



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XIX

NUMBER 2

July 17, 1996

Pages 73 to 240

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the Administrative Rules Coordinator and published in the Iowa Administrative Bulletin.

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Fourth quarter	April 1, 1997, to June 30, 1997	\$ 58.00 plus \$2.88 sales tax

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Iowa Administrative Code

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Prices for the Iowa Administrative Code and its Supplements are as follows:

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(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$9.60 plus \$0.48 tax.)

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Des Moines, IA 50319
Telephone: (515)281-8796**

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 1996

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 1 '95	Dec. 20 '95	Jan. 9	Jan. 24	Jan. 26	Feb. 14	Mar. 20	June 17
Dec. 15 '95	Jan. 3	Jan. 23	Feb. 7	Feb. 9	Feb. 28	Apr. 3	July 1
Dec. 29 '95	Jan. 17	Feb. 6	Feb. 21	Feb. 23	Mar. 13	Apr. 17	July 15
Jan. 12	Jan. 31	Feb. 20	Mar. 6	Mar. 8	Mar. 27	May 1	July 29
Jan. 26	Feb. 14	Mar. 5	Mar. 20	Mar. 22	Apr. 10	May 15	Aug. 12
Feb. 9	Feb. 28	Mar. 19	Apr. 3	Apr. 5	Apr. 24	May 29	Aug. 26
Feb. 23	Mar. 13	Apr. 2	Apr. 17	Apr. 19	May 8	June 12	Sept. 9
Mar. 8	Mar. 27	Apr. 16	May 1	May 3	May 22	June 26	Sept. 23
Mar. 22	Apr. 10	Apr. 30	May 15	May 17	June 5	July 10	Oct. 7
Apr. 5	Apr. 24	May 14	May 29	May 31	June 19	July 24	Oct. 21
Apr. 19	May 8	May 28	June 12	June 14	July 3	Aug. 7	Nov. 4
May 3	May 22	June 11	June 26	June 28	July 17	Aug. 21	Nov. 18
May 17	June 5	June 25	July 10	July 12	July 31	Sept. 4	Dec. 2
May 31	June 19	July 9	July 24	July 26	Aug. 14	Sept. 18	Dec. 16
June 14	July 3	July 23	Aug. 7	Aug. 9	Aug. 28	Oct. 2	Dec. 30
June 28	July 17	Aug. 6	Aug. 21	Aug. 23	Sept. 11	Oct. 16	Jan 13 '97
July 12	July 31	Aug. 20	Sept. 4	Sept. 6	Sept. 25	Oct. 30	Jan. 27 '97
July 26	Aug. 14	Sept. 3	Sept. 18	Sept. 20	Oct. 9	Nov. 13	Feb. 10 '97
Aug. 9	Aug. 28	Sept. 17	Oct. 2	Oct. 4	Oct. 23	Nov. 27	Feb. 24 '97
Aug. 23	Sept. 11	Oct. 1	Oct. 16	Oct. 18	Nov. 6	Dec. 11	Mar. 10 '97
Sept. 6	Sept. 25	Oct. 15	Oct. 30	Nov. 1	Nov. 20	Dec. 25	Mar. 24 '97
Sept. 20	Oct. 9	Oct. 29	Nov. 13	Nov. 15	Dec. 4	Jan. 8 '97	Apr. 7 '97
Oct. 4	Oct. 23	Nov. 12	Nov. 27	Nov. 29	Dec. 18	Jan. 22 '97	Apr. 21 '97
Oct. 18	Nov. 6	Nov. 26	Dec. 11	Dec. 13	Jan. 1 '97	Feb. 5 '97	May 5 '97
Nov. 1	Nov. 20	Dec. 10	Dec. 25	Dec. 27	Jan. 15 '97	Feb. 19 '97	May 19 '97
Nov. 15	Dec. 4	Dec. 24	Jan. 8 '97	Jan. 10 '97	Jan. 29 '97	Mar. 5 '97	June 2 '97
Nov. 29	Dec. 18	Jan. 7 '97	Jan. 22 '97	Jan. 24 '97	Feb. 12 '97	Mar. 19 '97	June 16 '97
Dec. 13	Jan. 1 '97	Jan. 21 '97	Feb. 5 '97	Feb. 7 '97	Feb. 26 '97	Apr. 2 '97	June 30 '97
Dec. 27	Jan. 15 '97	Feb. 4 '97	Feb. 19 '97	Feb. 21 '97	Mar. 12 '97	Apr. 16 '97	July 14 '97

20 days from the Dec. 27 publication date is the **minimum** date for a public hearing or cutting off public comment.
 35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER

SUBMISSION DEADLINE

ISSUE DATE

4

Friday, July 26, 1996

August 14, 1996

5

Friday, August 9, 1996

August 28, 1996

6

Friday, August 23, 1996

September 11, 1996

PLEASE NOTE:

Rules will not be accepted after 12 o'clock noon on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURAL DEVELOPMENT AUTHORITY[25]		
IADA loan participation program, ch 4 IAB 7/17/96 ARC 6552A (See also ARC 6553A herein)	IADA Conference Room Suite 327 505 5th Ave. Des Moines, Iowa	August 28, 1996 1 p.m.
BANKING DIVISION[187]		
State and federal banking laws, amendments to chs 1, 2, 4 to 9, 15, 16 IAB 7/17/96 ARC 6577A	Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 28, 1996 10 a.m.
CULTURAL AFFAIRS DEPARTMENT[221]		
ICCG program, ch 6 IAB 7/3/96 ARC 6528A	Conference Room Third Floor West New Historical Bldg. Des Moines, Iowa	July 23, 1996 10 a.m. to 12 noon
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Iowa industrial new jobs training program, 5.13 IAB 7/17/96 ARC 6569A (See also ARC 6570A herein)	Room 136 Workforce Development Center 150 Des Moines St. Des Moines, Iowa	August 6, 1996 10 a.m.
Iowa jobs training program, ch 7 IAB 7/17/96 ARC 6571A (See also ARC 6572A herein)	Room 136 Workforce Development Center 150 Des Moines St. Des Moines, Iowa	August 6, 1996 1 p.m.
Variance procedures for tax increment financing (TIF) housing projects, ch 26 IAB 7/17/96 ARC 6575A (See also ARC 6576A herein)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 6, 1996 11 a.m.
New jobs and income program, 58.2, 58.4, 58.7, 58.9, 58.12, 58.13 IAB 7/17/96 ARC 6573A (See also ARC 6574A herein)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 6, 1996 1:30 p.m.
EDUCATION DEPARTMENT[281]		
Open enrollment, 17.2 to 17.4, 17.7, 17.8, 17.10, 17.11 IAB 7/17/96 ARC 6551A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 13, 1996 1 p.m.
Extracurricular interscholastic competition, 36.15(3)“b”(3) IAB 7/17/96 ARC 6550A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 13, 1996 2:30 p.m.

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Abuse of students by school employees, 102.2, 102.5(4), 102.11 IAB 7/17/96 ARC 6549A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 7, 1996 11 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Protected water sources, 53.7(1) IAB 7/17/96 ARC 6579A	Conference Room Water Department 1111 Shaver Road Northeast Cedar Rapids, Iowa	August 7, 1996 2 p.m.
Animal feeding operations; commercial septic tank cleaners; land application of wastes, ch 65, appendix B, tables 1 and 2; 68.9(2), 121.1(1) IAB 7/17/96 ARC 6581A	Farmers and Merchants Savings and Trust 101 E. Main Manchester, Iowa	August 6, 1996 1 p.m.
	City Council Chambers 220 W. Monroe Mt. Pleasant, Iowa	August 7, 1996 10 a.m.
	Auditorium Wallace State Office Bldg. E. 9th and Grand Ave. Des Moines, Iowa	August 8, 1996 9 a.m.
	City Hall Meeting Room 2021 Main St. Emmetsburg, Iowa	August 9, 1996 1 p.m.
	Municipal Utilities Meeting Room 15 W. 3rd St. Atlantic, Iowa	August 12, 1996 10 a.m.
Releases of regulated substances from underground storage tanks, amendments to chs 133, 135 IAB 7/17/96 ARC 6556A (See also ARC 6555 herein)	State Bank 100 1st St. NW Hampton, Iowa	August 6, 1996 10 a.m.
	Meeting Center 1804 E. 7th St. Atlantic, Iowa	August 7, 1996 10 a.m.
	Delaware County Comm. Center Fairgrounds, 200 E. Acres Manchester, Iowa	August 8, 1996 1 p.m.
	National Guard Armory Drill Floor Jct. Highways 1 and 92 Washington, Iowa	August 12, 1996 10 a.m.
	Auditorium, South Elementary School 310 Cayuga St. Storm Lake, Iowa	August 14, 1996 1 p.m.
	Auditorium Wallace State Office Bldg. Des Moines, Iowa	August 15, 1996 1 p.m.

GENERAL SERVICES DEPARTMENT[401]

Handicapped parking, 4.1, 4.3 LAB 7/3/96 ARC 6526A	Director's Conference Room Hoover State Office Bldg. Level A Des Moines, Iowa	July 23, 1996 8 a.m.
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INSURANCE DIVISION[191]

Life insurance illustrations model, ch 14 LAB 7/3/96 ARC 6543A	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	July 24, 1996 1:30 p.m.
Unfair trade practices, ch 15 LAB 7/17/96 ARC 6548A	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	August 9, 1996 9 a.m.

JOB SERVICE DIVISION[345]

Employer records and reports, contributions and charges, claims and benefits, amendments to chs 2 to 4 LAB 7/17/96 ARC 6560A	Job Service Division 1000 E. Grand Ave. Des Moines, Iowa	August 6, 1996 9:30 a.m.
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LAW ENFORCEMENT ACADEMY[501]

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State parks and recreation areas, 61.2 to 61.7, 61.22, 61.25 LAB 7/3/96 ARC 6533A	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	July 23, 1996 11 a.m.
Nursery stock sale, 71.3 LAB 7/17/96 ARC 6580A	Conference Room Fifth Floor West Wallace State Office Bldg. Des Moines, Iowa	August 6, 1996 2 p.m.
Timber buyers, 72.1, 72.2, 72.3(1) LAB 7/3/96 ARC 6534A	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	August 6, 1996 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Outpatient diabetes education, ch 9 IAB 7/17/96 ARC 6567A (ICN Network)	Fiber Optic Room, Ames High 1921 Ames High Drive Ames, Iowa	August 14, 1996 1 to 2:30 p.m.
	University of Northern Iowa 130C Schindler Cedar Falls, Iowa	August 14, 1996 1 to 2:30 p.m.
	Hills Bldg., Loess Hills AEA 13 24997 Highway 92 Council Bluffs, Iowa	August 14, 1996 1 to 2:30 p.m.
	Room 8786 JJP, 8th Floor U. of Iowa Hospitals and Clinics 200 Hawkins Dr. Mason City, Iowa	August 14, 1996 1 to 2:30 p.m.
	Activity Center, Room AC106 NIACC, 500 College Dr. Mason City, Iowa	August 14, 1996 1 to 2:30 p.m.
	National Guard Armory RR1 Parkwest Road Red Oak, Iowa	August 14, 1996 1 to 2:30 p.m.
Radiation, amendments to chs 38 to 41, 45, 46 IAB 7/17/96 ARC 6557A	Conference Room Third Floor, Side 2 Lucas State Office Bldg. Des Moines, Iowa	August 6, 1996 10 a.m.

REAL ESTATE COMMISSION[193E]

Business conduct, amendments to ch 1 IAB 7/17/96 ARC 6563A	Conference Room Commerce Bldg. 1918 S.E. Hulsizer Ankeny, Iowa	August 6, 1996 9 a.m.
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RECORDS COMMISSION[710]

Government reorganization, chs 1 and 2 IAB 7/3/96 ARC 6527A	Director's Conference Room Level A Hoover State Office Bldg. Des Moines, Iowa	July 23, 1996 9 a.m.
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Logo signing, amendments to ch 118 IAB 7/3/96 ARC 6498A	Commission Room 800 Lincoln Way Ames, Iowa	July 25, 1996 10 a.m. (If requested)
Tourist-oriented directional signing, amendments to ch 119 IAB 7/3/96 ARC 6499A	Commission Room 800 Lincoln Way Ames, Iowa	July 25, 1996 1 p.m. (If requested)

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

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NOTICE -- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	PRIMECARRE Community Grant	Statewide	Communities/not for profit of 10,000 population or less	Physician Recruitment and Retention	* September 9, 1996	Oct. 1, 1996 - June 30, 1997

*** To receive an application kit, letters of intent must be received by August 27, 1996.**

Request application packet from:

Carl Kulczyk
Center for Rural Health & Primary Care
Division of Family and Community Health
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075
515/281-7223

NOTICE - AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Prospective minor parents decision making assistance program	Available to meet with advisory committee and staff in Des Moines, IA as required by the project.	Video production companies with experience in communicating with young adults and ability to produce video in English, Spanish and other languages with closed captioning for hearing impaired.	Produce a video, PSAs and accompanying written materials in English with the potential for closed captioning and production in Spanish and other languages to assist prospective minor parents in decision making based on criteria developed by advisory committee and specified in Senate File 13 of the 1996 General Assembly.	August 16, 1996.	September 1, 1996 to December 31, 1996

It is anticipated that the application packet will be available after July 17, 1996.

Request application packet from: Carol Hinton
 Family Services Bureau
 Iowa Department of Public Health
 Lucas Building, 3rd Floor
 321 E. 12th Street
 Des Moines, IA 50319-0075

ARC 6552A

AGRICULTURAL DEVELOPMENT
AUTHORITY[25]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 175.6, the Iowa Agricultural Development Authority (IADA) gives Notice of Intended Action to rescind Chapter 4, "IADA Loan Participation Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

The programs provided in Chapter 4 need to incorporate changes to align with federal guidelines which were recently provided to the Authority.

The new Chapter 4 is intended to assist qualified low-income farmers by participating in the purchase of agricultural property by enabling lenders to request a "last-in/last-out" loan participation so the farmer can more readily secure a loan from a participating lender.

Any interested person may make written suggestions or comments on these proposed rules prior to 12:30 p.m. on August 28, 1996. Such written materials should be directed to Steve Ferguson, Executive Director, Iowa Agricultural Development Authority, 505 5th Avenue, Suite 327, Des Moines, Iowa 50309, fax (515)281-8618.

Also, there will be a public hearing on August 28, 1996, at 1 p.m. in the IADA Conference Room, Suite 327, 505 5th Avenue, Des Moines, Iowa, at which time persons may present their views.

This proposed new chapter was also Adopted and Filed Emergency and is published herein as ARC 6553A. The content of that submission is incorporated by reference.

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

ARC 6577A

BANKING DIVISION[187]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to amend all of its chapters of the Iowa Administrative Code.

The amendments are the result of a comprehensive review of all existing rules of the Banking Division and are intended to update the rules to implement new and existing state and federal banking laws and changes in statutory interpretation. Affected areas include application procedures, forms, conduct of securities activities, conduct of leasing activities, es-

tablishment of state bank subsidiaries, interstate banking, and miscellaneous minor and technical amendments.

Interested persons may make written comments on the proposed new language on or before August 28, 1996. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

Also, a public hearing will be held on Wednesday, August 28, 1996, at 10 a.m. in the Banking Division Conference Room at 200 East Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Superintendent of Banking at least one day prior to the date of the public hearing.

These amendments are intended to implement Iowa Code chapters 524, 527, 536, and 536A.

The following amendments are proposed.

ITEM 1. Amend rule 187—1.3(17A,524) to read as follows:

187—1.3(17A,524) Division of banking. The division is the office of the superintendent of banking is a subdivision of the department of commerce and consists of the superintendent and those employees who discharge the duties and responsibilities imposed upon the superintendent by the laws of this state. The superintendent has general control, supervision and regulatory authority over all state-chartered banks, regulated loan companies, industrial loan companies, mortgage bankers, brokers, and registrants, delayed deposit service licensees, persons licensed to engage in the business of debt management and persons licensed to engage in the business of selling written instruments for the transmission or payment of money. The division consists of two separate bureaus. The bank bureau has primary responsibility relating to the supervision, regulation and chartering of state banks. The finance company bureau has primary responsibilities relating to the supervision, regulation and licensing of regulated loan companies, industrial loan companies, mortgage bankers, brokers, and registrants, delayed deposit service licensees, persons engaged in the business of selling written instruments, and persons engaged in the business of debt management.

1.3(1) Central organization Organization — superintendent. The superintendent is the head administrator of the division. The superintendent is appointed by the governor, by and with the approval of the senate, for a term of four years. The superintendent's office is located at Suite 300, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The superintendent is assisted by the following officials who are responsible to the superintendent:

a. Deputy superintendent. The deputy superintendent performs such duties as the superintendent prescribes, including general supervision of all matters pertaining to the office of the superintendent. During the absence or disability of the superintendent, or as directed by the superintendent, the deputy superintendent possesses the powers and performs the duties of the superintendent.

b. Assistants to the superintendent. Three assistants to the superintendent perform duties prescribed by the superintendent, including general supervision of all bank examining personnel and scheduling, general supervision of all matters relating to bank and bank office applications, and renewals

BANKING DIVISION[187](cont'd)

and amendments to articles of incorporation, and general supervision of the bank examination process, for which each is responsible, *administration and supervision of regulatory examinations, administration and supervision of all matters relating to the exercise of banking powers authorized by the laws of this state, and other matters for which each is responsible.*

c. Bank examination review analysts. Bank examination review analysts perform such duties as the superintendent prescribes, including matters relating to the review and analysis of bank examination reports.

d. Bureau Finance bureau chief. The finance bureau chief performs duties prescribed by the superintendent, including general supervision over all matters relating to *the licensing and supervision of regulated loan companies, industrial loan companies, mortgage bankers, brokers, and registrants, delayed deposit service licensees*, persons engaged in the business of debt management and persons engaged in the sale of written instruments.

e. Examiners. *Regulatory examinations are performed by examining personnel situated in examination regions throughout the state. Each region is headed by a supervisor who is assisted by a staff of examiners. Each examiner performs duties prescribed by the superintendent in a manner consistent with the laws of this state and may be predominantly trained in the specialized fields of commercial bank and bank holding company regulation, trust asset administration, finance company and mortgage banking regulation, data processing, and other areas within the jurisdiction of the office of the superintendent.*

1.3(2) Field organization.

a. ~~Bank examination territories. Thirteen bank examination territories are located throughout the state. Each territory is headed by a senior examiner who is assisted by three or more junior examiners. All bank examiners perform duties prescribed by the superintendent, including general supervision over the banks located in the territory to which they are assigned. Senior examiners also have general supervision over the junior examiners under them.~~

b. ~~Trust examination. Trust examiners perform duties prescribed by the superintendent, including general supervision over bank trust examinations and junior examiners who may be assigned to assist in examinations.~~

c. ~~Finance company examination. The examiners perform duties prescribed by the superintendent, including general supervision of regulated loan companies, industrial loan companies and persons engaged in the business of debt management.~~

This rule is intended to implement Iowa Code sections section 17A.3 and Iowa Code chapter 533.

ITEM 2. Rescind rule 187—1.4(12C,17A,524,533) and insert in lieu thereof the following new rule:

187—1.4(17A,524) Forms and instructions.

1.4(1) Forms. The following forms and instructions of the superintendent are currently in use:

- a. Bank bureau.
 - (1) Consolidated Report of Condition and Income
 - (2) Consolidated Report of Condition (Publisher's Copy)
 - (3) List of Shareholders (Bank and Bank Holding Company)
 - (4) Oath of Directors (Long Form)
 - (5) Oath of Directors (Short Form)
 - (6) Certificate of Elections and Appointments
 - (7) Stockholders Resolution to Establish the Number of Directors

(8) Application to Organize a State Bank (including supplemental forms)

(9) Application to Move Main Office or Bank Office

(10) Application to Establish a Bank Office

(11) Application for Renewal of Corporate Existence

(12) Directors Acknowledgment of Bank Examiners

Report

(13) Application for Change of Control

(14) Articles of Incorporation

(15) Statement of Cancellation of Preferred Shares

(16) Application for Voluntary Dissolution of State Bank (including supplemental forms)

(17) Application for Approval of a Merger (including supplemental forms)

(18) Application for Approval of Conversion to State Bank (including supplemental forms)

(19) Application for Approval of Amendment to Articles of Incorporation (including supplemental forms)

(20) Application for Approval of Restatement of the Articles of Incorporation (including supplemental forms)

b. Finance bureau.

(1) Application for Regulated Loan License (including supplemental forms)

(2) Application for Industrial Loan License (including supplemental forms)

(3) Application for a Mortgage Banker/Broker License (including supplemental forms)

(4) Application for a Travelers Checks/Money Order License (including supplemental forms)

(5) Application for a Debt Management License (including supplemental forms)

(6) Application for a Delayed Deposit Services License (including supplemental forms)

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

ITEM 3. Amend rule 187—2.1(17A,524) to read as follows:

187—2.1(17A,524) Organization of a state-chartered bank.

2.1(1) Application. Persons desiring to organize a state-chartered bank should first meet with the superintendent to discuss their *the* proposal. At that time an "Application to Organize a State Bank" and supplementary forms may be obtained for subsequent submission to the superintendent.

2.1(2) Investigation. The superintendent may conduct such an investigation as deemed necessary including the gathering of information as provided in rule 2.12(17A). Matters to be investigated shall include:

a. Form and content of articles of incorporation and supporting items.

b. The convenience and needs of the public to be served by the proposed state bank.

c. The population density or other economic characteristics of the area to be served by the proposed state bank.

d. The character and fitness of the incorporators and of the members of the initial board of directors of the proposed state bank.

e. The adequacy of the proposed bank's capital structure.

f. The banking ability and experience of proposed officers and other employees.

2.1(3) Public hearing. The superintendent will provide any interested person timely notice by regular mail of the time, date and place of any hearing relating to the organization of a state-chartered bank, provided the superintendent

BANKING DIVISION[187](cont'd)

has been advised in writing of such interest prior to the date on which such hearing notice is to be mailed.

~~2.1(4-3) Preliminary approval. The superintendent of banking determines whether or not may grant preliminary approval of an application to organize a state-chartered bank shall be granted. If preliminary approval is granted, the superintendent may, if it is determined that such action is necessary or desirable for the protection of the public interest, at any time withdraw such that approval or provide that final approval shall be subject to the fulfillment of conditions specified by the superintendent.~~

~~2.1(4) Decision. The superintendent shall approve or deny the application within 180 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.~~

~~2.1(5) Corporate organization. The proposed state bank does not become a body corporate come into existence until articles of incorporation have been approved by the superintendent and filed and recorded by the secretary of state and a certificate of incorporation has been issued.~~

~~2.1(6) Commencement of business. The superintendent determines whether or not the proposed state bank is entitled to commence the business of banking. If the superintendent is satisfied that the proposed state bank has met all requirements and conditions and is ready to commence business, the superintendent shall issue issues a charter an Authorization To Do Business which provides that the state bank is authorized to commence business as of a specified date.~~

This rule is intended to implement Iowa Code section 524.303.

