

**401.34(2)** To reassign plates to a vehicle owned or leased by another person, a written request for reassignment signed by both the assignor and assignee shall be submitted to the county treasurer of the assignee's county of residence. The special registration plates shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the registration plates previously issued.

**401.34(3)** When ownership of a vehicle is transferred to another person, the owner shall, within 30 days after the transfer, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

**401.34(4)** When the lease for a vehicle is terminated, the lessee shall, within 30 days after the termination, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

**761—401.35(321) Revocation of special registration plates.** Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing the plates' issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

**761—401.36(321) Refund of fees.** No refund of fees for special registration plates shall be allowed unless the special plates were issued in conflict with the statutes or rules governing their issuance.

These rules are intended to implement Iowa Code sections 35A.11 as amended by 2011 Iowa Acts, House File 651, section 1, 321.34 as amended by 2011 Iowa Acts, House File 651, section 2, 321.105, 321.166 and 321L.1.

[Filed 2/8/95, Notice 1/4/95—published 3/1/95, effective 4/5/95]

[Filed 11/25/97, Notice 10/8/97—published 12/17/97, effective 1/21/98]

[Filed 12/16/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]

[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 5/12/99]

[Filed 10/14/99, Notice 9/8/99—published 11/3/99, effective 12/8/99]

[Filed 6/19/02, Notice 4/17/02—published 7/10/02, effective 8/14/02]

[Filed 7/13/04, Notice 5/12/04—published 8/4/04, effective 9/8/04]

[Filed 11/2/05, Notice 9/14/05—published 11/23/05, effective 12/28/05]

[Filed 10/11/07, Notice 8/15/07—published 11/7/07, effective 12/12/07]

[Filed ARC 9048B (Notice ARC 8869B, IAB 6/30/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9833B (Notice ARC 9742B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]