ITEM 4. Amend rule 187—2.2(17A,524) to read as follows:

187—2.2(17A,524) Conversion of national bank into state bank.

~~2.2(1) Application. A national bank desiring to become a state-chartered bank should make arrangements to first meet with the superintendent to discuss the proposal. At that time An application and supplementary forms may be obtained for subsequent submission to the superintendent.~~

~~2.2(2) Examination and investigation. The superintendent may conduct such an examination or investigation of the national bank as the superintendent deems deemed necessary or proper to determine if the application for conversion to a state-chartered bank should be approved or denied.~~

~~2.2(3) Approval Decision. The superintendent determines whether or not approval of an application for conversion from a national to a state-chartered bank should be granted shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.~~

~~2.2(4) Corporate documents. If approval is granted, articles of conversion with a plan of conversion attached will shall be delivered to the secretary of state for filing and recording.~~

~~2.2(5) Commencement of business as state-chartered bank. The conversion will shall be effective as of the date of filing of articles of conversion in the office of the secretary of state unless a later date is specified by the superintendent upon consulting the national bank in the articles of conversion. The superintendent's Authorization To Do Business as a state-chartered bank will be issued to be effective on the date of conversion.~~

~~2.2(6) Resulting state-chartered bank. The resulting state bank will shall submit two copies of the oath of directors, and list of shareholders, and certificate of elections and appoint-~~

ments to the superintendent on forms to be provided by the superintendent. The oath of directors is to be signed prior to the first meeting of the board of directors following the effective date of the conversion. The list of shareholders is to be completed as of the effective date of conversion.

This rule is intended to implement Iowa Code sections 524.1410 and 524.1413 to 524.1415.

ITEM 5. Amend rule 187—2.3(17A,524) to read as follows:

187—2.3(17A,524) Merger, consolidation, or purchase and assumption.

~~2.3(1) Definition. For purposes of this rule, the term "merger" means a merger or consolidation in which the resulting bank is a state-chartered bank.~~

~~2.3(2) Application. State banks or national and state banks desiring to merge or a state bank desiring to purchase the assets and assume the liabilities of another bank should make arrangements to first meet with the superintendent to discuss the proposal. At that time, An application and supplementary forms may be obtained for subsequent submission to the superintendent.~~

~~2.3(3) State-chartered bank as seller. In the case of a purchase and assumption, if the selling bank being acquired is a state bank, it is furnished with suggested appropriate forms of documents and instructions for the voluntary liquidation of the bank may be obtained from the superintendent.~~

~~2.3(4) Examination and investigation. The superintendent of banking may conduct such an examination or investigation as deemed necessary or proper including the gathering of information as provided in rule 2.12(17A,524).~~

~~2.3(5) Approval Decision. The superintendent determines whether or not approval of the application should be granted shall approve or deny the application within 90 days after the purchase and assumption application has been accepted for processing and within 180 days after the merger application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations.~~

~~2.3(6) Certification. If the determination of the superintendent is favorable, the superintendent issues written evidence of such approval of the merger or purchase and assumption and authorization in the form of bank office certificates for the operation of permitted bank offices incident thereto.~~

~~2.3(7) Cash out merger. Before the superintendent of banking approves any plan of merger that requires state bank shareholders to sell their shares of stock for cash, a determination shall be made by the superintendent that the cash price being paid for such shares is reasonable. The following factors may be considered by the superintendent in making the determination as to whether the cash out merger price for the bank stock is reasonable:~~

- a. The book value of the bank stock.
- b. Recent sales prices of the bank stock.
- c. Appraisals of the bank stock.
- d. Bank earnings and stock dividend payment history.
- e. Number of shares being purchased.
- f. Any other relevant factors as the superintendent may prescribe.

This rule is intended to implement Iowa Code sections 524.1401 to 524.1405.

ITEM 6. Amend rule 187—2.4(17A,524) to read as follows:

BANKING DIVISION[187](cont'd)

187—2.4(17A,524) Establishment of a bank offices office.

2.4(1) Application. A state-chartered bank desiring to establish and operate a bank office shall submit to the superintendent an "Application to Establish a Bank Office." This application and instructions for preparing and filing it are furnished which is available upon written request submitted to the superintendent.

2.4(2) Investigation. The superintendent may conduct such an investigation as deemed necessary or proper including the gathering of information as provided in rule 2.12(17A) of this chapter.

2.4(3) Hearing. A public hearing may be required by the superintendent on an application for any bank office.

2.4(4-3) Guidelines. In determining whether or not approval of to approve or deny a bank office should be granted application, the superintendent will consider the following factors:

a. Whether the convenience and needs of the public and existing customers of the applicant bank will be served by the proposed office.

b. Whether the population density and other economic characteristics of the area primarily to be served by the proposed office afford reasonable promise of adequate support for the office.

c. Whether the capital structure of the applicant bank is adequate in relation to the costs and anticipated increased business, if any, occasioned by the proposed office.

d. The history of operation and management of the applicant bank.

e. Such other factors as the superintendent may determine are relevant to a determination of whether or not approval of the application should be granted.

2.4(5-4) Approval Decision. The superintendent determines whether or not approval of the application should be granted shall approve or deny the application within 120 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue a bank office certificate for the establishment and operation of the bank office to be effective on a specific date and at a designated location.

2.4(6) Certification. If the determination of the superintendent is favorable, the superintendent issues a bank office certificate to evidence approval for the establishment and operation of the bank office to be effective on a specified date and at a designated location.

This rule is intended to implement Iowa Code sections 524.305 524.312, 524.1201, 524.1303, and 524.1403, and 524.1507.

ITEM 7. Amend rule 187—2.5(17A,524) to read as follows:

187—2.5(17A,524) Change of location of main bank principal place of business or bank office.

2.5(1) Application. A state bank desiring to relocate its main office principal place of business or a bank office should shall submit to the superintendent an "Application to Move Main Office or Bank Office." This application and instructions for preparing and filing it are furnished which is available upon written request submitted to the superintendent.

2.5(2) Investigation. The superintendent may conduct such an investigation as deemed necessary or proper including the gathering of information as provided in rule 2.12(17A,524).

2.5(3) Approval Decision. The superintendent determines whether or not approval of the application shall be granted

shall approve or deny the application within 180 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations for the conduct of business at the new location.

2.5(4) Certification. If the determination of the superintendent is favorable, the superintendent issues written evidence of such approval and authorization for the conduct of business at the new location.

This rule is intended to implement Iowa Code sections 524.1202 524.312 and 524.1507 524.1202.

ITEM 8. Amend rule 187—2.6(17A,524) to read as follows:

187—2.6(17A,524) Change of control.

2.6(1) Application. Any An application by any person desiring to purchase or otherwise acquire, directly or indirectly, outstanding shares of a state bank which would result in control or a change in control shall include with their informal letter application to the superintendent be submitted in the format requested by the superintendent and shall, at a minimum, contain the following information:

a. Copy of the agreement between the purchaser and seller for the sale of stock which results in the buyer acquiring a majority interest in the state bank.

b. Terms of any bank stock loan including the amount to be borrowed, rate of interest, number of years the loan is to run, collateral pledged to secure the indebtedness and any other pertinent information relating to such loan.

c. Personal financial Financial statement of the purchaser and a resume related to the purchaser's past experience and affiliations.

d. Personal statement of the purchaser's income and expenses during the term of the bank stock loan and a statement from the purchaser indicating which assets will be converted to cash or pledged as security to provide the initial equity.

e. Projections of statement of condition of the state bank to be purchased during the term of the bank stock loan.

f. Projections of income and expenses of the state bank to be purchased during the term of the bank stock loan.

g. Any plans which the purchaser may have which would represent major changes in the present staff or policies of the state bank involved.

h. An When requested by the superintendent, an affidavit signed by the purchaser stating that the majority interest in the state bank is not being acquired for the benefit of another person or company.

2.6(2) Investigation. The superintendent may conduct such an investigation of the applicant as deemed necessary and proper to determine whether or not a certificate of approval for the proposed change of control should be issued.

2.6(3) Approval Decision. The superintendent determines whether or not approval of an application for change in control should be granted, shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved

2.6(4) Certificate of approval. If approval is granted, a certificate of approval, in letter form, will be delivered to the applicant. Upon receipt of such certificate, the applicant may proceed to conclude the purchase transaction, subject to such terms and conditions as the superintendent may impose.

This rule is intended to implement Iowa Code section 524.519 524.544.

BANKING DIVISION[187](cont'd)

ITEM 9. Amend rule 187—2.7(17A,524) to read as follows:

187—2.7(17A,524) Renewal, amendment or restatement of articles of incorporation.

2.7(1) Application. Sample forms and instructions for making application to the superintendent to renew, amend or restate existing articles of incorporation of a state bank will be furnished upon written request to the superintendent. State banks desiring to effect a reverse stock split or similar change in capital structure by such renewal, amendment, or restatement should make arrangements to meet with contact the superintendent to discuss the proposal prior to its adoption.

2.7(2) Examination and investigation Investigation. The superintendent may conduct such examination or an investigation as the superintendent deems deemed necessary, including the gathering of information as provided for in rule 2.12(17A).

2.7(3) No change.

2.7(4) Approval Decision. The superintendent determines whether or not approval of such applications should be granted. ~~shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved~~

2.7(5) Certification. ~~If the determination of the superintendent is favorable, the renewed, amended or restated articles of incorporation will be approved and forwarded to the secretary of state for filing and recording. Upon filing such articles, the secretary of state will return the original to the state bank and will also issue a certificate to the state bank indicating the date the filing was effective. Thereafter, the state bank will operate in accordance with its renewed, amended or restated articles of incorporation.~~

This rule is intended to implement Iowa Code sections 524.106 524.314, 524.1505, and 524.1508, and 524.1509.

ITEM 10. Rescind and reserve rule 187—2.8(17A,524).

ITEM 11. Amend subrules 2.9(1) to 2.9(3) to read as follows:

2.9(1) Application. Persons desiring to secure a license to operate a debt management company should contact the superintendent for the proper application and related forms for completion and subsequent submission to the superintendent.

2.9(2) Investigation. The superintendent may conduct such investigation as deemed necessary. Matters investigated include:

a. The character, fitness, financial responsibility and experience of the applicant.

b. A determination that applicant has not been convicted of a felony or a misdemeanor involving moral turpitude or had a record of defaulting in payment of money collected for others, including discharge of such debts through bankruptcy proceedings.

c. A review of a current credit report to be submitted directly to the superintendent at the cost expense of the applicant.

2.9(3) Approval or denial Decision. The superintendent will notify the license applicant of the decision by mail ~~shall approve or deny the application within 60 days from the filing of the completed application and related forms after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.~~

This rule is intended to implement Iowa Code sections 533A.2(1)“P” and 533A.3.

ITEM 12. Amend subrules 2.12(1) to 2.12(7), 2.12(9), 2.12(10), 2.12(13), 2.12(14), and the implementation paragraph following the rule to read as follows:

2.12(1) Scope. Subrules 2.12(2) to 2.12(14) contain procedures by which the superintendent may reach informed decisions with respect to those applications which by statute require a public hearing, and in such other cases as the superintendent shall deem a public hearing desirable necessary. These procedures provide a method by which all persons interested in the subject matter of such applications or other cases in which a public hearing is deemed desirable necessary may present their views. Nothing contained herein shall be construed to prevent interested persons from presenting their views in a more informal manner when deemed appropriate by the superintendent or to prevent the superintendent from conducting such other investigation as may be deemed appropriate.

2.12(2) Notice of filing of application. Applications described in subrule 2.12(1) shall be filed as provided in rules 2.1(17A,524) to 2.11(17A). Except in the case of proposed transactions where notice by publication is governed by statute, the applicant shall, within 15 days after the superintendent shall have notified the applicant in writing that an application has been accepted for filing, or within 15 days after the superintendent shall have notified the applicant in writing that a public hearing is deemed desirable in connection with a matter on which a public hearing is not required by statute processing, publish one time in a newspaper of general circulation in the community in which the applicant's main office is located and in a newspaper of general circulation in the community in which the applicant proposes to engage in business, a notice containing the name of the applicant or applicants, the subject matter of the application, and the date upon which the application was filed, and the date of the public hearing, if established accepted for processing. Immediately thereafter, the applicant shall furnish the superintendent with proof of such publication. The superintendent shall give timely notice to any person requesting in writing notice of the date on which an application was filed. The superintendent shall may solicit, in whatever manner deemed appropriate, comments from each bank banks which it is believed might be affected by or have an interest in the pending application.

2.12(3) Public file. The public file in each case shall consist of the application with supporting data and supplementary information with the exception of material deemed by the superintendent to be confidential. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such application, excluding any material deemed by the superintendent to be confidential. The superintendent or the superintendent's designee shall not deem information confidential for purposes of the two immediately preceding sentences unless the person submitting the information requests that such information be deemed confidential. All factual information contained in any field investigation report made by a bank examiner shall also be made a part of the public file, unless deemed confidential by the superintendent.

a. The public file shall be available for inspection in the office of the superintendent upon written request from a protesting person and to such other persons as the superintendent shall deem to have a direct interest therein during such periods of time as the superintendent shall prescribe.

BANKING DIVISION[187](cont'd)

b. No documentation in the public file may be removed from the superintendent's office by persons other than members of the superintendent's staff. Photocopies may be made available, on request, to protesting and other interested parties. The charge for such copies shall be made in accordance with a written schedule maintained by the superintendent.

2.12(4) Written comments and requests for an opportunity to be heard. Within ten days after the date of publication of the notice described in subrule 2.12(2), any interested person may submit to the superintendent written comments concerning the application or a written request for an opportunity to be heard before the superintendent or the superintendent's designee. ~~This time may be extended by the superintendent if the applicant has failed to file all required supporting data in time to permit review by interested persons or for other extenuating circumstances. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent.~~ In the absence of a request, the superintendent, when it is believed to be in the public interest, may order a hearing to be held.

2.12(5) Place of hearing. ~~Persons submitting a request described in subrule 2.12(4) shall be given an opportunity to be~~ *Hearings granted by the superintendent shall be heard in the office of the superintendent.* The superintendent, in any matter, reserves the right to conduct hearings at any location deemed to be appropriate.

2.12(6) Date of hearing. An opportunity to be heard shall be given as soon as practicable after ~~requested or ordered.~~

2.12(7) Notice of hearing. ~~The superintendent, when notifying interested persons of the scheduling of an opportunity to be heard, The notice given by the superintendent concerning the hearing shall set forth in the notice the subject matter of the application, the legal authority for such hearing, and the date, time, and place at which the opportunity to be heard shall be afforded of the hearing.~~ The notice shall be sent to the person or persons requesting the hearing, the applicant and to other interested persons who have sent written comments to the superintendent.

2.12(9) Presiding officer. ~~When an opportunity to be heard is being afforded, the~~ *The presiding officer at the hearing shall be the superintendent or such other person as may be named designated by the superintendent.*

2.12(10) Hearing rules. The applicant and each other participant may make opening statements of a length within the discretion of the presiding officer. Such opening statements should concisely state what the participant intends to show. The applicant shall have the opportunity to present a statement first. Following the opening statements, the applicant shall present data and materials, oral or documentary. Following the applicant's presentation, the persons protesting the application shall present their data and materials, oral or documentary. The protesters may agree, with the approval of the presiding officer, to have one of their number make their presentation. Following the evidence of the applicant and the protester, the presiding officer may recognize other interested persons who may present their views with respect to the application under consideration. After all the above presentations have been concluded, the participants before the panel may make short and concise summary statements reviewing their position. The applicant shall present a concluding summary statement.

a. The obtaining and use of witnesses is the responsibility of the parties. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant. The refusal of a wit-

ness to answer questions may be considered by the superintendent in determining the weight to be accorded the testimony of that witness. Witnesses shall be sworn.

b. The presiding officer shall have the authority to exclude data or materials ~~which is~~ deemed to be improper or irrelevant. Formal rules of evidence shall not be applicable to these hearings. Documentary material must be of a size consistent with ease of handling, transportation and filing, and copies must be provided for each participant. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission ~~of as~~ evidence. Two copies of all such documentary evidence shall be furnished to the superintendent, and one copy shall be furnished to each other person represented at the proceeding.

c. The superintendent or the superintendent's designee shall determine all procedural questions not governed by these rules. The superintendent or the superintendent's designee shall have the authority to limit the number of witnesses to be used by any party, and to impose such time limitations as shall be deemed reasonable.

d. A transcript of each proceeding shall be arranged for by the superintendent's office, with all expenses of such service, including the furnishing ~~of~~ one copy of the transcript to the superintendent, being borne by the person or persons requesting the opportunity to be heard, except for hearings ~~required by statute or ordered by the superintendent's office on its own volition, where in which case, the applicant will bear the expense of furnishing transcripts of the record.~~

e. The public file described in subrule 2.12(3) shall automatically be deemed a part of the record of these proceedings as well as all evidence submitted and the transcript described in paragraph "d" of this subrule.

2.12(13) ~~Superintendent's decision~~ *Decision.* The applicant and all persons so requesting in writing shall be notified of the final disposition of the application by the superintendent.

2.12(14) Computation of time. In computing any period of days provided for in this rule, the day of the ~~act event~~ from which the period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this subrule, "legal holiday" means a day on which the office of the superintendent remains closed.

This rule is intended to implement Iowa Code sections 17A.3, 524.305, 524.312, 524.1201, 524.1303, and 524.1403, ~~and 524.1507.~~

ITEM 13. Rescind rule 187—2.13(524) and insert in lieu thereof the following new rule:

187—2.13(524) Integral facility determination.

2.13(1) Scope. A state bank which desires to lease, construct or purchase a facility which will be accessible to the general public and will be located in the proximity of the bank's principal place of business or one of its authorized bank offices may request in writing that a determination be made by the superintendent that such a facility will be an integral part of its business operation within the meaning of Iowa Code section 524.1202(2). If a favorable determination by the superintendent is rendered, the proposed integral facility shall not be deemed a bank office within the meaning of Iowa Code sections 524.1201 and 524.1202.

2.13(2) Application. An application by a state bank to establish a facility as an integral part of the bank's principal

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place of business or one of its authorized bank offices shall be in letter form and shall, at a minimum, contain the following information:

- a. The location of the proposed integral facility in relation to the state bank's principal place of business or bank office.
- b. The estimated cost of establishing the proposed integral facility.
- c. The banking services to be offered at the proposed integral facility.
- d. Whether the proposed integral facility will provide banking services to the public at hours when the state bank's principal place of business or bank office is not available.
- e. A confirmation that the proposed integral facility will constitute the only such facility of the state bank's principal place of business or bank office.

2.13(3) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.13(4) Decision. The superintendent shall approve or deny the application within 60 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

This rule is intended to implement Iowa Code section 524.1202.

ITEM 14. Rescind rule 187—2.14(524) and insert in lieu thereof the following **new** rule:

187—2.14(524) Investment in a bank service corporation or other subsidiary.

2.14(1) Application. An application by a state bank to invest in a bank service corporation or other subsidiary for purposes of engaging in an authorized activity shall be in letter form and shall, at a minimum, contain the following information.

- a. A detailed description of the proposed authorized activity of the bank service corporation or other subsidiary.
- b. A detailed description of the location(s) where the bank service corporation or other subsidiary proposes to conduct its authorized activity.
- c. Evidence that the bank service corporation or other subsidiary:
 - (1) Will be adequately capitalized in relation to the risks associated with the proposed authorized activity;
 - (2) Will have sufficient managerial resources to perform the proposed authorized activity;
 - (3) Will obtain all licenses and approvals from other regulatory agencies necessary to perform the proposed authorized activity;
 - (4) Will maintain a separate and adequate accounting system and other corporate records; and
 - (5) Will conduct its authorized activity pursuant to independent policies and procedures designed to inform customers and prospective customers of the bank service corporation or other subsidiary that it is a separate organization from the state bank.
- d. A legal opinion that the proposed authorized activity of the bank service corporation or other subsidiary is permissible under state and federal laws and regulations, if requested by the superintendent.

e. The amount which the state bank proposes to initially invest in the bank service corporation or other subsidiary.

f. A copy of the resolution adopted by the state bank's board of directors authorizing the investment in the bank service corporation or other subsidiary.

2.14(2) Investment limitation. Unless state or federal statutes impose specific limitations relating to investments in the shares of a corporation by a state bank, a state bank's invest-

ment in a bank service corporation or other subsidiary shall not exceed 15 percent of its aggregate capital as defined in Iowa Code section 524.103, nor shall more than 5 percent of its total assets be invested in all bank service corporations or subsidiaries. At the superintendent's discretion, a higher investment limitation may be established for an investment by a state bank in an operations subsidiary, as defined in section 524.103. For purposes of this rule, the terms "invest" or "investment" shall include any advance of funds to a bank service corporation or other subsidiary, whether by the purchase of stock, the making of a loan or otherwise.

2.14(3) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.14(4) Decision. The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.14(5) Revocation. The superintendent may revoke a previously granted approval to invest in a bank service corporation or another subsidiary and order divestiture of the shares, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

- a. The financial condition of the state bank has significantly deteriorated.
- b. The superintendent determines the authorized activity is being conducted unlawfully or in an unsafe or unsound manner.

c. Other relevant factors occur which the superintendent may determine are grounds for a revocation of the authorized activity.

This rule is intended to implement Iowa Code chapter 524.

ITEM 15. Rescind rule 187—2.15(524) and insert in lieu thereof the following **new** rule:

187—2.15(524) Securities activities.

2.15(1) Scope. Iowa law authorizes state-chartered banks to engage in any aspect of the securities business. The evolution of this authority by state banks has been confined primarily to recommending and selling interests in mutual funds, annuities, and other nondeposit investment products on bank premises. The sale of these nondeposit investment products on bank premises may be conducted directly by a state bank, through a subsidiary or an affiliate of a state bank, or through an arrangement with a third-party vendor. The sale of these retail products on the premises of a state bank, where traditionally only federally insured deposits are taken, has led to some confusion among retail customers about what is being purchased and whether or not it is insured. The purpose of this rule is to place greater emphasis on board of director involvement in any proposed securities activities on the premises of the state bank and, if retail product sales are part of that proposed activity, enhance customer protections through proper disclosures.

2.15(2) Board responsibilities. The board of directors of a state bank shall evaluate the risks associated with the securities activities proposed and the method by which the securities activities will be conducted on its premises. The board of directors shall be responsible for ensuring that any securities activities conducted on its premises will comply with all applicable state and federal laws and regulations as well as any policy statements issued which relate to securities activities. Specifically, if a state bank develops and implements a particular program where nondeposit investment products are recommended and sold to retail customers, that program shall ensure that customers are clearly and fully informed of the nature of and risks associated with those types of products. If an affiliate, a subsidiary, or a third-party vendor is

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used to recommend and sell nondeposit investment products, all signs, advertisements and other promotional material should clearly identify the affiliate, subsidiary, or third-party vendor as the seller and should not suggest by use of a trade name that the state bank is the seller. The board of directors shall be responsible for complying with the joint federal Interagency Statement on Retail Sales of Nondeposit Investment Products or any substitution therefor or revision thereof.

2.15(3) Application. An application by a state bank to engage in any securities activities shall be in letter form and shall, at a minimum, contain the following information.

a. A commitment that the proposed securities activities will be conducted either directly by the state bank, through a subsidiary or an affiliate of the state bank, or through an arrangement with a third-party vendor. In specific cases, it may be necessary for the applicant to provide a legal opinion stating that the proposed activities are authorized.

b. A commitment that the state bank's board of directors has evaluated the risks associated with the proposed securities activities and has adopted a written statement that addresses these risks and the procedures to be used to ensure compliance with all applicable laws, regulations and policy statements. The scope and level of detail of the written statement should reflect the state bank's level of involvement in the securities activities. If securities activities are to be conducted on bank premises by an affiliate, a subsidiary, or a third-party vendor, the written statement should also address the scope of those activities, as well as the procedures for monitoring compliance by the affiliate, subsidiary, or third-party vendor with all applicable laws, regulations and policy statements.

c. A commitment that, if securities activities are to be conducted through an affiliate, a subsidiary, or a third-party vendor, the board of directors has performed an appropriate review of the affiliate, subsidiary, or third-party vendor. A copy of the written agreement between the parties shall accompany the application.

d. A commitment that the location(s) on bank premises where the proposed securities activities will be conducted will be physically distinct and separate from the area where deposits are taken. Proper signs or other means must be used to distinguish the area where the sale of retail nondeposit investments products will be conducted from the area where insured deposits are normally taken. If securities activities are to be conducted on bank premises by an affiliate, a subsidiary, or a third-party vendor, all signs or other means used to identify this area shall provide to the retail customer a clear and accurate representation of the entity conducting the securities activities.

e. A commitment that clear and concise oral and written disclosures will be provided to retail customers. A copy of the proposed written disclosures shall accompany the application.

f. A commitment that the state bank, its subsidiary or affiliate, or a third-party vendor will complete background checks on all personnel authorized to recommend and sell nondeposit investment products and that all such personnel will be properly trained and appropriately licensed prior to commencing any securities activities and thereafter while conducting securities activities on the premises of the state bank.

Notwithstanding the application requirements set forth herein, if the securities activity being conducted is limited to discount brokerage or referral services, then the state bank

only needs to notify the superintendent that it intends to engage in the limited securities activity.

2.15(4) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.15(5) Decision. The superintendent shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.15(6) Revocation. The superintendent may revoke a previously granted approval to conduct securities activities on the premises of the state bank, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur.

a. The financial condition of the state bank has significantly deteriorated.

b. The superintendent determines the securities activities are being conducted unlawfully or in a unsafe or unsound manner.

c. Other relevant factors occur which the superintendent may determine are grounds for a revocation of the securities activities.

This rule is intended to implement Iowa Code section 524.825.

ITEM 16. Amend rule 187—2.16(524) to read as follows:

187—2.16(524) Contracts—authorization. ~~Procedures for authorization to engage in futures contracts, forward contracts, and standby contracts pursuant to Iowa Code section 524.901(1).~~

2.16(1) Scope. Futures contracts shall be defined as standardized contracts traded on and guaranteed by organized exchanges to purchase or sell a specified security or a bank certificate of deposit on a future date at a specified price. Forward contracts shall be defined as over-the-counter contracts for forward placement or delayed delivery of securities in which one party agrees to purchase and another to sell a specified security at a specified price for future delivery. Contracts specifying settlement in excess of 30 days following the trade date shall be deemed to be forward contracts. Standby contracts shall be defined as optional forward contracts. For an example, the buyer of a standby contract (put option) pays a fee for the right or option to sell securities to the other party at a stated price at a future time. The seller of a standby contract receives the fee and must stand ready to buy the securities at the other party's option.

Futures contracts, forward contracts and standby contracts may be used by the state banks to reduce their existing interest rate risk exposure resulting from their overall investment activities and as a general hedge against interest rate exposure associated with undesired mismatches in interest-sensitive assets and liabilities. At no time shall futures, forward and standby contracts be used to speculate on future interest rate movements.

State banks may, without the prior approval of the superintendent, purchase shares in permissible investment companies, up to a maximum of ~~20 percent of capital and surplus~~ *15 percent of aggregate capital*, which use futures contracts, forward contracts and standby contracts, as well as repurchase agreements and securities lending arrangements as a part of their portfolio management strategies. However, it remains the responsibility of the board of directors making these purchases to ensure that a particular investment company is a proper holding for the bank's investment portfolio.

2.16(2) Application. An application by a state bank to engage in futures contracts, forward contracts and standby con-

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tracts shall be in letter form and shall, at a minimum, contain the following information:

a. A description of the type(s) of contracts the state bank proposes to purchase and sell.

b. A copy of the board of directors' resolution authorizing the specific type(s) of contracts proposed to be purchased and sold.

c. A copy of the policy adopted by the state bank's board of directors which shall include specific policy objectives that outline permissible contract strategies and their relationship to overall investment activities and asset-liability management; the names, responsibilities, and authority limits of the personnel authorized to engage in futures, forward and standby contracts; limitations applicable to futures, forward and standby contract positions; the personnel to be used to review at least monthly the bank's contract positions to ascertain compliance with such limits; the exchanges and firms through which authorized personnel may conduct futures, forward and standby contracts; and the dollar limit on transactions with each firm.

d. A representation that the state bank has sufficient managerial resources to engage in futures, forward and standby contracts.

e. A copy of the board of directors' resolution stating that the board members have read and understood the "Federal Deposit Insurance Corporation Statement of Policy Concerning Interest Rate Futures Contracts, Forward Contracts, and Standby Contracts" and will comply with the policy statement.

~~2.16(3) Investigation. The superintendent may conduct an investigation as deemed necessary or proper in connection with the application.~~

~~2.16(4) Approval Decision. The superintendent shall determine whether or not an application should be granted on the basis of the following: shall approve or deny the application within 60 days after the application is accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.~~

~~a. The capital, assets, earnings and liquidity of the state bank are satisfactory.~~

~~b. The state bank has sufficient managerial resources to engage in futures, forward, and standby contracts.~~

~~c. Any other relevant factors as the superintendent may prescribe.~~

~~2.16(5) Certification. The superintendent will issue a written decision approving or disapproving an application. The decision is not a final decision in a contested case, but constitutes other agency action.~~

~~2.16(6) Revocation. The superintendent may suspend or revoke the approval of the state bank to engage in futures, forward and standby contracts, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur:~~

~~a. The capital, assets, management, earnings, or liquidity of the state bank becomes unsatisfactory financial condition of the state bank has significantly deteriorated.~~

~~b. The superintendent determines the futures, forward or standby contract activities are being conducted unlawfully or in an unsafe or unsound manner.~~

~~c. Other relevant factors occur which the superintendent may determine are grounds for a suspension or revocation of the activities.~~

~~2.16(7) Applicability. Effective March 16, 1988, these rules shall be applicable to any application for authorization to engage in futures contracts, forward contracts, and standby~~

~~contracts received by the office of the superintendent on or after May 29, 1987.~~

This rule is intended to implement Iowa Code section 524.901(4).

ITEM 17. Amend rule 187—4.1(524) to read as follows:

187—4.1(524) Composition of board. The state banking board is a statutory board composed of the superintendent of banking, who is an ex officio nonvoting member and chairperson and six other members. All members of the board are appointed by the governor.

ITEM 18. Amend rule 187—4.2(524) to read as follows:

187—4.2(524) Term of office. Each member of the board is appointed for a term of four years which is contemporaneous with the regular term of office of the superintendent of banking. ~~Each member holds office for such term and until a successor has been appointed.~~ In case of a vacancy in the board, other than a vacancy in the office of the superintendent of banking, a new member is appointed to fill such vacancy for the unexpired term.

ITEM 19. Amend rule 187—4.4(524) to read as follows:

187—4.4(524) Meetings and method of contacting members of the board. The state banking board generally meets in the office of the superintendent of banking on the third Wednesday of each month. Such meetings will be adjourned for lack of a quorum unless at least four of the six members are present at the start of each meeting. The superintendent's office is located at Suite 300, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. Anyone wishing to contact members of the board at other times may obtain the address and telephone number for each member by calling or writing to the superintendent of banking.

ITEM 20. Amend rule 187—4.5(524) to read as follows:

187—4.5(524) Board policy relating to reconsideration of certain applications which have been previously denied by the superintendent of banking. Applications which have been denied by the superintendent of banking involving requests to organize new state-chartered banks, requests to establish bank offices, *requests to merge one or more banks*, *requests for voluntary dissolution*, or requests to change the location of a bank's principal place of business from one city to another may be resubmitted to the board for reconsideration *within 180 days after the date of denial* if the previously denied applicant can provide information showing significant positive changes in the factors originally considered by the board at the time of their last recommendation to the superintendent of banking.

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

ITEM 21. Amend rule 187—5.1(17A) to read as follows:

~~Adopt~~ *The Iowa division of banking hereby adopts* the petitions for rule making segment of the Uniform Administrative Rules which is printed in the first Volume of the Iowa Administrative Code with the following amendments.

187—5.1(17A) Petition for rule making. In lieu of the words "the agency at (designate office)" insert "the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, Suite 300, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827". In lieu of the words "(AGENCY NAME)" the heading on the petition should read:

BEFORE THE DIVISION OF BANKING

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ITEM 22. Amend rule 187—5.3(17A) to read as follows:

187—5.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making should be made to the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, ~~Suite 300~~, 200 East Grand Avenue, ~~Suite 300~~, Des Moines, Iowa 50309-1827.

ITEM 23. Amend rule 187—6.1(17A) to read as follows:

~~Adopt~~ *The Iowa division of banking hereby adopts* the declaratory rulings segment of the Uniform Administrative Rules which is printed in the front of first Volume I of the Iowa Administrative Code with the following amendments.

187—6.1(17A) Petition for declaratory ruling. In lieu of the words "the agency at (designate office)" insert "the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, ~~Suite 300~~, 200 East Grand Avenue, ~~Suite 300~~, Des Moines, Iowa 50309-1827". In lieu of the words "(AGENCY NAME)" the heading on the petition should read:

BEFORE THE DIVISION OF BANKING

ITEM 24. Amend rule 187—6.3(17A) to read as follows:

187—6.3(17A) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, ~~Suite 300~~, 200 East Grand Avenue, ~~Suite 300~~, Des Moines, Iowa 50309-1827.

ITEM 25. Amend subrule 7.3(1) to read as follows:

7.3(1) Location of records. A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

ITEM 26. Amend subrule 7.13(2), paragraphs "f" and "g," to read as follows:

f. All papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent of banking pursuant to the laws of this state (Iowa Code section 524.215).

g. Reports of examinations conducted by the superintendent of banking and reports of examination received by or furnished to the superintendent of banking pursuant to Iowa Code section 524.217.

ITEM 27. Amend subrules 7.15(4) and 7.15(6) to 7.15(8) to read as follows:

7.15(4) Orders issued by the superintendent. All findings of fact, conclusions of law, and orders issued by the superintendent of banking subsequent to a public hearing under the provisions of chapter 17A, except as otherwise provided by law. (See Iowa Code section 17A.3.) These records may contain information about individuals.

7.15(6) Policy manuals. The agency's employees' manual, containing information concerning policies and procedures for programs administered by the agency, is available in the office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to Iowa Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. Policy manuals do not contain information about individuals.

7.15(7) Reports to superintendent. Reports obtained by the superintendent of banking pursuant to the provisions of Iowa Code section 524.220. These reports are considered open records.

7.15(8) Officers, directors and shareholders. Lists filed with the superintendent of banking pursuant to the provisions of Iowa Code section 524.515. These reports are considered open records.

ITEM 28. Amend rule 187—8.8(12B) to read as follows:

187—8.8(12B) Approved rating services. Rating services approved by the superintendent of banking as provided by Iowa Code section 12B.10 for use by the treasurer of state and the treasurer of each political subdivision in determining qualifying commercial paper investments are Moody's Investors Services, *New York, New York 10007* and Standard & Poor's, *Chicago, Illinois 60680*.

This rule is intended to implement Iowa Code section 12B.10.

ITEM 29. Rescind and reserve rule 187—9.1(524).

ITEM 30. Amend subrules 9.2(1) to 9.2(10) to read as follows:

9.2(1) Written policy. The board of directors of the state bank shall formulate and maintain a written real estate lending policy that is appropriate for its size and the nature and scope of its operation. Each policy must be comprehensive and consistent with safe and sound lending practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The real estate lending policy should reflect the level of risk that is acceptable to the board and should provide clear and measurable underwriting standards that enable the state bank's lending staff to evaluate all relevant credit factors. The real estate lending policy, at a minimum, should:

- a. Identify the geographic area where the state bank will consider lending.
- b. Establish loan portfolio diversification standards.
- c. Set appropriate terms and conditions by type of real estate loan.
- d. Establish loan origination and approval procedures.
- e. Establish prudent underwriting standards which include clear and measurable loan-to-value limitations.
- f. Establish review and approval procedures for exempted loans.
- g. Establish loan administration procedures.
- h. Establish real estate appraisal and evaluation programs.
- i. Monitor the portfolio and provide timely reports to the board of directors.

When formulating the real estate policy, the board should consider both internal and external factors, such as size and condition of the state bank, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate-related laws and rules, and general market conditions.

9.2(2) Evidence of indebtedness. Real estate loans shall be evidenced by a note or other form of obligation indebtedness and shall be secured by liens on or interests in real estate in the form of mortgages, deeds of trust, or similar instruments.

9.2(3) Appraisals or evaluations. The state bank shall use written real estate appraisals performed by appraisers who have demonstrated competency and are subject to effective supervision in connection with certain real estate-related transactions. The state bank shall use the services of certified or licensed appraisers for specific transactions in accordance

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with the implementing regulations adopted in connection with Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA) 12 U.S.C. §3310 and 3331 through 3351. All appraisals performed must conform to the minimum appraisal standards of federal regulations. Also, appropriate evaluation programs for real estate-related transactions exempt from federal regulations must be established based upon safety and soundness considerations, as well as economic considerations. ~~The federal banking regulatory agencies have issued a policy statement to provide state banks assistance in establishing these programs.~~

9.2(4) Loan-to-value limits. The board of directors of the state bank shall establish its own internal loan-to-value (LTV) limits for real estate loans. These internal limits shall not exceed the following:

LOAN CATEGORY	LTV (PERCENT)
Raw land	65
Land development	75
Construction:	
Multifamily, commercial & other nonresidential	80
1- to 4-family residential	85
Farmland, rangeland or timberland	85
1- to 4-family not owner-occupied	85
Multifamily residential (5 or more units)	85
Commercial and other nonresidential	85
Owner-occupied 1- to 4-family and home equity	90*

The loan-to-value limits established by the board shall not apply to loans for which a lien on or interest in real estate is taken as additional collateral through an abundance of caution.

~~For owner-occupied 1- to 4-family residential and home equity loans which equal or exceed the 90 percent loan-to-value limit, the state bank shall require private mortgage insurance or other readily marketable collateral.~~

**A loan-to-value limit has not been established for permanent mortgage or home equity loans on owner-occupied, 1- to 4-family residential property. However, for any such loan with a loan-to-value ratio that exceeds 90 percent at origination, an institution should require appropriate credit enhancement in the form of either mortgage insurance or readily marketable collateral.*

Compliance with the appropriate loan-to-value limits shall require that the state bank's lien be aggregated with more senior liens securing the same property. The state bank shall maintain written verification of the outstanding balance or the maximum credit available to the borrower of any more senior lien at the inception of the loan. The existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or part whereby the rents or profits are reserved to the owner shall not be deemed senior liens for purposes of compliance with loan-to-value limits.

9.2(5) Evidence of title. The state bank shall obtain, when lending for the purpose of acquisition or for the purpose of refinance of acquisition when a new mortgage, deed of trust, or similar instrument is filed, either:

a. A written legal opinion by an attorney admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the state bank's mortgage, deed of trust, or similar instrument is a lien on the real estate, or

b. Title insurance written by an insurance company licensed to do business in the state in which the real property is located, describing any existing liens and insuring the title to the real property and the validity and enforceability of the mortgage, deed of trust, or similar instrument as a lien on the real property.

9.2(6) Insurance. The state bank shall require, when lending for the purposes of acquisition or for the purpose of refinance of acquisition of real estate when a new mortgage, deed of trust, or similar instrument is filed, insurance against loss from fire, wind, and natural hazards on all structures which are included in the mortgage for the term of the loan. The state bank may, at its own expense, maintain insurance covering its interest as lender. If the real estate is located within a special flood hazard area as identified by the Federal Emergency Management Agency, the state bank shall require flood insurance in accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. §4003 et seq.) and implementing regulations adopted in connection therewith.

~~9.2(7) The state bank shall originate or purchase loans securing real estate only in Iowa or states contiguous to the state of Iowa.~~

9.2(8 7) Disclosures. The state bank shall provide pertinent and timely disclosures to borrowers pursuant to the Real Estate Settlement Procedures Act of 1974 as amended and implementing regulations adopted in connection therewith (12 U.S.C. §2601 et seq.) and Regulation Z, Truth-In-Lending Act as amended the Truth-in-Lending Act (15 U.S.C. §1601 et seq.) and implementing regulations adopted in connection therewith.

9.2(9 8) Exceptions. There are certain real estate transactions in which other factors significantly outweigh the need to apply the provisions of subrules 9.2(4) to 9.2(8). Therefore, the following transactions are exempt from subrules 9.2(4) to 9.2(8):

a. Loans guaranteed, insured, or for which a written commitment for such has been issued by the U.S. government or its agencies.

b. Loans guaranteed, insured, or for which a written commitment for such has been issued by the state of Iowa, a political subdivision, or agency thereof, provided that the state bank has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the agreement.

c. Acceptance of real estate as collateral to secure debts previously contracted in good faith.

d. Securities collateralized by real estate, but in which a state bank may invest pursuant to Iowa Code section 524.901.

e. *With the prior approval of the superintendent, any other loans approved, issued, insured or guaranteed by any other federal or state sponsored program.*

9.2(10 9) Exempted transactions. In addition to the exemptions set forth in subrule 9.2(8), it may be appropriate, in light of all of the relevant credit considerations, including community reinvestment factors, for state banks, in certain instances, to originate or purchase real estate loans that do not meet the requirements of subrules 9.2(4) to 9.2(7). State banks shall be allowed to make such loans; however, the aggregate amount of all real estate loans that fall into this category shall not exceed 25 percent of aggregate total equity capital as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent. ~~This aggregate amount of real estate loans that do not comply with the provisions of subrules 9.2(4) to 9.2(7) should grant state banks the flexibility necessary to meet the needs of their~~

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customers. These exempted loans must be identified by the board of directors at inception by name and outstanding balance and must be reviewed by the board *no less frequently than annually at least quarterly*. Examiners, during the course of their examinations, will determine whether these exempted loans are adequately documented and appropriate in light of overall safety and soundness considerations. No real estate loans to directors, officers, or principal shareholders or their related interests shall be allowed in the exempted category of this subrule.

This rule is intended to implement Iowa Code section 524.905.

ITEM 31. Amend subrule 9.3(2), paragraphs "d," "g" and "i" to read as follows:

d. A bank officer, an officer of an affiliated lease originator, or an independent third-party appraiser shall conduct at inception, and then at least annually thereafter, an inspection of the leased *tangible* personal property, unless prior approval to waive the inspection requirements has been obtained from the superintendent of banking.

g. Property covered by the lease shall be limited to *tangible* personal property, excluding livestock. *In addition a state bank may purchase or construct a municipal building, such as a school building, or other similar public facility and, as holder of legal title, lease the same to a municipality or other public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall address liability issues and shall provide that upon its expiration the lessee will become owner of the building or facility.*

i. The term of a lease shall not exceed seven years if made to a nongovernmental unit or ten years if made to a governmental unit without the prior approval of the superintendent of banking.

ITEM 32. Amend subrule 9.3(3), paragraph "a," to read as follows:

a. If the obligations acquired carry full recourse endorsements, guaranty, or an agreement to repurchase of the lessor or servicer negotiating the sale of the leases, then the endorser, guarantor, or repurchaser shall also be deemed to be a customer of the bank. This customer's obligation would be limited to ~~60 percent of capital and surplus~~ *35 percent of aggregate capital* of the state bank if the amounts exceeding ~~20~~ *15 percent of capital and surplus aggregate capital* consist of obligations as endorser of negotiable chattel paper negotiated by endorser with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

ITEM 33. Amend subrule 9.3(5) to read as follows:

9.3(5) Exempted transactions. In some instances, it may be appropriate, in light of all relevant credit considerations, to originate or purchase leases that do not conform with the requirements of 9.3(2)"c," "d," and "e." The outstanding aggregate rentals payable of all originated and purchased leases that fall into this category shall not exceed 25 percent of the ~~total equity~~ *aggregate capital* as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent of banking. These exempted leases shall be identified by the board of directors at inception by name and outstanding balance and shall be reviewed by the board at ~~least quarterly~~ *no less frequently than annually*. Examiners, during the course of their examinations, will determine whether these exempted leases are adequately documented

and appropriate in light of overall safety and soundness considerations. No leases to directors, officers, or substantial shareholders or their related interests shall be allowed in the exempted category of this subrule.

This rule is intended to implement Iowa Code section 524.908.

ITEM 34. Rescind subparagraph 10.4(2)"d"(5).

ITEM 35. Amend subrule 15.1(1) to read as follows:

15.1(1) Form used. Printed copies of application for license shall be obtained from the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, State of Iowa, Suite 300, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The printed application form shall be used by each applicant when applying for a license. All questions shall be answered in full and whenever space is inadequate a rider may be attached giving in full the information required.

ITEM 36. Amend rule 187—15.2(536) to read as follows:

187—15.2(536) Suspension, revocation or surrender of license.

15.2(1) Refund. No refund of license fee, *in whole or in part*, shall be made wherein a license is *suspended*, revoked, or surrendered.

15.2(2) Responsibility of licensee. ~~In order to preclude violation of any provision of the Regulated Loan Act or any general rule or regulation thereunder, it shall be the responsibility of each licensee to assure that each person in charge of or employed in its place of business shall be familiar with the laws and regulations relating to the business of making, servicing and collecting loans under the provisions of the Regulated Loan Act.~~

This rule is intended to implement Iowa Code section 536.9 and 1985 Iowa Acts, chapter 158.

ITEM 37. Rescind rule 187—15.3(536) and insert in lieu thereof the following new rule:

187—15.3(536) Records.

15.3(1) Loan register. A "loan register" or its equivalent record which shall be the book of original entry shall show for every loan: account number, date of loan, name of borrower and nature of security. The register shall be kept chronologically in the order made for two years from the date of final entry.

15.3(2) Ledger card.

a. Such account card shall show: name and address of borrower; loan number; date of loan; terms of repayment including maturity date; amount financed; total of payments; nature of security; cost of each credit insurance policy and any other insurance policy with each premium stated separately; name of each endorser, comaker or surety; and amount of recording and releasing fees.

b. All payments shall be posted on the account card as of the date received. No erasures whatsoever may be made in the payment section of any account card. In case of error, a line should be drawn in ink through the improper entry, with the correct entry made on the following line. The entries on the card shall correspond with the receipts given to the borrower.

c. If payment is made in any other way than in the ordinary course of business, it shall be so designated; for example, payment by sale of security, insurance claim or endorser. When a death claim is filed, the exact date of death is to be recorded on the ledger card.

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d. The card for an interest-bearing loan shall show the amount of the loan if different from the amount financed, the amount and date of each payment received, the allocation of the payment to principal and interest, and the remaining principal balance. If a portion of the interest earned is not paid at the time payment is made, the card for an interest-bearing loan must show either the date to which interest is paid or the amount of interest then due but unpaid.

e. The card for a precomputed loan shall show the actual amount of the loan excluding the precomputed interest, the amount of the precomputed interest and the face amount of the note including interest, the amount and date of each payment applied to the note, the unpaid balance of the note after applying such payment and the type and amount of any additional charges collected or assessed. If deferment charges are collected in whole or in part, the card shall indicate any uncollected portion of the deferment charge, the particular installment deferred, the number of times deferred, plus the date of the final installment.

f. When any loan is prepaid in full, either by cash or renewal, the card must show the date of prepayment, the amount paid to discharge the loan, the amount of the interest rebate, and any deduction from the rebate for previously earned but uncollected charges, and refunds of the unearned premiums of each credit insurance policy or other insurance policy. Each insurance refund shall be separately recorded on the card.

g. Account ledger cards relating to each type of business operation must be filed in separate groups. Paid-in-full and renewed ledger cards must also be filed in a similar manner and retained from one banking division examination to the next. After the examination, these cards may be filed in a permanent file.

15.3(3) Account ledger card control. A record shall be maintained in the licensed office showing the total number of accounts and total amount receivable for each type of business. This record shall be posted either daily or weekly.

15.3(4) Loan file. A separate file shall be maintained for each borrower in the office where the loan is outstanding. Such file shall contain the note, security agreement, wage assignment and all other evidence of indebtedness or security pertaining to the loan except when the note is kept in a separate promissory note file or when said papers are in custody of a court or an agent for collection or are hypothecated. When a borrower is also a comaker, guarantor or endorser on another loan, the file of such borrower shall be cross-referenced to the other, unless such cross-referencing is included on the alphabetical record required by 15.3(5) or on the individual account card required by 15.3(2). All instruments taken in connection with a loan and signed by a borrower must bear the loan number.

15.3(5) Index. An alphabetical record shall be maintained and show the name of each borrower, endorser, comaker, or surety who is currently indebted to the licensee, together with sufficient information to locate the account card.

15.3(6) Disbursement voucher. Licensees shall use a disbursement voucher or equivalent document in conjunction with each loan showing a detailed itemization of the distribution of the loan proceeds.

15.3(7) EDP systems. With prior written approval from the superintendent, the licensee's use, in whole or part, of mechanical or electronic data processing equipment to maintain its loan account records, or business records, shall be permitted if it is determined that the EDP system provides the same information as is otherwise required.

This rule is intended to implement Iowa Code sections 17A.3 and 536.11.

ITEM 38. Rescind rule 187—15.4(536) and insert in lieu thereof the following **new** rule:

187—15.4(536) Miscellaneous restrictions.

15.4(1) Mail loans. A licensee shall have authority to make and complete loans by mail from the lender's licensed office. In making such loans, the lender shall mail all the necessary papers to the borrower; and upon completion of such papers by the borrower, the check or money order representing proceeds of the loan shall be mailed from the licensee's office.

15.4(2) Default charge. Default charges are not to be collected if payment is made by accident and health insurance claim.

This rule is intended to implement Iowa Code section 536.12 and 1985 Iowa Acts, chapter 158.

ITEM 39. Rescind rule 187—15.5(536) and insert in lieu thereof the following **new** rule:

187—15.5(536) Interest rate. Pursuant to the power granted to the state banking board under Iowa Code section 536.13, subsections (1)"b" and (2), the state banking board in action taken at a board meeting held June 12, 1985, fixed the maximum interest that may be charged beginning July 15, 1985, and until such time as a different rate is fixed by the board as 36 percent per annum on any part of the unpaid balance not exceeding \$1,000 and 24 percent per annum on any part of the unpaid balance in excess of \$1,000, but not exceeding \$2,800 and 18 percent per annum on any part of the unpaid balance in excess of \$2,800, but not exceeding \$10,000.

This rule is intended to implement Iowa Code section 536.13.

ITEM 40. Rescind rules 187—15.6(536) to 187—15.8(536).

ITEM 41. Amend rule 187—16.1(536A) to read as follows:

187—16.1(536A) Licenses. The license and current license renewal card of each licensee shall be prominently displayed and available for easy reading by the public in the place of business of the licensee. *No refund of a license fee, in whole or in part, shall be made wherein a license is suspended, revoked, or surrendered.*

ITEM 42. Rescind rule 187—16.2(536A) and insert in lieu thereof the following **new** rule:

187—16.2(536A) Other business in same office. The superintendent, upon receiving a completed application from a licensee, may authorize that licensee to conduct its industrial lending business within the same office, room, suite or place of business in which any other business is conducted except that no authorization will be granted to a licensee to conduct its industrial lending business within the same office, room, suite or place of business where the sale of tangible personal property is conducted; except that the sale of repossessed property shall be allowed.

ITEM 43. Rescind rule 187—16.3(536A) and insert in lieu thereof the following **new** rule:

187—16.3(536A) Multiple business authorization. This regulation shall be known as the "Multiple Business Regulation." Any authorization granted by this regulation shall be conditional upon full compliance with all parts thereof. Printed copies of the "Application for Multiple Business Authorization" shall be obtained from the office of Superintendent of Banking, Iowa Department of Commerce, Division of

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Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. The printed application form shall be used by each licensee when applying for multiple business authorization. All information shall be supplied in full and where space is inadequate for a full answer, a rider shall be attached.

ITEM 44. Rescind rule 187—16.4(536A) and insert in lieu thereof the following new rule:

187—16.4(536A) Multiple business revocation. If the licensee or other business affiliate fails to comply with any conditions set forth in these rules, the superintendent, upon giving ten days' advance written notice to the licensee by certified mail stating the superintendent's contemplated action and the grounds thereof, and after granting the licensee an adequate hearing, may revoke the licensee's authorization to conduct a multiple business operation.

ITEM 45. Rescind rule 187—16.5(536A) and insert in lieu thereof the following new rule:

187—16.5(536A) Examination of books. The superintendent or the superintendent's duly appointed representative shall have the right to examine and investigate the books, accounts and records wherever situated of all businesses authorized or conducted by a licensee licensed pursuant to Iowa Code chapter 536A. All books, accounts and records pertaining to businesses conducted pursuant to such license shall be made readily available to the examiners who may investigate without prior notice.

ITEM 46. Rescind rule 187—16.6(536A) and insert in lieu thereof the following new rule:

187—16.6(536A) Records. Records for loans made under the Iowa industrial loan law shall be kept separate from other types of business conducted in the office of the licensee. Each licensee shall keep the following records in its place of business, except that combination forms and special office systems may be used in lieu thereof, if approved by the superintendent in writing.

16.6(1) Loan register.

a. The loan register shall contain the original entry and shall show for every loan the loan number, date of loan, name of borrower, nature of security, and amount of note.

b. The loan register shall be kept chronologically in the order made.

16.6(2) Account ledger cards.

a. An individual account ledger card shall be kept for each account and shall show at least the loan number, name and address of the borrower, date of loan, date of first payment, date of final payment, terms of repayment, amount financed, total of payments, face amount of note if different from amount financed or total of payments, cash advanced to borrower, cash advanced to pay balance of previous industrial loan, interest or discount charge, service charge, attorney fee, fee paid or to be paid to a public official for recording or filing a mortgage or for satisfying a judgment or lien on any real or personal property securing the loan, type and cost of each credit insurance policy, and type and cost of any other insurance policy.

b. All payments shall be credited upon the account ledger card as of the same day they are received. No erasures whatsoever may be made in the payment section of any account ledger. In case of error, a line shall be drawn in ink through the improper entry with the correct entry made on the following line.

c. If payment is made through the proceeds of an insurance claim or the sale of security, it shall be so designated.

When a death claim is filed, the exact date of death is to be recorded on the ledger card.

d. The account ledger card for an interest-bearing loan shall show the amount and date of each payment received, the allocation of the payment to interest and principal, and the remaining principal balance. If a portion of the interest earned is not paid at the time payment is made, the card for an interest-bearing loan must show either the date to which interest is paid or the amount of interest then due but unpaid.

e. The account ledger card for a precomputed loan shall show the amount and date of each payment received, the unpaid balance of the note after applying such payment, and the amount and description of any additional charges collected. If deferment charges are collected in whole or in part, the ledger card shall indicate any uncollected portion of the deferment charge, the number of installments deferred, plus the date of the final installment.

f. When a loan is prepaid in full, the account ledger card shall show the date of prepayment, the amount paid to discharge the loan, the amount of the interest or discount rebate, the refund of the unearned premiums of each credit insurance policy, or any other insurance policy, and any deduction from the rebate or refunds for previously earned but uncollected charges.

g. Account ledger cards relating to each type of business operation must be filed in separate groups. Paid-in-full or renewed account ledger cards must also be filed in a similar manner and must be retained as a separate group from one banking division examination to the next.

16.6(3) Account ledger card control. A record shall be maintained in the licensed office showing the total number of accounts and amount receivable for each type of business conducted. This record shall be posted either daily or weekly.

16.6(4) Original paper file.

a. A separate file, envelope or folder shall be maintained for each borrower or loan account.

b. Such file shall contain all papers relating to the borrower or the loan with the exception of the promissory note which may be kept in a separate promissory note file. Copies of the note and security agreement shall be substituted for the original documents if the loan has been sold, pledged or assigned as collateral security or if the original papers are in the custody of a court or agent for collection.

c. All instruments evidencing or securing a loan must bear the loan number.

d. No instrument or part thereof shall be left blank for completion after the borrower(s) has signed the instrument.

16.6(5) Promissory note file. If the promissory notes are not kept in the file of original papers and have not been sold, pledged or assigned as collateral security or placed in the custody of a court or agent for collection, then they must be kept in a promissory note file.

16.6(6) Index. An alphabetical index shall be maintained for each borrower, endorser, comaker, surety or other party currently indebted to the licensee or to any other business operated within the same office, room, suite or place of business. The index shall show the following information: the name of the obligor, the account number assigned to the obligor's indebtedness, the type of indebtedness (regulated loan, industrial loan, insurance, receivable, or any receivable), information showing whether the obligor is other than a borrower and sufficient information to locate all account ledger cards.

16.6(7) Disbursement voucher. Licensees shall use a disbursement voucher or equivalent document in conjunction

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with each loan showing a detailed itemization of the distribution of the loan proceeds.

16.6(8) EDP systems. With prior written approval from the superintendent, the licensee's use, in whole or in part, of mechanical or electronic data processing equipment to maintain its loan account records, or other business records, shall be permitted if it is determined that the EDP system provides the same information as is otherwise required.

ITEM 47. Rescind rule 187—16.7(536A) and insert in lieu thereof the following new rule:

187—16.7(536A) Record retention. Licensees shall be required to preserve their books, accounts and files for a minimum period of two years following the date of final entry recorded therein.

ITEM 48. Rescind rule 187—16.8(536A) and insert in lieu thereof the following new rule:

187—16.8(536A) Loan conversion. If any person or husband and wife together is indebted in any amount on a loan made under the provisions of the Iowa industrial loan law, no loan shall be made to said person or husband and wife together under the Iowa regulated loan law unless the proceeds of the regulated loan, after deducting insurance premiums, exceed by \$200 or more the amount necessary to pay in full the balance due on the industrial loan after the normal rebates have been made. The proceeds of the regulated loan shall, to the extent necessary, be applied to pay off the balance of the industrial loan.

ITEM 49. Rescind rule 187—16.9(536A) and insert in lieu thereof the following new rule:

187—16.9(536A) Mail loans. A licensee shall have authority to make and complete loans by mail from the lender's licensed office. In making such loans, the lender shall mail all the necessary papers to the borrower; and upon completion of such papers by the borrower, the check or money order representing proceeds of the loan shall be mailed from the licensee's office.

ITEM 50. Rescind rule 187—16.10(536A) and insert in lieu thereof the following new rule:

187—16.10(536A) Real estate loan reporting and disclosure. Each licensee which is a reporting financial institution shall file with the Iowa finance authority and the superintendent a report showing mortgage loans made in Iowa, by census tract, in form and substance as required by the Federal Home Mortgage Act and regulations promulgated under that Act.

This rule is intended to implement Iowa Code sections 535A.1 and 535A.4.

ITEM 51. Rescind rule 187—16.11(536A) and insert in lieu thereof the following new rule:

187—16.11(536A) Thrift certificates. A licensee shall notify the superintendent in writing before issuing thrift certificates or similar evidences of indebtedness to the general public.

16.11(1) Acknowledgment. When a new customer purchases a thrift certificate or similar evidence of indebtedness that is not insured by a federal deposit insurance agency, the customer shall sign an acknowledgment. The acknowledgment shall be a separate form and in duplicate. The original copy shall be given to the customer and the duplicate retained by the licensee. The acknowledgment shall be in substantial form the following form:

ACKNOWLEDGMENT

THRIFT CERTIFICATES, OR SIMILAR EVIDENCES OF INDEBTEDNESS, ISSUED BY THIS CORPORATION:

- 1) ARE NOT INSURED OR GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) OR ANY OTHER FEDERAL AGENCY, AND
- 2) ARE NOT INSURED OR GUARANTEED BY THE STATE OF IOWA OR ANY OF ITS AGENCIES.
- 3) ARE INVESTMENTS AND SUBJECT TO INVESTMENT RISKS, INCLUDING THE POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED.

You are entitled to a copy of the firm's Disclosure Document and a copy of the firm's most current audited financial statements.

Your signature(s) below indicate(s) you have read and received a copy of this document.

Date: _____
 Signature: _____
 Signature: _____
 Signature: _____
 Signature: _____

16.11(2) Disclosure. A licensee shall, before issuing thrift certificates or similar evidences of indebtedness that are not insured by a federal deposit insurance agency, have available for distribution a disclosure document. The disclosure document and any changes to the disclosure document shall be approved by the superintendent. The disclosure document shall contain all material facts necessary to make an informed investment decision with respect to the purchase of a thrift certificate or similar evidence of indebtedness. The disclosure document will provide, at a minimum, the following:

- a. A synopsis of the licensee's primary business.
- b. A synopsis of management's experience and expertise.
- c. A statement that thrift certificates have substantial restrictions on their transferability.
- d. A statement that thrift certificates or similar evidences of indebtedness are not registered under the Iowa Securities Act nor are they registered with the Securities and Exchange Commission.
- e. A statement that thrift certificates or similar evidences of indebtedness may be sold only to residents of the state of Iowa.
- f. A statement regarding the licensee's policy regarding early redemption and penalties, if any, for early redemption.
- g. A statement that thrift certificates or similar evidences of indebtedness are unsecured and purchasers rank as general creditors of the company and have rights prior to subordinated debt, debentures, capital notes and stockholders of the company.
- h. Audited financial statements setting forth in comparative form corresponding figures for the previous two fiscal or calendar year ends.

This rule is intended to implement Iowa Code section 536A.22.

ITEM 52. Rescind rule 187—16.12(536A) and insert in lieu thereof the following new rule:

187—16.12(536A) Real estate loans. A licensee may, subject to Iowa Code chapter 536A and these rules, extend credit secured by real estate; or discount, purchase, or finance vendors' or vendees' interest in real estate contracts.

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16.12(1) If the licensee issues thrift certificates or similar evidences of indebtedness that are not insured by a federal deposit insurance agency, the following documentation shall be obtained and retained for the aforementioned loans or contracts secured by real estate. These documentation requirements do not apply to loans in which a lien or an interest in real estate is taken as additional collateral through an abundance of caution. The required documentation is as follows:

- a. Loan application or similar document disclosing the name of the applicant(s), the purpose of the loan, and the proposed security.
- b. A signed and dated financial statement from the borrower(s).
- c. Credit report detailing the borrower's history of repaying debt.
- d. Written verification that the licensee's interest in the security is properly insured.
- e. Legal opinion or similar assurance affirming the validity of the licensee's lien or claim on the security.
- f. Signed and dated appraisal, completed by a qualified person after inspecting the property, which indicates the market value of the property.
- g. Legal documents including the note, security agreement, and mortgage or similar instrument constituting a lien or claim upon real estate.
- h. Copies of all documents required to be disclosed to the borrower pursuant to state or federal laws.

16.12(2) Reserved.

This rule is intended to implement Iowa Code sections 536A.20 and 536A.22.

ITEM 53. Rescind rules 187—16.13(536A) to 187—16.16(536A), 187—16.20(536A), 187—16.25(536A), 187—16.27(536A) to 187—16.28(536A), and 187—16.30(536A).

ARC 6569A**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 5, "Iowa Industrial New Jobs Training Program," Iowa Administrative Code.

The amendment defines the conditions by which community colleges determine which jobs under an Iowa Industrial New Jobs Training Project can utilize the supplemental new jobs credit from withholding.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on August 6, 1996. Interested persons may submit written or oral comments by contacting: Alan Clausen, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)281-9009.

A public hearing to receive comments about the proposed amendment will be held on August 6, 1996, at 10 a.m. at the Workforce Development Center, 150 Des Moines Street, Des Moines, Iowa, in Room 136. Individuals interested in providing comments at the hearing should contact Alan Clausen by 4 p.m. on August 5, 1996, to be placed on the hearing agenda.

This amendment is also Adopted and Filed Emergency and published herein as **ARC 6570A**. The content of that submission is incorporated by reference.

This rule is intended to implement 1996 Iowa Acts, Senate File 2351, section 8.

ARC 6571A**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to rescind Chapter 7, "Iowa Jobs Training Program," Iowa Administrative Code, and adopt a new chapter with the same title.

The rules implement program changes authorized by 1996 Iowa Acts, Senate File 2351.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on August 6, 1996. Interested persons may submit written or oral comments by contacting: Bob Lipman, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)281-9028.

A public hearing to receive comments about the proposed amendment will be held on August 6, 1996, at 1 p.m. at the Workforce Development Center, 150 Des Moines Street, Des Moines, Iowa in Room 136. Individuals interested in providing comments at the hearing should contact Bob Lipman by 4 p.m. on August 5, 1996, to be placed on the hearing agenda.

This amendment is also Adopted and Filed Emergency and published herein as **ARC 6572A**. The content of that submission is incorporated by reference.

These rules are intended to implement 1996 Iowa Acts, Senate File 2351, sections 9 to 15.

ARC 6575A**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 26, "Variance Procedures for Tax Increment Financing (TIF) Housing Projects," Iowa Administrative Code.

The proposed new rules establish the procedures to request a variance from the required level of benefit to low- and moderate-income families when conducting a housing development project using the provisions of tax increment financing.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 6, 1996. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)242-4822.

A public hearing to receive comments about the proposed new chapter will be held at 11 a.m. on August 6, 1996, at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on August 5, 1996, to be placed on the hearing agenda.

These rules are also Adopted and Filed Emergency and published herein as **ARC 6576A**. The content of that submission is incorporated by reference.

These rules are intended to implement 1996 Iowa Acts, Senate File 2464, section 24.

ARC 6573A**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby proposes amendments to Chapter 58, "New Jobs and Income Program," Iowa Administrative Code.

The proposed amendments implement changes authorized by 1996 Iowa Acts, House Files 2234 and 2481, which became effective on July 1, 1996. The amendments add new definitions, incorporate the expanded benefits authorized under the new laws, establish the process for requesting a waiver

of program requirements, and delete the valuation of incentives procedures which were administrative, not statutory requirements.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 6, 1996. Interested persons may submit written or oral comments by contacting Bob Henningsen, Business Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)242-4725.

A public hearing to receive comments about the proposed amendments will be held on August 6, 1996, at 1:30 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Betty Hadden at (515)242-4707 by 4 p.m. on August 5, 1996, to be placed on the hearing agenda.

These amendments are also Adopted and Filed Emergency and published herein as **ARC 6574A**. The content of that submission is incorporated by this reference.

These amendments are intended to implement 1996 Iowa Acts, House Files 2234 and 2481.

ARC 6551A**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 17, "Open Enrollment," Iowa Administrative Code.

Item 1 adds the definition of "timely filed" to the definitions.

Item 2 changes the date of application for open enrollment from October 30 to January 1 and removes the requirement that parents/guardians provide a reason for requesting open enrollment. The date change will allow parents additional time to consider using the open enrollment option. The removal of the requirement for providing a reason will lessen tension between the district and the parent/guardian.

Item 3 changes the approval date for the resident district to correspond with the new application date indicated in Item 1. It also allows a district, by written policy, to delegate to the district superintendent the authority to approve, but not deny, timely filed applications. This will save time and energy at board meetings and will facilitate the handling of open enrollment applications.

Item 4 expands the definition of "good cause" to include the loss of accreditation or the permanent closing of a nonpublic school of attendance. This change provides access to open enrollment to parents/guardians whose children attend a nonpublic school that either loses its state accreditation or closes permanently after the normal application date of January 1.

Item 5 changes the approval date to correspond with the new application date of January 1.

Item 6 adds nonpublic school of attendance to the good cause definition.

EDUCATION DEPARTMENT[281](cont'd)

Item 7 reletters this subrule and defines "loss of accreditation" as mentioned in Item 3 as removal of accreditation by the state board, surrender of accreditation, or permanent closure. This change will provide access to open enrollment to parents/guardians whose children attend a nonpublic school that either loses its state accreditation or closes permanently after the normal application date of January 1.

Item 8 allows districts, by written policy, to delegate to the district superintendent the authority to approve, but not deny, timely filed applications for good cause. This will save time and energy at school board meetings and facilitate the handling of open enrollment applications.

Item 9 changes the approval date to correspond with the new application date of January 1.

Item 10 rescinds a subrule that is no longer needed.

Item 11 changes the approval date to correspond with the new application date of January 1.

Item 12 clarifies that open enrollment status will not be lost when a pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. This will allow the pupil to reenroll in the receiving district when released from such a facility.

Item 13 changes the amount to be billed under open enrollment from the lower of the two districts' cost per pupil to the state cost per pupil and states that Phase III money will follow all open enrollment students. This change will greatly reduce the time spent by board secretaries and business managers on billing.

Item 14 changes the billing amounts for open enrollment students who are under competent private instruction and are dual enrolled to correspond to the change made in Item 11. This change will greatly reduce the time spent by board secretaries and business managers on billing.

Item 15 changes the billing amounts for open enrollment students in home school assistance programs to correspond to the change made in Item 11. This change will greatly reduce the time spent by board secretaries and business managers on billing.

Item 16 clarifies that both tuition and Phase III funds are prorated when open enrollment ends before a full year of attendance by the open enrolled pupil. This change will reduce the time spent by board secretaries and business managers on billing.

Item 17 clarifies and improves the process of determining the appropriateness of the use of open enrollment by a special education pupil. It also protects the interests of the resident district by requiring its participation in placement staffings.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 13, 1996. Written or oral comments should be addressed to Don Helvick, Consultant, Bureau of School Administration and Accreditation, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-5001.

A public hearing on the proposed amendments will be held on August 13, 1996, at 1 p.m. in the State Board Room, second floor, at the above address.

These amendments are intended to implement Iowa Code section 282.18 as amended by 1996 Iowa Acts, Senate File 2201, sections 1 and 2.

The following amendments are proposed.

ITEM 1. Amend rule ~~281—17.2(282)~~ by adding the following **new** definition:

"Timely filed application" includes an open enrollment request postmarked or hand-delivered on or before January 1,

an open enrollment request for "good cause" as defined in Iowa Code section 282.18(18) postmarked or hand-delivered on or before June 30, an open enrollment request filed for a continuation of an educational program postmarked or hand-delivered on or before the third Thursday of the following September, and an open enrollment request for an entering kindergarten student postmarked or hand-delivered on or before June 30.

ITEM 2. Amend subrule 17.3(1) as follows:

~~17.3(1)~~ Parent/guardian responsibilities. Between July 1 and ~~October 30~~ **January 1** of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify the district of residence of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. The parent/guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided by Iowa Code chapter 256B. ~~The formal application shall contain a statement by the parent or guardian describing the reason for enrollment in the receiving district.~~ The forms for open enrollment application are available from each public school district, area education agency, and the state department of education.

ITEM 3. Amend subrule 17.3(2), introductory paragraph and the first unnumbered paragraph, as follows:

~~17.3(2)~~ School district responsibilities. The board of the resident district shall act on an open enrollment request by no later than ~~November 30~~ **February 1** of the year preceding the school year for which the request is made. If the request is denied, the parent/guardian shall be notified by the district superintendent within three days following board action and a copy of the application form, indicating the action taken, shall be filed with the department of education. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within five days following board action and shall notify the parent/guardian within three days of this action.

The board of the receiving district shall act to approve or deny an open enrollment request by no later than ~~December 31~~ **March 1** following receipt of the request from the resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action and shall file a copy of the application form, indicating the final action on the request, with the department of education.

As an alternative procedure, either the resident board or the receiving board may by policy authorize the superintendent to approve, but not deny, timely filed applications. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed by January 1, good cause applications filed by June 30, kindergarten applications filed by June 30, continuation applications filed by the third Thursday of the following September, or any combination that the board determines. The same time lines for approval, forwarding, and notification shall apply.

ITEM 4. Amend rule 17.4(282), introductory paragraph, as follows:

~~281—17.4(282)~~ **Filing after the October 30 January 1 deadline—good cause.** A parent/guardian may apply for open enrollment after the filing deadline of ~~October 30~~ **January 1** and until June 30 of the school year preceding the school year for which open enrollment is requested if good cause ex-

EDUCATION DEPARTMENT[281](cont'd)

ists for the failure to meet the deadline. Good cause is a change in the status of the pupil's residence, or a change in the status of the pupil's resident district taking place after ~~October 30~~ *January 1*, or the closing or loss of accreditation of a non-public school of attendance after *January 1* resulting in the desire of the parent/guardian to obtain open enrollment for the following school year. If good cause can be established, the parent/guardian shall be permitted to apply for open enrollment in the same manner as if the deadline had been met.

ITEM 5. Amend subrule 17.4(1), paragraph "a," as follows:

a. A change in the family residence due to the family's moving from the district of residence anytime from ~~October 31~~ *January 1* through June 30 of the school year preceding the school year for which open enrollment is requested.

ITEM 6. Amend subrule 17.4(2), introductory paragraph, as follows:

17.4(2) Good cause related to change in status of the pupil's resident district or nonpublic school of attendance shall include:

ITEM 7. Amend subrule 17.4(2) by adding a new paragraph "d" as follows and relettering existing "d" as "e."

d. Loss of accreditation.

(1) Removal of accreditation by the state board after January 1.

(2) Surrender of accreditation after January 1.

(3) Permanent closure of a nonpublic school after January 1.

ITEM 8. Amend subrule 17.4(5), introductory paragraph, as follows:

17.4(5) Timelines for board action on applications filed after ~~October 30~~ *January 1* for good cause. Boards shall utilize the basic time frames established in subrule 17.3(2) in acting on open enrollment requests filed by a parent/guardian citing good cause as defined in subrules 17.4(1) and 17.4(2). The board of the resident district shall act on the request within 30 days of its receipt. *As an alternative procedure, the board may by policy authorize the superintendent to approve, but not deny, such applications. The same timelines for approval, forwarding, and notification shall apply.* If the request is denied, the parent/guardian shall be notified by the district superintendent within three days following board action and a copy of the application form, indicating the action taken, shall be filed with the department of education. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within five days following board action and shall notify the parent/guardian within three days of this action.

ITEM 9. Amend rule 17.7(282) as follows:

281—17.7(282) Open enrollment for kindergarten. While the regular time frame in requesting open enrollment is that an application should be made no later than ~~October 30~~ *January 1* of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application through June 30 of that school year. In considering an application for a kindergarten pupil the resident and the receiving district are not precluded from administering board-adopted policies related to enrollment loss caps, insufficient classroom space or the requirements of a desegregation plan or order.

As an alternative procedure, either the resident board or the receiving board may by policy authorize the superinten-

dent to approve, but not deny, timely filed applications under this rule. The timelines established in rule 17.4(282) shall apply to applications for a kindergarten pupil.

ITEM 10. Rescind and reserve subrule 17.8(3).

ITEM 11. Amend subrule 17.8(4), introductory paragraph, as follows:

17.8(4) Petition for attendance in an alternative receiving district. Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The petition shall be filed by the parent/guardian with the receiving district by ~~October 30~~ *January 1* of the year preceding the school year for which the change is requested. The timelines and notification requirements for such a request shall be the same as outlined in subrule 17.3(2). If the request is approved, the alternative district shall send notice of this action to the parent/guardian, to the district filing the transfer, and to the resident district of the pupil. Petitions for transfer shall be effectuated at the start of the next school year.

ITEM 12. Amend subrule 17.8(10), paragraph "a," Exceptions, as follows:

EXCEPTIONS: This rule shall not apply if the pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. In such cases, the open enrollment status ~~remains in effect for the length of time approved in the application~~ *will automatically be reinstated when the pupil returns.*

ITEM 13. Amend subrule 17.10(1) as follows:

17.10(1) Full-time pupils. For full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the ~~lower district cost per pupil of the two districts state cost per pupil for the previous year plus phase III money equal to the per pupil amount for the previous year as provided by Iowa Code chapter 294A~~ *plus any moneys received for the pupil as a result of non-English-speaking weighting provided by Iowa Code section 280.4 and phase III money allocated to the district for the full-time equivalent attendance of the pupil as provided by Iowa Code chapter 294A.*

ITEM 14. Amend subrule 17.10(2) as follows:

17.10(2) Dual enrolled pupils. For home-schooled pupils who are dual enrolled, the resident district shall pay each year to the receiving district an amount equal to .1 times the ~~lower district cost per pupil of the two districts state cost per pupil for the previous year plus phase III money equal to .1 times the per pupil amount allocated for the previous year as provided by Iowa Code chapter 294A~~ *plus any moneys received for the pupil as a result of non-English-speaking weighting provided by Iowa Code section 280.4 and phase III money allocated to the district for the full-time equivalent attendance of the pupil as provided by Iowa Code chapter 294A.*

ITEM 15. Amend subrule 17.10(3) as follows:

17.10(3) Home school assistance program pupils. For home-schooled pupils who are registered for a home school assistance program, the resident district shall pay each year to the receiving district an amount equal to .6 times the ~~lower district cost per pupil of the two districts state cost per pupil for the previous year plus phase III money equal to .6 times the per pupil amount for the previous year as provided by Iowa Code chapter 294A~~ *plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4 and phase III money allocated to*

EDUCATION DEPARTMENT[281](cont'd)

the district for the full time equivalent attendance of the pupil as provided by Iowa Code chapter 294A.

ITEM 16. Amend subrule 17.10(6) as follows:

17.10(6) Partial-year situations. In the event that the pupil who is under open enrollment withdraws from school, moves into the district of attendance, moves out of state, moves to another district in the state of Iowa and elects to attend that district, graduates at mid-year, is allowed to return to the district of residence during the school year, or other similar set of circumstances that result in the pupil no longer attending in the receiving district, payment of both cost per pupil and phase III funds will be prorated based on the number of quarters of school enrollment.

ITEM 17. Amend rule 17.11(282) as follows:

281—17.11(282) Special education students. If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B, this request shall receive consideration under the following conditions. The request shall be granted only if the receiving district maintains is able to provide within the that district a the appropriate special education instructional program for that student in accordance with Iowa rules of special education, 281—41.84(256B,273,34 CFR 300) appropriate to the pupil's needs and enrollment of the pupil in the receiving district would not cause the size of the class in that special education instructional program to exceed the maximum class size as established in rule 281—41.6(256B) for that program. This determination shall be made by both the resident district and the receiving district before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made. If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent should request a due process hearing as provided by 281—41.113(1). If the appropriateness of the special education program in the receiving district is at issue, The the final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of a diagnostic-education team from the receiving district which shall include a representative from the resident district that has the authority to commit district resources, of the area education agency in which the receiving district is located. In situations where there is no difference in appropriateness of the program for the individual special education pupil between the resident and the receiving district, the open enrollment request shall be approved.

District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 17.9(282).

The district of residence shall pay to the receiving district on a quarterly basis the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the fourth quarter payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. *The receiving district shall provide*

notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

ARC 6550A**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 36, “Extracurricular Inter-scholastic Competition,” Iowa Administrative Code.

This amendment conforms the rules to Iowa Code section 256.46.

Interested parties may comment on the proposed amendment on or before August 13, 1996. Written materials should be directed to Don Helvick, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-5001.

A public hearing will be held on August 13, 1996, at 2:30 p.m. in the State Board Room, Grimes State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing.

This amendment is intended to implement Iowa Code section 256.46.

The following amendment is proposed.

Amend subrule 36.15(3), paragraph “b,” subparagraph (3), by adding the following new numbered paragraph “8”:

8. The child is living with one of the child's parents as a result of divorce decree, separation, death, or other change in the child's parents' marital relationship.

ARC 6549A**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 102, “Procedures for Charg-

EDUCATION DEPARTMENT[281](cont'd)

ing and Investigating Incidents of Abuse of Students by School Employees," Iowa Administrative Code.

These amendments clarify where investigators shall file founded complaints involving licensed and unlicensed school employees and change the training requirements of Level I and Level II investigators of student abuse to every five years, rather than annually.

Any interested party may submit oral or written comments on the proposed amendments on or before August 7, 1996, to Ann Molis, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319; telephone (515) 281-5296.

A public hearing will be held on August 7, 1996, at 11 a.m. in the State Board Room, Department of Education, Grimes State Office Building, Des Moines, Iowa.

These amendments are intended to implement Iowa Code section 280.17.

The following amendments are proposed:

ITEM 1. Amend rule 102.2(280), definition of "Board of educational examiners," by deleting "of educational examiners" from the definition and changing the Iowa Code chapter citation from 260C to 272.

ITEM 2. Amend subrule 102.5(4) as follows:

102.5(4) Arrange for annual in-service training for the designated investigator and alternate ~~in investigating reports of abuse of students~~. *Initial training should be undertaken within six months of appointing a level-one investigator or alternate. Follow-up training should be undertaken at least once every five years.*

ITEM 3. Amend rule 102.11(280), first unnumbered paragraph, numbered paragraph "2," as follows:

2. File a complaint *against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license*, with the board on behalf of the school or district by obtaining the superintendent's signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred; *In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees;* and

ARC 6579A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455A.6 and 455B.263, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 53, "Protected Water Sources—Purposes—Designation Procedures—Information in Withdrawal Applications—Limitations—List of Protected Sources," Iowa Administrative Code.

The Iowa Department of Natural Resources has jurisdiction over the use of the water resources of the state. Chapter 53 provides for the designation of protected water resources. The general purpose of such designations is to ensure the long-term availability, in terms of quantity and quality, of water from the protected source. Rule 53.7(455B) provides for designating specific geographical areas as protected water sources. The Department may impose special limitations on water use within the designated area to meet the above purposes.

Groundwater contamination originates from what is referred to as the Ralston Site in northeastern Cedar Rapids. This site was formerly used for disposal of industrial wastes, including solvents. Groundwater contaminants (i.e., chlorinated hydrocarbon solvents) have been found a quarter of a mile to the southeast of the site. A regular program of groundwater monitoring has not shown any expansion in the area of contamination or magnitude of contamination. Despite substantial efforts to clean up the site, residual groundwater contamination is anticipated.

A protected water source designation is being proposed for the area within a mile of the Ralston Site. Municipal water is available throughout this area. New or increased withdrawals of groundwater from within this area will be restricted or denied by the Department, if necessary to prevent exposure to the contamination or expansion of the contamination. Restrictions may apply to all potential groundwater withdrawals within the area, including small private wells.

Any person may make written suggestions or comments on the proposed amendment on or before August 7, 1996. Written comments should be directed to Robert Drustrup, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, fax (515)281-8895.

A public hearing will be held on August 7, 1996, at 2 p.m. in the conference room of the Cedar Rapids Water Department, 1111 Shaver Road Northeast, Cedar Rapids, Iowa, at which time comments may be submitted orally or in writing.

Any person planning to attend the public hearing who has special requirements, such as hearing or mobility impairments, should notify the Department of Natural Resources of those needs prior to the meeting.

This amendment may impact small business.

This amendment is intended to implement Iowa Code section 455B.262.

The following amendment is proposed.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Amend rule 567—53.7(455B) by adding the following **new** subrules:

53.7(1) Ralston Site, Linn County. The area within a one-mile radius of a point which is 600 feet south of the midpoint of the northern edge of Section 2, Township 83 North, Range 7 West in Linn County is a protected water source. Any new application for a permit to withdraw groundwater or to increase an existing permitted withdrawal of groundwater from within the protected water source area will be restricted or denied, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Ralston Site is identified in the Registry of Hazardous Waste or Hazardous Substance Disposal Sites pursuant to Iowa Code section 455B.426.

Withdrawal of groundwater from within the protected water source area may also be restricted or denied from what would otherwise be nonregulated wells, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Linn County health department will refer any application for a construction permit for a private well within the protected water source area to the department's water supply section who will, after consultation with the department's geological survey bureau, determine whether the proposed well will be allowed.

53.7(2) Reserved.

ARC 6581A**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 455B.173(13), the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 65, "Animal Feeding Operations," Chapter 68, "Commercial Septic Tank Cleaners," and Chapter 121, "Land Application of Wastes," Iowa Administrative Code.

Iowa Code Supplement section 455B.204 provides that an animal feeding operation structure shall be at least 200 feet away from a lake, river, or stream which can support a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Initial lists of navigable streams, rivers

ITEM 1. Amend 567—Chapter 65, Appendix B, Table 1, "Navigable Rivers and Streams," by adding the following **new stream segments:**

and lakes subject to the separation distance were adopted by the Commission and can be found in Tables 1 and 2 of Chapter 65. However, it was realized that the lists were not comprehensive lists of navigable waters and the Commission intended to amend those tables to add waters after consultation with local officials.

County conservation boards as well as the Department of Natural Resources Fish and Wildlife Division were subsequently contacted for suggested additions to the lists of navigable streams, rivers and lakes. Items 1, 2, 3 and 4 reflect the proposed additions and changes to Tables 1 and 2 of Chapter 65. Items 1 and 2 add new waters to the lists of navigable streams and lakes and Items 3 and 4 amend the existing lists to modify the extent of the navigable portions of streams, to correct locations, or to remove waters that were found not navigable.

Items 5 and 6 make nonsubstantive changes to Chapter 68, "Commercial Septic Tank Cleaners," and Chapter 121, "Land Application of Solid Wastes," to reflect the animal manure management requirements of Iowa Code Supplement section 455B.201 and Chapter 65 rules. The existing language in Chapters 68 and 121 refers to the guidelines for land disposal of animal wastes in Chapter 65 whereas the disposal of animal wastes is now governed by a combination of guidelines and mandatory measures (e.g., manure management plans).

Any interested party may provide written or oral comments on the proposed amendments on or before August 12, 1996. Written comments should be directed to Jack Riessen, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, fax (515)281-8895.

Persons are invited to present oral or written comments at public hearings which will be held at the following locations at the indicated times:

Manchester, August 6, 1996, 1 p.m., Farmers and Merchants Savings and Trust, 101 E. Main;

Mt. Pleasant, August 7, 1996, 10 a.m., Mt. Pleasant City Council Chambers, 220 W. Monroe;

Des Moines, August 8, 1996, 9 a.m., Wallace State Office Building Auditorium, East 9th and Grand;

Emmetsburg, August 9, 1996, 1 p.m., City Hall Meeting Room, 2021 Main Street;

Atlantic, August 12, 1996, 10 a.m., Atlantic Municipal Utilities Meeting Room, 15 W. 3rd Street.

Any person who intends to attend a public hearing and has special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments may impact small businesses.

These amendments are intended to implement Iowa Code Supplement section 455B.173(13).

The following amendments are proposed.

COUNTY	RIVER/STREAM	LOCATION
Black Hawk	Buck Creek	All
	Crane Creek	Mouth to North County Line
	Miller's Creek	Mouth to West Line, S5, T87N, R12W
	Spring Creek	Mouth to Confluence with Little Spring Creek, S11, T87N, R11W
Boone	Squaw Creek	West Line of S8, T85N, R25W to East County Line

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Bremer	Crane Creek	South County Line to North Line of S9, T91N, R12W
	East Fork Wapsipinicon River	Mouth to North County Line
	Little Wapsipinicon River	East County Line to North Line of S2, T92N, R11W
	Quarter Section Run	Mouth to West Line of S35, T91N, R13W
Buchanan	Buck Creek	Mouth to West County Line
	Buffalo Creek	Mouth to Confluence of East and West Branches, S35, T90N, R8W
	Little Wapsipinicon River	Mouth to North County Line
	Otter Creek	Mouth to Confluence with Unnamed Creek, S9, T90N, R9W
Butler	Beaver Creek	All
	Boylan Creek	Mouth to North Line of S23, T92N, R18W
	Coldwater Creek	Mouth to West Line of S5, T93N, R18W
	Flood Creek	Mouth to North County Line
	Hartgrave Creek	Mouth to West County Line
	Johnson Creek	West County Line to Confluence with Beaver Creek
	South Beaver Creek	Mouth to South County Line
Calhoun	Camp Creek	Mouth to North Line of S25, T87N, R33W
	Lake Creek	Mouth to West Line of S25, T87N, R34W
Cherokee	Silver Creek	Mouth to North Line of S34, T90N, R40W
Chickasaw	Crane Creek	All
	East Fork Wapsipinicon River	South County Line to Confluence with Plum Creek, S16, T95N, R12W
	Little Wapsipinicon River	Mouth to North County Line
Clayton	Elk Creek	Mouth to Steeles Branch, S26, T91N, R4W
	Robert's Creek	Mouth to confluence with Silver Creek, S17, T94N, R5W
Delaware	Buffalo Creek	All
	Coffin's Creek	Mouth to Road Crossing, Center of S26, T89N, R6W
	North Fork Maquoketa River	All
	Plum Creek	Mouth to Confluence with Penn's Br., S18, T88N, R3W
	South Fork Maquoketa River	Mouth to West County Line
Dubuque	Little Maquoketa River	Mouth to Confluence with North Fork Little Maquoketa River, S31, T90N, R1E
	North Fork Little Maquoketa River	Mouth to confluence with Middle Fork Little Maquoketa River, S35, T90N, R1E
	Lytle Creek	South County Line to Confluence with Buncombe Creek, S19, T87N, R2E
	Whitewater Creek	South County Line to confluence with John's Creek, S25, T87N, R1W
Fayette	Little Wapsipinicon River	All
Floyd	Flood Creek	South County Line to Road Crossing, S32, T96N, R17W
	Rock Creek	Mouth, S24, T97N, R17W to North County Line
Greene	Buttrick Creek	Mouth to North County Line
Guthrie	Brushy Creek	Mouth to North Line of S35, T81N, R33W (County Road F24)
	Mosquito Creek	S36, T81N, R32W to Hwy 4, S17, T81N, R30W
	Middle River	South County Line to County Road N54
	Willow Creek	Mouth to North County Line
Henry	Crooked Creek	All
Howard	Crane Creek	South County Line to Hwy 9
	Little Wapsipinicon River	South County Line to North Line of S23, T98N, R14W
	North Branch Turkey River	Mouth to Highway 9
Jackson	Bear Creek	Mouth to West County Line
	Deep Creek	Mouth to South County Line
	Lytle Creek	Mouth to North County Line
	Prairie Creek	Mouth to Hwy 64, S20, R84N, R3E
Jefferson	Crooked Creek	All
Jones	Whitewater Creek	Mouth to North County Line
Linn	Buffalo Creek	All

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Louisa	Honey Creek	Mouth to East Line of S25, T76N, R5W
	Short Creek	Mouth to West Line of S6, T75N, R5W
	East Fork Crooked Creek	All
	Buffington Creek	Mouth to West Line of S18, T74N, R5W
	Indian Creek	Mouth to North Line of S1, T75N, R4W
	Otter Creek	Mouth to South Line of S16, T73N, R4W
	Roff Creek	Mouth to South Line of S36, T73N, R4W
	Johnny Creek	Mouth to East Line of S6, T74N, R4W
	Honey Creek	Mouth to South Line of S32, T73N, R3W (Morning Sun Twp.)
	Smith Creek	Mouth to South Line of S31, T73N, R2W
Madison	North Branch North River	Mouth to West County Line
	North River	East County Line to East Line of S17, T76N, R28W
Mitchell	Deer Creek	Mouth to West County Line, S6, T99N, R18W
	Rock Creek	South County Line to Road Crossing, West Line S7, T97N, R17W
	Spring Creek	Mouth to North Line of S29, T98N, R16W
	Turtle Creek	Mouth to North Line S7, T99N, R15W
O'Brien	Ocheydan River	All
Palo Alto	Cylinder Creek	Mouth to confluence with DD#21, S24, T95N, R32W
	Jack Creek	Mouth to West Line of S11, T97N, R33W
Pocahontas	North Branch Lizard Creek	Mouth to North Line of S6, T91N, R31W
Polk	Indian Creek	All
	Walnut Creek	All
	Four Mile Creek	Mouth to South Line of S1, T80N, R24W
Story	Indian Creek	South County Line to confluence with East and West Branches in S16, T82N, R22W
	East Indian Creek	Mouth to Highway 30
	Squaw Creek	Mouth to West County Line
	West Indian Creek	Mouth to Highway 30
Webster	South Branch Lizard Creek	Mouth to West County Line
Winneshiek	Little Turkey River	All
	Turkey River	All
Wright	Otter Creek	Mouth to West Line of S14, T92N, R26W

ITEM 2. Amend 567—Chapter 65, Appendix B, Table 2, "Navigable Lakes," by adding the following new waterbodies:

COUNTY	LAKE	LOCATION
Black Hawk	Mitchell Lake	Waterloo
Calhoun	Calhoun Wildlife Area	4 Miles East of Manson
	Hwy. 4 Recreation Area	1 Mile South of Rockwell City
	South Twin Lake	5 Miles North of Rockwell City
Crawford	Ahart/Rudd Natural Resource Area	2 Miles South of Dow City, S21, T82N, R40W
Chickasaw	Airport Park Lake	S35, T96N, R13W
	Split Rock Park Lake	5 Miles Southwest of Fredericksburg
Clay	Elk Lake	3 Miles South, 1 Mile West of Ruthven
Dubuque	Heritage Pond	2 Miles North of Dubuque on Rupp Hollow Road
Franklin	Maynes Grove Lake	4 Miles South of Hampton on Hwy. 65
Hamilton	Andersen Lake/Marsh	1 Mile East of Jewell
	Bjorkboda Marsh	S36, T86N, R26W
	Gordons Marsh	S33 and 34, T88N, R26W
Henry	City of Westwood Pond	S11, T71N, R7W
	Gibson Park Pond	S28, T71N, R7W
	East Lake Park Pond	Mt. Pleasant
	Crane's Pond	Mt. Pleasant

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Louisa	Cone Marsh	10 Miles Northwest of Columbus Jct.
	Indian Slough	4 Miles Northwest of Wapello
	Iowa Slough	3 Miles Southeast of Oakville
Marion	Roberts Creek Lake	S28, 29, 33 and 34, Summit Twp.
Monona	Utterback Pond	3 Miles North, 3 Miles West of Castana
	Peters Park Pond	1 Mile East of Rodney
O'Brien	Hagan Wildlife Pond	S13, T95N, R41W
	Negus Wildlife Area Pond	S30, T94N, R39W
	Tjossem Park Ponds	S6, T95N, R40W
Osceola	Ashton Park Lake	S14, T98N, R42W
	Ashton Pits Access Area	S11, T98N, R42W
	Iowa Lake	S9, T100N, R39W
	Leinen Pits	S25, T99N, R42W
	May City Pit	S5, T98N, R39W
	Ocheyedan Pits	S24, T99N, R40W
	Peters Pits	S19, T100N, R42W
	Thomas Pit	S36, T99N, R40W
	Willow Creek Lake	S31, T100N, R40W
Palo Alto	Virgin Lake	2 Miles South of Ruthven
	Rush Lake	9 Miles West of Mallard
Plymouth	Hillview Lake	1 Mile Northwest of Hinton
	Silver Maple Primitive Area Lake	3 Miles Southeast of Akron
	Southeast Wildwood Park Pond	3 Miles Northeast of Kingsley
Polk	Two Dam Pond	Jester Park near Polk City
	Skull Pond	Jester Park near Polk City
	Teal Pond	Jester Park near Polk City
	Case's Lake	Des Moines, S13, T78N, R24W
	Carney Marsh	Ankeny
	Yellow Banks Park Pond	4 Miles Southeast of Pleasant Hill
	Thomas Mitchell Park Pond	2 Miles Southwest of Mitchellville
Story	Engledinger Marsh	6 Miles Northwest of Bondurant
	McFarland Lake	4 Miles Northeast of Ames
	Dakin's Lake	½ Mile North of Zearing
Wayne	Hendrickson Marsh	3 Miles Northeast of Collins
	Medicine Creek Wildlife Area Complex	6 Miles East of Lineville
Wright	Wall Lake	10 Miles Southeast of Clarion

ITEM 3. Amend 567—Chapter 65, Appendix B, Table 1, "Navigable Rivers and Streams," as follows:

COUNTY	RIVER/STREAM	LOCATION
Allamakee	Paint Creek	Mouth Confluence with Little Paint Creek, S33, T97N, R3W, upstream to road crossing in S18, T97N, R4W
	Yellow River	Mouth, S34, T96N, R3W to West Line S24, T96N, R5W Confluence with Upper Branch Yellow River, S4, T96N, R6W
Appanoose	North Chariton River	Rathbun Lake to Hwy. 14
Benton	Bear Creek	North Benton County Line to Mouth at Cedar River, S21, T86N, R10W
	Opossum Creek	SE¼ S5, T84N, R9W to East Benton/Linn County Line
Buena Vista	Beaver Creek	All
	Hartgraves Creek	West County Line to Mouth at West Fork of Cedar River
Calhoun	Cedar Creek	South County Line to S31, T87N, R31W Confluence with West Cedar Creek
Cedar	Clear Creek	East Line of S21, T82N, R4W to Mouth at Cedar River

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Clayton	Maquoketa River	South County Line-Confluence with South Fork Maquoketa River, S16, T90N, R6W Delaware County, upstream to North Line S31, T91N, R6W
Clinton	Drainage Ditch 12	South West Line of S30, T82N, R2E to Mouth at the Wapsipinicon River
Delaware Dubuque	Harts Mill Creek	South East Line of S8, T81N, R6E to Mouth at Mill Creek
	Twin Springs Creek	Mouth, S2, T90N, R4W, to Spring Source S12, T90N, R4W
Fayette	Catfish Creek	Mouth to North Line of S16, T88N, R2E, to South Line S17, T88N, R2E
	North Fork Maquoketa River	All South County Line to Confluence with Hewitt Creek, Sec. 29, T89N, R2W
Fayette	Bass Creek a/k/a Turners	Mouth, S3, T95N, R9W to West Line S3, T95N, R9W
	Volga River	East County Line to South Line S22, T93N, R8W Confluence with Little Volga River, S2, T92N, R9W
Grundy	North Black Hawk Creek	NE¼ S8, T88N, R15W to Black Hawk County Line Mouth
	Wolf Creek	N¼ of S31, T86N, R17W to Black Hawk County Line
Hamilton	Skunk River	South County Line to Hwy. 175 County Road D41
Howard	Turkey River	East Line S12, T98N, R11W to Hwy. 9 County Line to West Line of S1, T98N, R12W
	Upper Iowa River	East Line S12, T100N, R11W to North Line S11, T100N, R14W All
Keokuk	Wapsipinicon River	South Line S17, T97N, R14W to West Line S19, T98N, R14W All
	South Fork, English River	West County Line to Mouth at the English River All
Louisa	Big Slough Creek	East Line of S7, T74N, R5W to Mouth at Long Buffington Creek
Mitchell	Beaver Creek	Mouth at S1, T98N, R16W to North Line S8, T99N, R15W
	Wapsipinicon River	Town of McIntire-East County Line upstream to North Line of S20, T100N, R15W
Muscatine	Mud Creek	West Line of S5, T78N, R1E to Mouth at Mississippi River-Sugar Creek
Plymouth	North Branch, Lizard Creek	North Line of S6, T91N, R31W to Mouth with Lizard Creek
Sioux	Rock Rock River	All
Wayne	North Chariton River	Rathbun Lake to Hwy. 14 All
Winneshiek	Bear Creek	Confluence with North Bear Creek S25, T100N, R7W upstream East County Line to County Road A24 in S34, T100N, R15W
	Canoe Creek	County Road W38N, S23, T99N, R8W upstream East County Line to West Line of S8, T99N, R8W
	Nichols Creek	Mouth S18, T100N, R10W to West Line S18, T100N, R10W
	Silver Creek	Mouth at Upper Iowa River to North Line S26, T100N, R9W

ITEM 4. Amend 567—Chapter 65, Appendix B, Table 2, “Navigable Lakes,” as follows:

COUNTY	LAKE	LOCATION
Palo Alto	Elk	1 mile West, 3 miles South of Ruthven

ITEM 5. Amend subrule 68.9(2) as follows:

68.9(2) Disposal of waste from animal confinement feeding operations shall be consistent with *the guidelines in provisions of 567—Chapter 65* for land disposal of animal wastes. *Animal wastes from an animal confinement feeding operation shall be applied in accordance with the provisions applicable for that facility.*

ITEM 6. Amend subrule 121.1(1) as follows:

121.1(1) General. This chapter shall apply to the land application of solid wastes, except domestic septage, sewage sludge, animal manure, animal bedding and crop residue. Land application of animal manure should be in confor-

mance with “Guidelines of Iowa Water Quality Commission on Land Disposal of Animal Wastes” following *the provisions of 567—Chapter 65*. Land application of water supply sludge and certain other approved wastes is governed by 121.2(455B). Land application of other waste without a permit is governed by 121.3(455B). Land application of wastes which require a permit is governed by 121.4(455B). These rules establish permit requirements and exemptions for home and crop use and general exemptions for other wastes, contamination levels and other requirements for the disposal of solid wastes by land application. Land application of sewage sludge is governed by 567—Chapter 67.

ARC 6556A**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Termination
and
Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 455B.474, the Environmental Protection Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on November 8, 1995, as **ARC 6013A** and gives Notice of Intended Action to amend Chapter 133, "Rules for Determining Cleanup Actions and Responsible Parties," and Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

1995 Iowa Acts, chapter 215, section 30, established a technical advisory committee (TAC) consisting of representatives of various interested groups of citizens who were to work jointly with the Iowa Department of Natural Resources to implement "risk-based corrective action" rules applicable to releases of regulated substances from underground storage tanks. A Notice of Intended Action was published in the Iowa Administrative Bulletin on November 8, 1995, as **ARC 6013A**. Six public hearings were held, the last of which was on December 13, 1995. Pursuant to Iowa Code section 17A.4(1)"b," this Notice of Intended Action terminated on June 10, 1996, due to the expiration of the statutory 180 days which runs from the date of the last oral presentation.

Any interested party may submit written comments on the proposed amendments on or before August 23, 1996. Written comments should be directed to Keith Bridson, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, fax (515) 281-7212.

Persons are invited to present oral or written comments at public hearings which will be held as follows:

Hampton State Bank 100 1st Street NW Hampton, Iowa	August 6, 1996 10 a.m.
Atlantic Meeting Center 1804 E. 7th Street Atlantic, Iowa	August 7, 1996 10 a.m.
Delaware County Community Center Fairgrounds 200 E. Acres Manchester, Iowa	August 8, 1996 1 p.m.
National Guard Armory (Drill Floor) Jct. Highways 1 and 92 Washington, Iowa	August 12, 1996 10 a.m.

Auditorium South Elementary School 310 Cayuga Street Storm Lake, Iowa	August 14, 1996 1 p.m.
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Auditorium Wallace State Office Building 900 E. Grand Des Moines, Iowa	August 15, 1996 1 p.m.
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Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments may have an impact on small business as provided in Iowa Code section 17A.31.

These amendments are intended to implement Iowa Code Supplement section 455B.474 and 1995 Iowa Acts, chapter 215, section 30.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6555A**. The content of that submission is incorporated by reference.

ARC 6547A**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 156, "Payments for Foster Care and Foster Parent Training," appearing in the Iowa Administrative Code.

These amendments increase the annual clothing allowance for children in family foster care from \$100 to \$200. The annual clothing allowance for children in group care remains at \$100. These amendments also increase the rates paid to foster family homes for providing emergency care to a child in the home by \$2.51 per day.

The increase in clothing allowance will assist foster parents in meeting the increased costs of clothing. The emergency rate has not increased for children needing foster family care for two years, and money for these two increases was included in the Fiscal Year 1997 appropriation.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before August 7, 1996.

These amendments are intended to implement Iowa Code section 234.38.

The following amendments are proposed.

ITEM 1. Amend subrule 156.8(1) as follows:

156.8(1) Clothing allowance. When in the judgment of the worker clothing is needed at the time the child is removed from the child's home and placed in foster care, an allowance may be authorized, not to exceed \$250, to purchase clothing.

HUMAN SERVICES DEPARTMENT[441](cont'd)

A second clothing allowance, not to exceed \$100 \$200 for family foster care and \$100 for all other levels, may be approved, not more than once within a calendar year, by the worker when a child in foster care needs clothing to replace lost clothing or because of unusual growth or weight change, and the child does not have escrow funds.

ITEM 2. Amend subrule 156.11(2) as follows:

156.11(2) Foster family home payment. Foster family homes may be designated to provide emergency care and may be paid on a daily rate per child when a child is placed. Rates for children shall be:

Age of child	Rate
Age 0 - 11	\$11.49 \$14 per day
Age 12 and over	\$19.12 \$21.63 per day

ITEM 3. Amend rule 441—156.11(234), implementation clause, to read as follows:

This rule is intended to implement Iowa Code section 234.38 and 1995 Iowa Acts, Senate File 462, section 10, subsection 9.

ARC 6548A

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapters 505 and 507B, the Insurance Division hereby gives Notice of Intended Action to rescind Chapter 15, “Unfair Trade Practices,” Iowa Administrative Code, and to adopt a new Chapter 15 with the same title.

The proposed new chapter deletes outdated references, groups similar concepts in the same subrule and, in some cases, establishes new conduct standards for insurance producers. The proposed chapter also lists all forms that accompany the chapter in a separate appendix.

Any interested persons may submit written suggestions or comments on this proposed chapter and the issues raised in this Notice of Intended Action. Written comments should be directed to Rosanne Mead, Iowa Insurance Division, Lucas State Office Building, Des Moines, Iowa 50319, and must be received at the Division no later than August 9, 1996.

A public hearing will be held on August 9, 1996, at 9 a.m. in the Sixth Floor Conference Room of the Insurance Division at the Lucas Building in Des Moines, Iowa. Interested persons may submit comments orally or in writing at the hearing. The hearing will be recorded electronically, and all persons who wish to make oral presentations should submit a written request in advance to schedule time for their presentations. All persons that require assistive technology should contact the Division at (515)281-5705 to inquire about any special accommodations. All persons that attend the hearing will be asked to sign an attendance record.

These rules are intended to implement Iowa Code chapter 507B.

The following rules are proposed.

Rescind 191—Chapter 15 and adopt the following **new** chapter:

CHAPTER 15

UNFAIR TRADE PRACTICES

191—15.1(507B) Purpose. This chapter is intended to establish certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B.

191—15.2(507B) Definitions.

“Advertisement” for the purpose of these rules shall be material designed to create public interest in insurance or an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy including:

1. Printed and published material, audio and visual material, oral statements, and descriptive literature of an insurer or producer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, computer on-line networks and similar displays; descriptive literature and sales aids of all kinds issued by an insurer or producer for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; sales talks, presentations, and material for use by producers; and material and oral instruction used by an insurer or producer for the recruitment, training, and education of sales personnel and producers.

2. However, for the purpose of these rules “advertisement” shall not include: communications or materials used within an insurer’s own organization and not intended for dissemination to the public; communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, or retain a policy; and a general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

“Duplicate Medicare supplement insurance” shall mean the sale or the attempt to knowingly sell to a person a policy of insurance designed to supplement Medicare benefits as provided in The Health Insurance for the Aged Act, Title XVII of the Social Security Amendments of 1965 as then constituted or later amended when the person is already insured under such a policy.

“Duplication” means policies of the same coverage type which overlap to the extent that a reasonable person would not consider the ownership of the policies to be beneficial.

“Exception” for the purpose of these rules shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

“Insurer” shall mean any person, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s, fraternal benefit society, and any other legal entity engaged in the business of insurance.

“Limitation” for the purpose of these rules shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

“Person” shall mean any individual, corporation, association, partnership, trust or benevolent association.

“Preneed funeral contract or prearrangement” shall mean an agreement by or for a person before the person’s death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

INSURANCE DIVISION[191](cont'd)

"Producer" shall mean a person who solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance for risks residing, located or to be performed in this state.

"Reduction" for the purpose of these rules shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

"Twisting" shall mean any action by a producer or insurer to induce or attempt to induce any person to lapse, forfeit, surrender, terminate, retain, assign, borrow or convert a policy of one insurer in order that such person procure a policy of another insurer, when such action would operate to the overall detriment of the interests of the person.

191—15.3(507B) Advertising.

15.3(1) Form and content of advertisements. The format and content of an advertisement shall be truthful and sufficiently complete and clear to avoid deception or the capacity or tendency to misrepresent or deceive. Whether an advertisement has a capacity or tendency to misrepresent or deceive shall be determined by the overall impression that the advertisement may be reasonably expected to create upon a person in the segment of the public to which it is primarily directed and who has average education, intelligence and familiarity with insurance terminology for products in that market.

15.3(2) Prohibited terms and disclosure requirements for health insurance.

a. No advertisement shall contain or use words or phrases such as "all"; "full"; "complete"; "comprehensive"; "unlimited"; "up to"; "as high as"; "this policy will help fill some of the gaps that Medicare and your present insurance leave out"; "this policy will help to replace your income" (when used to express loss of time benefits); or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.

b. No advertisement shall contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit, such as, describing a waiting period as a "benefit builder," or stating "even preexisting conditions are covered after two years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.

c. No advertisement of a benefit for which payment is conditional upon confinement in hospital or similar facility shall use words or phrases such as "tax free," "extra cash" and substantially similar phrases which have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable a person to make a profit from being hospitalized.

d. No advertisement shall use the words "only"; "just"; "merely"; "minimum" or similar words or phrases to describe the applicability of any exceptions and reductions, such as: "this policy is subject to the following minimum exceptions and reductions."

e. An advertisement which refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

f. A policy which contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss shall prominently disclose the existence of such periods.

15.3(3) Prohibited terms in life insurance and annuity policies. No advertisement for a life insurance or annuity policy shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," "retirement plan," or other similar term which has the capacity or tendency to mislead an insured or prospective insured to believe that the insurer is offering something other than an insurance policy or some benefit not available to other persons of the same class and equal expectation of life. An advertisement shall not state that there are "no more premiums" or that premiums will "vanish" or "disappear" or use similar terms when such statement is not based on the guaranteed rates.

15.3(4) Exclusions, limitations, exceptions and reductions. Words and phrases used in an advertisement to describe policy exclusions, limitations, exceptions and reductions shall clearly, prominently and accurately indicate the negative or limited nature of the exclusions, limitations, exceptions and reductions.

15.3(5) Use of statistics. An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

15.3(6) Introductory, initial or special offers.

a. An advertisement shall not directly or by implication represent that a policy is an introductory, initial or special offer, or that a person will receive advantages not available at a later date, or that the offer is available only to a specified group of persons, unless such is the fact.

b. An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the initial reduced premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium and the renewal premium must be stated in each portion of the advertisement where the initial reduced premium appears. This paragraph shall not apply to annual renewable term policies.

15.3(7) Testimonials or endorsements by third parties.

a. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of these rules.

b. If the person making a testimonial, an endorsement or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for such "scale" for TV or radio performances. The payment of substantial amounts, directly or indirectly, for "travel

INSURANCE DIVISION[191](cont'd)

and entertainment" for filming or recording of TV or radio advertisements constitutes compensation and requires disclosure. This rule does not apply to an institutional advertisement which has as its sole purpose the promotion of the insurer.

c. An advertisement which states or implies that an insurer or an insurance product has been approved or endorsed by any person or other organizations must also disclose any proprietary or other relationship between the parties.

15.3(8) Disparaging and incomplete comparisons and statements. An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of noncomparable policies of other insurers, and shall not disparage other insurers, their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance. An advertisement shall not contain statements which are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of an insurer in the insurance business.

15.3(9) Identity of insurer.

a. The name of the actual insurer shall be clearly and prominently identified in all advertisements for a particular policy. An advertisement shall not use a trade name, insurance group designation, name of a parent company, name of a particular company division, service mark, slogan, symbol or other device which would have the capacity and tendency to misrepresent the true identity of an insurer.

b. No advertisement shall use any combination of words, symbols, or physical materials which by its content, phraseology, shape, color or other characteristics is so similar to combinations of words, symbols, or physical materials used by a municipal, state or federal agency which would lead a reasonable person to believe that the advertisement is approved, endorsed or accredited by an agency of the municipal, state, or federal government.

15.3(10) Disclosure requirements for life insurance and annuities.

a. An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

b. An advertisement for a policy with nonlevel premiums shall prominently describe the premium changes.

c. Dividends.

(1) An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, the illustration must be based on the insurer's current dividend scale and must contain a statement that the illustration is not to be construed as a guarantee or estimate of dividends to be paid in the future.

(2) An advertisement shall not state or imply that illustrated dividends under a participating policy or pure endowments will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains (1) what benefits or coverage would be provided at such time and (2) under what conditions this would occur.

d. An advertisement of a deferred annuity shall not state the net premium accumulation interest rate unless it discloses in close proximity thereto and with equal prominence the actual relationship between the gross and net premiums.

e. An advertisement that illustrates the projected values of a policy must use the guaranteed interest rates in determin-

ing such projected values and, in addition, may show other projected values based on interest rates not greater than those currently being credited by the company. Any illustrations or statements containing or based upon an interest rate higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. If the policy does not contain a provision for a guaranteed interest rate, any illustration showing projected values must clearly state that the rates are not guaranteed.

f. An advertisement or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such advertisement may be used for the purpose of demonstrating the cash flow pattern of a policy if such advertisement is accompanied by a statement disclosing that the advertisement does not recognize that, because of interest, a dollar in the future may not have the same value as a dollar at the time of the presentation.

g. An advertisement of benefits shall not display guaranteed and nonguaranteed benefits as a single sum unless they are also shown separately in close proximity thereto.

h. A statement regarding the use of life insurance cost indexes shall include an explanation that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

i. A life insurance cost index which reflects dividends or an equivalent level annual dividend shall be accompanied by a statement that it is based on the insurer's current dividend scale and is not guaranteed.

191—15.4(507B) Life insurance cost and benefit disclosure requirements.

15.4(1) Except as hereafter exempted, this rule shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This rule shall apply to any insurer issuing life insurance contracts including fraternal benefit societies.

Unless otherwise specifically included, this rule shall not apply to:

a. Annuities.

b. Credit life insurance.

c. Group life insurance, except for disclosures relating to preneed funeral contracts or prearrangements as provided herein. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy.

d. Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).

e. Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

15.4(2) The definition of terms applicable to this rule and its appendices will be found in Appendix I.

15.4(3) Prior to or at delivery of a life insurance policy, an insurer or producer shall provide the prospective purchaser a life insurance buyer's guide in the current form prescribed by the National Association of Insurance Commissioners and a policy summary.

15.4(4) In the case of policies whose equivalent level death benefits do not exceed \$5000, the requirement for providing a policy summary will be satisfied by delivery of a written statement containing the information described in

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Appendix I, "Policy Summary," paragraphs "2," "3," "4," "5(a)," "5(b)," "5(c)," "6," "7," "10," and "11."

191—15.5(507B) Requirements for life insurance policies sold to an applicant at the age of 60 or over.

15.5(1) Whenever a policy is issued for delivery in this state to a person at the age of 60 or over that limits death benefits during a period following the inception date of the policy or where the accumulated premiums exceed the death benefit at any point during the first ten years, then the form entitled "Financial Review of This Policy," reproduced as Appendix II, or a form containing substantially similar information approved by the insurance commissioner, shall be completed by the insurer and delivered simultaneously with the policy and the free-look period for the policy shall be extended to 30 days. In addition, the National Association of Insurance Commissioners' "Guide to Buying Life Insurance After Age 60" shall be simultaneously delivered with the policy. A copy of the guide can be obtained by contacting the National Association of Insurance Commissioners, 120 West 12th Street, Suite 1100, Kansas City, Missouri 64105-1925.

15.5(2) Before taking an application for a policy that is subject to the disclosure requirements of this rule, the insurer or producer must provide the applicant with a prominent notice in the following form or in a form approved by the insurance commissioner containing substantially similar information:

NOTICE TO APPLICANTS AGED 60 OR OVER

With your policy, you may receive a "Financial Review of This Policy" form showing premiums and benefits for a ten-year period. You should review the form and your policy and decide if the policy is suitable for you. If you are not entirely satisfied, please review the cancellation provision on the form for directions on obtaining a full refund of any premiums paid.

15.5(3) In addition to all other information required by this rule, in those situations specified under subrule 15.5(1), the information illustrated in the form reproduced in Appendix II shall be prepared on an individual basis.

15.5(4) If an insurer uses a form other than the "Financial Review of This Policy" form, that form must be approved for use by the insurance commissioner. An insurer may use the appropriate box or boxes from the top of the disclosure form for the specific policy being illustrated without seeking the insurance commissioner's approval for this change in the form.

15.5(5) If cost of insurance, nonguaranteed dividends or benefits or potential preferential tax implications are presented in the policy or advertising, the producer, or company if a direct marketer, shall attach those materials to the "Financial Review of This Policy" form at delivery of the policy if not previously provided.

15.5(6) If any method other than the "Financial Review of This Policy" form is used to explain the death benefit, a copy of the illustration, signed by the applicant and the producer, must be attached to the form.

15.5(7) A copy of this individual information shall be retained by the insurer as long as the policy remains in force, plus five years. This copy can be by microfiche or other electronic means including an insurer's computer records.

191—15.6(507B) Health insurance sales to persons 65 years of age or older.

15.6(1) The sale of duplicate Medicare supplement insurance is prohibited.

15.6(2) Prohibition of sale without acknowledgment of nonduplication.

a. Insurers or producers shall obtain an acknowledgment of nonduplication as set forth in Appendix III with all applications for any type of health insurance sold to an individual who is 65 years of age or older. This acknowledgment shall be obtained at the same time as the application and shall be submitted to the insurer with the application.

b. In order to obtain this acknowledgment, insurers or producers shall offer to examine all health insurance policies owned by a prospective purchaser and advise that person as to whether the purchase of the proposed policy will result in any duplication of benefits.

c. Insurers who do not use producers shall implement a similar system of review at no cost to the proposed insured.

191—15.7(507B) Preneed funeral contracts or prearrangements.

15.7(1) Advertising. An advertisement for the solicitation or sale of a preneed funeral contract or prearrangement which is funded or to be funded by a life insurance policy or annuity contract shall adequately disclose the following:

a. The fact that a life insurance policy or annuity contract is involved or being used to fund a prearrangement, and

b. The nature of the relationship among the soliciting producer or producers, the provider of the funeral or cemetery merchandise or services, the administrator and any other person.

15.7(2) Application. Prior to accepting an application, initial premium or deposit, an insurer or producer must adequately disclose:

a. The relationship of the life insurance policy or annuity contract to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

b. The impact on the prearrangement of any:

(1) Changes in the life insurance policy or annuity contract, including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds,

(2) Penalties to be incurred by the policyholder as a result of failure to make premium payments,

(3) Penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract;

c. A list of the merchandise and services which are supplied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

d. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the prearrangement;

e. Any penalties or restrictions including, but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and

f. The fact that a sales commission or other form of compensation is being paid and, if so, the identity of the person to whom it is paid.

191—15.8(507B) Twisting prohibited. No insurer or producer shall engage in the act of twisting.

191—15.9(507B) Sales presentation guidelines.

15.9(1) Required disclosures. A producer shall inform the prospective purchaser, prior to commencing an insurance sales presentation, that the producer is acting as an insurance

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producer and inform the prospective purchaser of the producer's full name and the full name of the insurance company which the producer will represent in the insurance sales presentation. In sales situations in which a producer is not involved, the insurer shall identify its full name to a prospective purchaser.

15.9(2) Improper sales tactics.

a. Producers and insurers shall not employ any method of marketing or tactic which uses undue pressure, force, fright, threat, whether explicit or implied, to solicit the purchase of insurance.

b. A producer shall not, without good cause:

(1) Allow a producer or a relative of a producer to be named as owner or beneficiary of a life insurance policy or annuity insuring the life of an unrelated insurance customer. Transactions which involve nominal interim ownership immediately precedent to transfer of ownership into trust are exempt from this subrule;

(2) Be named as a beneficiary in a will of an unrelated insurance customer;

(3) Obtain a personal loan or a monetary gift from an unrelated insurance customer;

(4) Execute a transaction for an insurance customer without authorization by the customer to do so; or

(5) Commit any act which shows that the producer has exerted undue influence over a person to take advantage of the producer/customer relationship.

c. Producers and insurers shall not, without good cause:

(1) Fail or refuse to furnish any person, upon reasonable request, information to which that person is entitled, or to respond to a formal written request or complaint from any person.

(2) Sell an insurance policy or rider to a person which is a duplication of a policy or rider which the person owns or for which the person has applied at the time of sale; or

(3) Sell one of the following listed policies or riders to a person who, at the time of sale, already owns, or has applied for two of the following policies or riders: basic hospital expense coverage, basic medical-surgical coverage, hospital confinement indemnity coverage, accident-only coverage and specified disease and specified accident coverage.

15.9(3) Prohibited designations and fees.

a. A producer shall not represent, directly or indirectly, that the producer is a "financial planner," "investment adviser," "financial counselor," or any other specialist engaged solely in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when the intent of the producer is to engage in the sale of insurance. This subrule does not prohibit the use of designations acquired through a recognized national program.

b. Producers shall not charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies. This prohibition shall not apply to assigned risk policies and commercial property/casualty policies. Any additional fee that a producer intends to charge for these policies must be fully disclosed to the insured.

15.9(4) Suitability. A producer shall not recommend to any person the purchase, sale or exchange of any life insurance policy, annuity or any rider, endorsement or amendment thereto, without reasonable grounds to believe that the transaction or recommendation is suitable for the person based upon reasonable inquiry concerning the person's insurance objectives, financial situation and needs, age and other relevant information known by the producer. For purposes of

this subrule, when a producer recommends a group life insurance policy or annuity, "person" shall refer to the intended group policyowner.

191—15.10(507B) Right to return a life insurance policy or annuity (free-look). An individual policyowner has the right, within ten days after receipt of a life insurance policy or annuity, to a free-look period. During this period, the policyowner may return the life insurance policy or annuity to the insurer at its home office, branch office, or to the producer through whom it was purchased. If so returned, the premium paid will be promptly refunded, the policy or annuity voided and the parties returned to the same position as if a policy or annuity had not been issued.

191—15.11(507B) Uninsured/underinsured automobile coverage—notice required.

15.11(1) Contents of notice. Automobile insurance policies delivered in this state shall include a notice which contains and is limited to the following language:

NOTICE REGARDING**UNINSURED/UNDERINSURED COVERAGE**

Uninsured/underinsured coverage does not cover damage done to your vehicle. It provides benefits only for bodily injury caused by an uninsured or underinsured motorist. If you wish to be insured for damage done to your vehicle, you must have collision coverage. Please check your policy to make sure you have the coverage desired.

15.11(2) Form of notice. Notice may be provided on a separate form or may be stamped on the declaration page of the policy. The notice shall be provided in conjunction with all new policies issued. Notice may be provided at the time of application but shall in no case be provided later than the time of delivery of the new policy. Insurers may inform applicants that the notice in this rule is required by the insurance division.

191—15.12(507B) Unfair discrimination.**15.12(1) Sex discrimination.**

a. A contract shall not be denied to a person based solely on that individual's sex or marital status. No benefits, terms, conditions or type of coverage shall be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent permitted under the Iowa Code or administrative code. An insurer may consider marital status for the purpose of defining persons eligible for dependents' benefits. This subrule does not apply to group life insurance policies or group annuity contracts issued in connection with pension and welfare plans which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).

b. Specific examples of practices prohibited by this subrule include, but are not limited to, the following:

(1) Denying coverage to persons of one sex employed at home, employed part-time or employed by relatives when coverage is offered to persons of the opposite sex similarly employed.

(2) Denying policy riders to persons of one sex when the riders are available to persons of the opposite sex.

(3) Denying a policy under which maternity coverage is available to an unmarried female when that same policy is available to a married female.

(4) Denying, under group contracts, dependent coverage to spouses of employees of one sex, when dependent coverage is available to spouses of employees of the opposite sex.

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(5) Denying disability income coverage to employed members of one sex when coverage is offered to members of the opposite sex similarly employed.

(6) Treating complications of pregnancy differently from any other illness or sickness under the contract.

(7) Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.

(8) Offering lower maximum monthly benefits to members of one sex than to members of the opposite sex who are in the same underwriting and occupational classification under a disability income contract.

(9) Offering more restrictive benefit periods and more restrictive definitions of disability to members of one sex than to members of the opposite sex in the same underwriting and occupational classifications under a disability income contract.

(10) Establishing different contract conditions based on gender which limit the benefit options a policyholder may exercise.

(11) Limiting the amount of coverage due to an insured's or prospective insured's marital status unless such limitation applies only to coverage for dependents and is uniformly applied to males and females.

c. When rates are differentiated on the basis of sex, an insurer must, upon the request of the commissioner of insurance, justify the rate differential in writing to the satisfaction of the commissioner. All rates shall be based on sound actuarial principles or a valid classification system and actual experience statistics, if available.

d. This subrule shall not affect the right of fraternal benefit societies to determine eligibility requirements for membership. If a fraternal benefit society does, however, admit members of both sexes, this subrule is applicable to the insurance benefits available to its members.

15.12(2) Physical or mental impairment. A contract shall not be denied to a person based solely on that person's physical or mental impairment. No benefits, terms, conditions or type of coverage shall be restricted, modified, excluded or reduced on the basis of physical or mental impairment of the insured or prospective insured except where based on sound actuarial principles or related to actual or reasonably anticipated experience. For purposes of this subrule, both blindness and partial blindness shall be considered a physical impairment.

15.12(3) Income discrimination. An insurer shall not refuse to issue, limit the amount or apply different rates to persons of the same class in the sale of individual life insurance based solely upon the prospective insured's legal source or level of income, unless such action is based on sound actuarial principles or is related to actual or reasonably anticipated experience. The portion of this subrule pertaining to level of income does not:

a. Apply to the sale of disability income insurance of any kind or of any insurance designed to protect against economic loss due to a disruption in the regular flow of a person's earned income;

b. Prohibit the sale of any insurance or annuity which is made available only to employees;

c. Prohibit basing the amount of insurance sold to an employee on a multiple or a percentage of the employee's salary or prohibit limiting availability to employees who have achieved a certain employment status as defined by the employer;

d. Prohibit insurers from providing life or health insurance as an incidental benefit through a qualified pension plan;

e. Prohibit insurers from applying suitability standards which include income as a factor in the sale of any life insurance or annuity products;

f. Prohibit insurers from establishing maximum or minimum amounts of insurance that will be issued to individuals so long as this is pursuant to a preexisting specialized marketing strategy which the insurer can demonstrate is related to the financial capacity of the insurer to write business or to bona fide transaction costs.

15.12(4) Domestic abuse. A contract shall not be denied to a person based solely on the fact such person has been or is believed to have been a victim of domestic abuse as defined in Iowa Code section 236.2.

191—15.13(507B) Testing restrictions of insurance applications for the human immunodeficiency virus.

15.13(1) Written release. No insurer shall obtain a test of any person in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the person to be tested provides a written release on a form which contains the following information:

a. A statement of the purpose, content, use, and meaning of the test.

b. A statement regarding disclosure of the test results including information explaining the effect of releasing the information to an insurer.

c. A statement of the purpose for which test results may be used.

15.13(2) Form. A preapproved form is provided in Appendix IV. An insurer wishing to utilize a form which deviates from the language in the appendix to these rules shall submit the form to the insurance division for approval. Any form containing, but not limited to, the language in the appendix shall be deemed approved.

191—15.14(507B) Records maintenance.

15.14(1) Complaint and business records.

a. An insurer shall maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data shall be maintained for the current calendar year plus two calendar years.

b. An insurer shall maintain a complete record of all the complaints received since the date of its last examination by the insurer's state of domicile or port-of-entry state. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. Appendix V sets forth the minimum information required to be contained in the complaint record.

15.14(2) Insurers' control over advertisements. Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements which explain a particular policy. All such advertisements, whether written, created, designed or presented by the insurer or its appointed producer, shall be the responsibility of the insurer whose particular policies are so advertised. As part of this requirement, each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its policies, with a notation indicating

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the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to inspection by the insurance division.

191—15.15(507B) Enforcement section—cease and desist and penalty orders. If, after hearing, the commissioner finds that an insurer or producer has engaged in an unfair trade practice in violation of these rules or unfair competition or unfair and deceptive acts or practices in violation of Iowa Code chapter 507B, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer or producer charged with the violation a copy of the findings in an order requiring the insurer or producer to cease and desist from engaging in the act or practice. The commissioner also may order one or more of the following:

1. Payment of a monetary penalty of not more than \$1,000 for each violation, but not to exceed an aggregate penalty of \$10,000. If the insurer or producer knew or reasonably should have known that its actions were in violation of these rules, the penalty shall not be not more than \$5,000 for each violation but not to exceed an aggregate penalty of \$50,000;
2. Suspension or revocation of the insurer's certificate of authority or the producer's license if the insurer or producer knew or reasonably should have known that it was in violation of these rules;
3. Full disclosure by the insurer of all terms and conditions of the policy to the policyowner;
4. Payment of the costs of the investigation and administrative expenses related to any violation.

Appendix I

LIFE INSURANCE COST AND
BENEFIT DISCLOSURE

Definitions.

"Annual premium" for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

"Buyer's guide" shall mean a document which contains, and is limited to, the language contained in Appendix II to these rules or language approved by the commissioner of insurance.

"Cash dividend" means the current illustrated dividend which can be applied toward payment of the gross premium.

"Equivalent level annual dividend" is calculated by applying the following steps:

1. Accumulate the annual cash dividends at 5 percent interest compounded annually to the end of the tenth and twentieth policy years.
2. Divide each accumulation of paragraph "1" by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in paragraph "1" over the respective periods stipulated in paragraph "1." If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
3. Divide the results of paragraph "2" by the number of thousands of the equivalent level death benefit to arrive at the equivalent level annual dividend.

"Equivalent level death benefit" of a policy or term life insurance rider is an amount calculated as follows:

1. Accumulate the guaranteed amount payable upon death, regardless of the cause of death other than suicide, or other specifically enumerated exclusions, at the beginning of each policy year for 10 and 20 years at 5 percent interest compounded annually to the end of the tenth and twentieth policy years respectively.
2. Divide each accumulation of paragraph "1" by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in paragraph "1" over the respective periods stipulated in paragraph "1." If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

"Generic name" means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

"Life insurance net payment cost index." The life insurance net payment cost index is calculated in the same manner as the comparable life insurance cost index except that the cash surrender value and any terminal dividend are set at zero.

"Life insurance surrender cost index." The life insurance surrender cost index is calculated by applying the following steps:

1. Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.
2. For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual cash dividends at 5 percent interest compounded annually to the end of the period selected and add this sum to the amount determined in subparagraph "1."
3. Divide the result of subparagraph "2" (subparagraph "1" for guaranteed-cost policies) by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subparagraph "2" (subparagraph "1" for guaranteed-cost policies) over the respective periods stipulated in subparagraph "1." If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
4. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at 5 percent interest compounded annually to the end of the period stipulated in subparagraph "1" and dividing the result by the respective factors stated in subparagraph "3" (this amount is the annual premium payable for a level premium plan).
5. Subtract the result of subparagraph "3" from subparagraph "4."
6. Divide the result of subparagraph "5" by the number of thousands of the equivalent level death benefit to arrive at the life insurance surrender cost index.

"Policy summary," for the purposes of these rules, shall mean a written statement describing the elements of the policy including but not limited to:

1. A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.
2. The name and address of the insurance producer or, if no producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.
3. The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.
4. The generic name of the basic policy and each rider.

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5. The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns including, but not necessarily limited to, the years for which life insurance cost indexes are displayed and at least one age from 60 through 65 or maturity whichever is earlier:

- (a) The annual premium for the basic policy.
- (b) The annual premium for each optional rider.
- (c) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide and other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.
- (d) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.
- (e) Cash dividends payable at the end of the year with values shown separately for the basic policy and each rider. (Dividends need not be displayed beyond the twentieth policy year.)
- (f) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

6. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is variable, the policy summary includes the maximum annual percentage rate.

7. Life insurance cost indexes for 10 and 20 years but in no case beyond the premium paying period. Separate indexes are displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor for basic policies or optional riders covering more than one life.

8. The equivalent level annual dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which life insurance cost indexes are displayed.

9. A policy summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed and a statement in close proximity to the equivalent level annual dividend as follows: An explanation of the intended use of the equivalent level annual dividend is included in the life insurance buyer's guide.

10. A statement in close proximity to the life insurance cost indexes as follows: An explanation of the intended use of these indexes is provided in the life insurance buyer's guide.

11. The date on which the policy summary is prepared.

The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in paragraph "5" of this definition shall be listed in total, not a per-thousand nor a per-unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insured if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

Appendix II

FINANCIAL REVIEW OF THIS POLICY

NOTICE: You have 30 days to review your policy and, if not entirely satisfied, to return it for a full refund of any premiums paid.

THIS IS A GUARANTEED ISSUE POLICY OFFERED WITHOUT AN ATTEMPT TO CLASSIFY RISKS BY DETERMINING YOUR STATE OF HEALTH. PREMIUMS MAY HAVE BEEN LOWER IF HEALTH INFORMATION HAD BEEN OBTAINED.]

THIS IS A POLICY ISSUED ON THE BASIS OF THE ANSWERS TO THE HEALTH QUESTIONS SET FORTH IN THE APPLICATION. PREMIUMS MAY HAVE BEEN LOWER IF FURTHER HEALTH INFORMATION HAD BEEN OBTAINED.]

THIS IS A POLICY WHERE THE ACCUMULATED PREMIUM EXCEEDS THE MINIMUM GUARANTEED DEATH BENEFIT IN TEN YEARS OR LESS.]

Application Information:

NAME: _____ AGE: _____ SEX: _____

List other personal information used in determining the premium for this policy:

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End of Policy Year	1 Premiums	2 Premiums Accumulating Interest at 5 Percent*	3 Death Benefits**	4 Cash Surrender Value	5 Column 3 Minus Column 2 Net Gain (Net Loss)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

Definitions: The following terms used in the above chart are defined as:

1. Premiums: Amount you must pay each year to keep this policy in force.
2. Premiums accumulating interest at 5 percent: The amount which could be earned if, instead of purchasing insurance, the dollars were left to accumulate at 5 percent interest.
3. Death Benefits: The amount that will be paid upon your death exclusive of any supplementary benefits.
4. Cash Surrender Value: The amount the insurance company will pay you if you surrender your policy to the company for cash.
5. Net Gain or Loss: This column shows whether your money would have earned more or less at 5 percent interest than your life insurance benefit.

*Note this figure does not take into account the cost of insurance, any dividends or additional benefits which are not guaranteed under the policy, nor potential preferential tax implications.

**Producer/Company: If death benefits have been explained in any manner other than shown on the above chart (through use of CPI index, dividends, or other nonguaranteed increases or a reduction in premiums), a copy of the illustration signed by the applicant and producer must be attached.

Appendix III
ACKNOWLEDGMENT OF NONDUPLICATION
PLEASE READ CAREFULLY BEFORE SIGNING

I, _____, certify that I have done the following:
(Producer's Name)

1. Informed the undersigned applicant of the right to have all existing health insurance policies presently in force reviewed by me to determine whether any duplicate coverage will occur with the issuance of this policy.
2. Reviewed the policies listed below and have found that duplication WILL/WILL NOT occur with the issuance of the following policy. _____

<u>COMPANY</u>	<u>POLICY NUMBER</u>	<u>TYPE OF POLICY</u>

- _____ Duplication will not occur because the above-listed policy(ies) will be replaced by the applied-for policy.
- _____ No health policies in force at this time.
- _____ Applicant has elected not to have the policy(ies) reviewed.

DATE

PRODUCER

INSURANCE DIVISION[191](cont'd)

I certify that I have been informed of my right to have all of my existing health policies reviewed and:

_____ I have been informed that the policy for which I am applying WILL/WILL NOT result in duplicate coverage.

_____ I have elected not to have my policies reviewed.

DATE

APPLICANT

This rule is intended to implement Iowa Code section 507B.12.

Appendix IV
HIV Antibody Test
Information Form For Insurance Applicant

AIDS

Acquired Immunodeficiency Syndrome (AIDS) is a life-threatening disorder of the immune system, caused by a virus, HIV. The virus is transmitted by sexual contact with an infected person, from an infected mother to her newborn infant, or by exposure to infected blood (as in needle sharing during IV drug use). Persons at high risk of contracting AIDS include males who have had sexual contact with another man, intravenous drug users, hemophiliacs, and persons who have had sexual contact with any of these persons. AIDS does not typically develop until a person has been infected with HIV for several years. A person may remain free of symptoms for years after becoming infected. Infected persons have a 25 percent to 50 percent chance of developing AIDS over the next 10 years.

The HIV antibody test:

Before consenting to testing, please read the following important information:

1. Purpose. This test is being run to determine whether you may have been infected with HIV. If you are infected, you are probably not insurable. This test is not a test for AIDS; AIDS can only be diagnosed by medical evaluation.
2. Positive test results. If you test positive, you should seek medical follow-up with your personal physician. If your test is positive, you may be infected with HIV.
3. Accuracy. An HIV test will be considered positive only after confirmation by a laboratory procedure that the state health officer has determined to be highly accurate. Nonetheless, the HIV antibody test is not 100 percent accurate. Possible errors include:
 - a. False positives: This test gives a positive result, even though you are not infected. This happens rarely and is more common in persons who have engaged in high-risk behavior. Retesting should be done to help confirm the validity of a positive test.
 - b. False negatives: The test gives a negative result, even though you are infected with HIV. This happens most commonly in recently infected persons; it takes at least 4 to 12 weeks for a positive test result to develop after a person is infected.
4. Side effects. A positive test result may cause you significant anxiety. A positive test may result in uninsurability for life, health, or disability insurance policies for which you may apply in the future. Although prohibited by law, discrimination in housing, employment, or public accommodations may result if your test results become known to others. A negative result may create a false sense of security.
5. Disclosure of results. A positive test result will be disclosed to you. You may choose to have information about your HIV test results communicated to you through your physician or through the alternative testing site.
6. Confidentiality. Like all medical information, HIV test results are confidential. An insurer, insurance agent, or insurance-support organization is required to maintain the confidentiality of HIV test results. However, certain disclosures of your test results may occur, including those authorized by consent forms that you may have signed as part of your overall application. Your test results may be provided to the Medical Information Bureau, a national insurance data bank. Your insurance agent will provide you with additional written information about this subject at your request.
7. Prevention. Persons who have a history of high-risk behavior should change these behaviors to prevent getting or giving AIDS, regardless of whether they are tested. Specific important changes in behavior include safe sex practices (including condom use for sexual contact with someone other than a long-term monogamous partner) and not sharing needles.
8. Information. Further information about HIV testing and AIDS can be obtained by calling the National AIDS hotline at 1-800-342-2437.

INFORMED CONSENT

I hereby authorize the company and its designated medical facilities to draw samples of my blood for the purpose of laboratory testing to provide applicable medical information concerning my insurability. These tests may include but are not limited to tests for: cholesterol and related blood lipids; diabetes; liver or kidney disorders; infection by the Acquired Immune Deficiency Syndrome (HIV) virus (if permitted by law); immune disorders; or the presence of medications, drugs, nicotine or other metabolites. The test will be done by a medically accepted procedure which is extremely reliable.

If an HIV Antibody Screen is performed, it will be performed only by a certified laboratory and according to the following medical protocol:

1. An initial ELISA blood test will be done.
 - a. If the initial ELISA blood test is positive, it will be repeated.
 - b. If the initial ELISA blood test is negative, a negative finding will be reported to the company.
2. If the initial ELISA blood test is positive, it will be repeated.
 - a. If the second ELISA blood test is also positive, a Western Blot blood test will be performed to confirm the positive results of the two ELISA blood tests.

INSURANCE DIVISION[191](cont'd)

b. If the second ELISA blood test is negative, a third ELISA blood test will be performed. If the third ELISA blood test is positive, a Western Blot blood test will be performed to confirm the previous positive results. If the third blood test is negative, a negative result will be reported to the company.

3. Only if at least two ELISA blood tests and a Western Blot blood test are all positive will the result be reported as a positive. All other results will be reported as negative to the company.

Without a court order or written authorization from me, these results will be made known only to the company and its reinsurers (if involved in the underwriting process). The company will provide results of all tests to a physician of my choice. Positive test results to the HIV Antibody Screen will be disclosed only as I direct below. In addition, the company may make a brief report to MIB, Inc., in a manner described in the Prenotice which I received as a part of the application process. All the company will report to MIB, Inc. is that positive results were obtained from a blood test. The company will not report what tests were performed or that the positive result was for HIV antibodies.

These organizations will be the only ones maintaining this information in any type of file except as required by law. Positive HIV Antibody Screen results are to be reported to: (elect one) the Alternative Testing Site or my physician;

_____ (name and address of attending physician)

This authorization will be valid for 90 days from the date below.

Dated At: _____ Day _____ Month _____, 19 _____

Witness _____ Proposed Insured: _____
 Producer (Signature) Signature

This rule is intended to implement Iowa Code section 505.16.

Appendix V
COMPLAINT RECORD

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	
Company Identification Number	Function Code	Reason Code	Line Type	Company Disposition after Complaint Receipt	Date Received	Date Closed	Insurance Division Complaint	State of Origin

(Producer's Number)

Explanation

A. Company Identification Number. As noted, this refers to the identification number of the complaint and shall also include the license number, name, or other means of identifying any licensee of the Insurance Division, such as a producer that may have been involved in the complaint.

B. Function Code. Complaints are to be classified by function(s) of the company involved. Separate classifications are to be maintained for underwriting, marketing and sales, claims, policyholder service and miscellaneous.

Reason Code. Complaints are also to be classified by the nature of the complaint. The following is the classification required for each function specified above.

- 1) Underwriting
 - a) Premium and rating
 - b) Refusal to insure
 - c) Cancellation/renewal
 - d) Delays
 - e) Unfair discrimination
 - f) Endorsement/rider
 - g) Group conversion
 - h) Medicare supplement violation
 - i) Miscellaneous (not covered by above)
- 2) Marketing and Sales
 - a) General advertising
 - b) Misrepresentation
 - c) Producer handling

- d) Replacement
- e) Delays
- f) Miscellaneous (not covered by above)
- 3) Claims
 - a) Post claim underwriting
 - b) Delays
 - c) Unsatisfactory settlement/offer
 - d) Coordination of benefits
 - e) Cost containment
 - f) Denial of claim
 - g) Miscellaneous (not covered by above)
- 4) Policyholder service
 - a) Premium notice/billing
 - b) Cash value
 - c) Delays/no response
 - d) Premium refund
 - e) Coverage question
 - f) Miscellaneous (not covered by above)
- 5) Miscellaneous

C. Line Type. Complaints are to be classified according to the line of insurance involved as follows:

- 1) Automobile
- 2) Fire
- 3) Homeowners-Farmowners
- 4) Crop
- 5) Life and Annuity
- 6) Accident and Health

INSURANCE DIVISION[191](cont'd)

7)Miscellaneous (not covered by above)

D. Company Disposition After Receipt. The complaint record shall note the disposition of the complaint.

The following examples illustrate the type of information called for, but are not intended to be required language nor to exhaust the possibilities:

1. Policy issued/restored.
2. Refund.
3. Claim settled.
4. Delay resolved.
5. Question of fact.
6. Contract provision/legal issue.
7. No jurisdiction.

E. Date Received. This refers to the date the complaint was received.

F. Date Closed. This refers to the date on which the complaint was disposed of whether by one action or a series of actions as may be present in connection with some complaints.

G. Insurance Department Complaint. Complaints are to be classified so as to indicate if the origin of the complaint was from an insurance department.

H. State of Origin. The complaint record should note the state from which the complaint originated. Ordinarily this will be the state of residence of the complainant.

ARC 6560A**JOB SERVICE DIVISION[345]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 96.11, the Commissioner of the Division of Job Service hereby gives Notice of Intended Action to amend Chapter 2, "Employer Records and Reports," Chapter 3, "Employer's Contributions and Charges," and Chapter 4, "Claims and Benefits," Iowa Administrative Code.

Subrule 2.3(5), paragraph "d," is amended to specify that generally individuals who perform services concurrently for more than one employing unit are considered to be the employees of each of the employing units. However, it provides an exception for concurrently employed corporate officers of related corporations when the corporate officers are paid through a common paymaster that is one of the related corporations for whom the individual is a corporate officer.

Subrule 3.3(2), paragraph "j," is amended to specify that remuneration received by members of a limited liability company is wages subject to unemployment insurance contributions if it is based on services performed and not on membership interest in the limited liability company, provided that remuneration based on membership interest is allocated among members or classes of members in proportion to their respective investments in the limited liability company.

Subrule 3.18(9) is amended to specify that members of a limited liability company are employees if they perform services other than for the purpose of acquiring membership interest in the limited liability company.

Subrule 3.45(14) is amended to specify that an employer that sells part of its business to an employer that does not receive a partial transfer of experience may protest and be relieved of charges for benefits paid to a former employee who worked for the acquiring employer, and was separated from the acquiring employer, after the sale. It also provided that the charges based on the wages paid by the former employer will not be charged to any employer's account, whether the employers involved are reimbursable or contributory.

Subrule 3.52(4) is amended to specify that, unless otherwise dictated by the Code of Iowa or other rules, initial determinations (which include rate notices) will be sent by regular mail to the last known address of the employer.

Subrule 3.53(1), paragraph "b," is amended to specify that an employer may appeal its current rate notice on the grounds that benefit charges used in the rate computation may be reversed by a decision on a pending claim or charge-back appeal and that this will prevent the employer's rate from becoming final. The employer may then reopen the appeal when the expected favorable decision is received. The rule also clarifies that the employer must pay the tax due at the disputed rate while waiting for the favorable decision and that the employer will be entitled to a refund of any overpayment that results from the recomputation of the rate after the appeal is reopened. The rate appeal must be reopened within 30 days of the date of the next rate notice received after the date of the favorable decision and refunds will be issued only on overpayments made during the last three years.

Subrule 3.70(13) is amended to specify that a reimbursable nonprofit organization cannot succeed to the account of a contributory employer. It also specifies that an employer that acquires the entire business of a nonprofit reimbursable employer will be responsible for reimbursing the agency for future benefits paid based on wages paid by the selling nonprofit reimbursable employer, whether or not the acquiring employer is reimbursable or is eligible to be reimbursable on its own payroll. It also specifies that the acquiring employer is responsible for reimbursing the agency for any unpaid past benefits if the nonprofit reimbursable employer is unable to meet that obligation.

Subrule 4.7(4), paragraph "b," subparagraph (1), is amended to correct a misspelled word.

Subrule 4.8(2), paragraph "d," subparagraph (1), is amended so Notices of Separation could be accepted if no claim has yet been filed and have the protest on record for when and if a claim is filed. The ten-day protest period would still be applicable if a claim was on file and the claimant was currently drawing unemployment insurance benefits.

Subrule 4.26(28) is amended so that when an employer protests that part of the business has been sold to another employer that does not receive a partial transfer of experience and the claimant works for the acquiring employer, benefits are allowed to the claimant. However, the transferring employer does not receive any charges and neither does the acquiring employer, but rather the balancing account receives the charges.

Subrule 4.28(4), which required six weeks of other employment to establish eligibility for unemployment insurance benefits, is rescinded.

Subrule 4.58(4) is amended to reflect the proper Iowa Code citation.

Interested persons, governmental agencies, and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m. August 6, 1996, to Reynel Dohse, Department of Employment Services, Di-

JOB SERVICE DIVISION[345](cont'd)

vision of Job Service, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m., August 6, 1996, at the above address. The proposed amendments are subject to revision after the Division considers all written and oral presentations. Persons who want to convey their views orally should contact Reynel Dohse at (515)281-4986 or at the above address.

These amendments are intended to implement Iowa Code sections 96.5(1)"a," 96.5(1)"i," 96.7(2)"e," 96.7(8)"b," 96.14(5), 96.19(18)"a," 96.19(18)"f," and 96.19(41).

The following amendments are proposed.

ITEM 1. Amend subrule 2.3(5), paragraph "d," to read as follows:

d. *Concurrently employed individuals.*

(1) *Except as described in subparagraph (2) below, individuals who perform services concurrently for more than one employing unit, whether or not the employing units are related, shall be considered as working for each of the employing units and shall be reported on the quarterly reports of each of the employing units. Each of the employing units shall be required to pay contributions on the wages attributable to that employing unit up to the taxable wage base limit for each calendar year.*

(2) *An individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may be treated as working for only the common paymaster at the discretion of the related corporations.*

ITEM 2. Amend subrule 3.3(2) by adding new paragraph "j" as follows:

j. Remuneration paid to members of limited liability companies based on membership interest. The term "wages" shall not include remuneration paid to a member of a limited liability company based on a membership interest in the company provided that the remuneration based on membership interest is allocated among members, or classes of members, in proportion to their respective investments in the company. If the amount of remuneration attributable to membership interest and the amount attributable to services performed cannot be determined, the entire amount of remuneration shall be considered to be based on the services performed.

ITEM 3. Amend rule 345—3.18(96) by adding new subrule 3.18(9) as follows:

3.18(9) Members of a limited liability company. Members of a limited liability company that perform services other than for the purpose of acquiring membership in the limited liability company are employees.

ITEM 4. Rescind subrule 3.43(14) and insert the following new subrule in lieu thereof:

3.43(14) Removal of benefit charges upon the sale or transfer of a clearly segregable part of an employer's business or enterprise when the acquiring employer does not receive a partial transfer of experience. Benefits based on wages earned with the transferring employer, paid to an individual who worked in and was paid wages for work with the acquiring employer shall be transferred to the balancing account. The transferring employer must protest this issue on the Notice of Claim, Form 65-5317, in a timely manner to receive relief from the charges. The relief of charges shall apply to both contributory and reimbursable employers.

ITEM 5. Amend subrule 3.52(4) as follows:

3.52(4) *Unless otherwise required, All initial all determinations by the tax section will be sent by regular mail to the last known address of the employer. The determination will be dated and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal all or any part of the initial determination. The employer has only 15 days to appeal a notice of reimbursable benefit charges, (Form 65-5324).*

ITEM 6. Amend subrule 3.53(1), paragraph "b," to read as follows:

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. *The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges; however, A refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).*

ITEM 7. Amend subrule 3.70(13) to read as follows:

3.70(13) In the event that a reimbursable nonprofit organization succeeds to a business entity, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the predecessor reimbursable nonprofit organization's *unpaid benefit charges* in the event that the predecessor reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the division, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the predecessor reimbursable nonprofit organization prior to the date of the sale or transfer.

ITEM 8. Amend subrule 4.7(4), paragraph "b," subparagraph (1), to read as follows:

(1) At least three base period quarters but the individual is currently ~~momentarily~~ *monetarily* eligible with an established weekly and maximum benefit amount.

ITEM 9. Rescind subrule 4.8(2), paragraph "d," subparagraph (1), and insert the following new subparagraph in lieu thereof:

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the division. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

ITEM 10. Amend subrule 4.26(28) to read as follows:

JOB SERVICE DIVISION[345](cont'd)

4.26(28) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the ~~acquiring employer~~ *balancing account* shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

ITEM 11. Rescind and reserve subrule 4.28(4).

ITEM 12. Amend subrule 4.58(4) as follows:

4.58(4) Approval of a plan may be denied or approval of a plan may be revoked at the discretion of the division if the plan and its actual operation do not meet all the requirements stated in Iowa Code section ~~96.36~~ *96.40* including, but not limited to, the providing of false or misleading information to the division, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

ARC 6564A

LAW ENFORCEMENT
ACADEMY[501]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)⁴b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 2, "Minimum Standards for Iowa Law Enforcement Officers," Iowa Administrative Code.

These proposed amendments will lessen the requirements for certified law enforcement officers who have previously met all minimum hiring standards and intend to move employment to another Iowa law enforcement agency.

The agency intends to implement these amendments effective September 1, 1996.

Any interested person may make written comments or suggestions on these proposed amendments on or before August 6, 1996. Such written materials should be sent to Gene W. Shepard, Director, Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131-0130, or telephone (515)242-5357.

There will be a public hearing on these proposed amendments on August 6, 1996, at 10:30 a.m. in the Conference Room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views orally or in writing. At the hearing persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These amendments were approved by the Iowa Law Enforcement Academy Council on June 11, 1996.

These amendments are intended to implement Iowa Code section 80B.11B.

The following amendments are proposed.

ITEM 1. Rescind rule 501—2.3(80B) and insert in lieu thereof the following new rule:

501—2.3(80B) Officers moving from agency to agency. A certified Iowa law enforcement officer who has previously met all the requirements of rule 2.1(80B) and who intends to move employment from one Iowa law enforcement agency to another Iowa law enforcement agency, or who intends to be employed as a regular officer by more than one Iowa law enforcement agency simultaneously, shall:

2.3(1) Undergo a psychological examination as provided in rule 2.2(80B) of this chapter, and

2.3(2) Be of good moral character as determined by a thorough background investigation by the hiring agency, including, but not limited to, a fingerprint search conducted by the Iowa division of criminal investigation and Federal Bureau of Investigation. If the results of fingerprint file checks cannot reasonably be obtained prior to the time of appointment, the hiring shall be considered conditional until such time as the results are received and reviewed by the appointing agency.

2.3(3) Except as otherwise specified, the provisions of rule 2.1(80B) of this chapter do not need to be reverified upon the movement of employment from one Iowa law enforcement agency to another Iowa law enforcement agency or upon being employed by more than one Iowa law enforcement agency simultaneously, if the certified Iowa law enforcement officer met all of the requirements of rule 2.1(80B) when the officer was initially hired as an Iowa law enforcement officer and if, without a break of not more than 180 days from law enforcement service, the officer is hired by another Iowa law enforcement agency.

ITEM 2. Adopt a new rule 501—2.4(80B) as follows.

501—2.4(80B) Higher standards not prohibited. While no person can be selected, hired or appointed as an Iowa law enforcement officer who does not meet minimum requirements, agencies are not limited or restricted in establishing additional standards.

ARC 6580A

NATURAL RESOURCE
COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)⁴b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of the Iowa Code section 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 71, "Nursery Stock Sale to the Public," Iowa Administrative Code.

These amendments alter the prices for nursery stock.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 6, 1996. Such written materials should be directed to the State Forests and Management Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the State

NATURAL RESOURCE COMMISSION[571](cont'd)

Forests and Management Bureau at (515)281-5441 or at the Forestry Office on the fourth floor of the Wallace State Office Building.

There will be a public hearing on August 6, 1996, at 2 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. Persons attending the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

The following amendments are proposed.

Amend rule 571—71.3(456A,461A) as follows:

571—71.3(456A, 461A) Nursery stock prices.

71.3(1) Prices for hardwoods and shrubs shall be \$22 per hundred plants. as follows:

a. Walnut, white oak and red oak, 10" to 16"—\$24 per hundred plants.

b. Walnut, white oak and red oak, 17" and greater—\$26 per hundred plants.

c. Other hardwoods and shrubs, 10" to 16"—\$23 per hundred plants.

d. Other hardwoods and shrubs, 17" and greater—\$25 per hundred plants.

71.3(2) Prices for conifers shall be \$14 \$15 per hundred plants.

71.3(3) Prices for wildlife packets shall be \$35 \$45 each.

71.3(4) and **71.3(5)** No change.

ARC 6558A**PERSONNEL DEPARTMENT[581]****Notice of Termination**

Pursuant to the authority of Iowa Code section 97B.15, the Iowa Department of Personnel terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on May 22, 1996, as **ARC 6428A**, amending Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

These amendments to Chapter 21 were also Adopted and Filed Emergency as **ARC 6429A**. The Notice of Intended Action was published to solicit comments and to provide opportunity for a hearing. Since no comments were received, no one appeared at the hearing, and no changes are required to the emergency adopted rules, there is no further need to proceed with rule making for **ARC 6428A**.

ARC 6566A**PROFESSIONAL LICENSURE
DIVISION[645]****PHYSICAL AND OCCUPATIONAL
THERAPY EXAMINERS****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 200, "Physical Therapy Examiners," Chapter 201, "Occupational Therapy Examiners," and Chapter 202, "Physical Therapist Assistants," Iowa Administrative Code.

Items 1 and 12 remove the requirement that applications for physical therapy and physical therapist assistants examination be notarized and be submitted 60 days prior to examination date since the examination service is now using computerized examination through a testing service. Items 2, 3, 4, 13, 14 and 15 rescind the requirement for physical therapy and physical therapist assistants to pass an oral interview for licensure. Items 5 and 16 clarify that the application fee be a check or money order made payable to the Board of Physical and Occupational Therapy Examiners and that the fee for the physical therapy and physical therapist assistant examination be a cashier's check made payable to the Professional Examination Service. Items 6, 10 and 17 require a \$10 fee for a duplicate license. Items 7 and 9 remove the requirement for occupational therapist and occupational therapy assistants applications to be notarized. Item 8 clarifies the issuance of a limited permit for occupational therapist and occupational therapy assistants. Item 11 clarifies training requirements for occupational therapist and occupational therapy assistants.

Any interested person may make written comments on these proposed amendments no later than August 6, 1996, addressed to Marilyn Ubaldo, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code chapter 147.

The following amendments are proposed.

ITEM 1. Amend subrule 200.3(1), introductory paragraph, as follows:

200.3(1) Applications for licensure to practice physical therapy in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, ~~at least 60 days before the date of the examination.~~ The application form will be furnished by the board. The ~~notarized~~ application shall include the following:

ITEM 2. Rescind and reserve subrule **200.3(2)**.

ITEM 3. Rescind and reserve subrule **200.4(7)**.

ITEM 4. Rescind subrule **200.7(3)**.

ITEM 5. Amend subrule 200.9(1) as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

200.9(1) The application fee for a license to practice physical therapy issued upon the basis of examination or endorsement is \$55 *in check or money order made payable to the Board of Physical and Occupational Therapy Examiners.* The examination fee is an additional \$185 *made payable by cashier's check to the Professional Examination Service (PES) and submitted to the Board of Physical and Occupational Therapy Examiners with application.*

ITEM 6. Adopt **new** subrule 200.9(9) as follows:

200.9(9) Fee for a duplicate or replacement license is \$10.

ITEM 7. Amend subrule 201.5(1), introductory paragraph, as follows:

201.5(1) Applications for licensure to practice as an occupational therapist or occupational therapy assistant in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, on an application form furnished by the board. The ~~notarized~~ application shall include the following:

ITEM 8. Amend subrule 201.6(1) as follows:

201.6(1) A limited permit to practice as an occupational therapist or as an occupational therapy assistant may be granted to persons who have completed the educational and experience requirements to be licensed as an occupational therapist or occupational therapy assistant and are waiting to take the certification examination *for the first time.*

ITEM 9. Amend subrule 201.6(4), introductory paragraph, as follows:

201.6(4) An applicant for a limited permit shall submit the limited permit application fee of \$25 and a completed, ~~notarized~~ application as set out in 201.2(2) except for the certification examination results.

ITEM 10. Adopt **new** subrule 201.12(11) as follows:

201.12(11) Fee for a duplicate or replacement license is \$10.

ITEM 11. Amend subrule **201.22(8)**, paragraph "b," as follows:

b. When the occupational therapist or occupational therapy assistant does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment, the licensee is obligated to inform the referring practitioner and assist in identifying a professional qualified to perform the service *or obtain training to carry out the technique in a competent manner. Appropriate documentation of training is necessary.*

ITEM 12. Amend subrule 202.3(1), introductory paragraph, as follows:

202.3(1) Applications for licensure to practice physical therapy in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, ~~at least 60 days before the date of the examination.~~ The on an application form will be furnished by the board. The ~~notarized~~ application shall include the following:

ITEM 13. Rescind and reserve subrule **202.3(2)**.

ITEM 14. Rescind and reserve subrule **202.4(7)**.

ITEM 15. Rescind subrule **202.8(3)**.

ITEM 16. Amend subrule 202.10(1) as follows:

202.10(1) The application fee for a license to practice as a physical therapy assistant issued upon the basis of examination or endorsement is \$45 *in check or money order made*

payable to the Board of Physical and Occupational Therapy Examiners. The examination fee is an additional \$185 *made payable by cashier's check to the Professional Examination Service (PES) and submitted to the Board of Physical and Occupational Therapy Examiners with application.*

ITEM 17. Adopt **new** subrule 202.10(9) as follows:

202.10(9) Fee for a duplicate or replacement license is \$10.

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PUBLIC HEALTH
DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 135, the Iowa Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 9, "Outpatient Diabetes Education Programs," Iowa Administrative Code, and to adopt a new Chapter 9 with the same title.

In preparing these rules, the Department drafted possible changes and distributed them for comments to currently certified programs, programs that had made inquiry during the past year regarding certification, the American Diabetes Association, Iowa Affiliate, and other professional organizations. The comments received were summarized and distributed to the same parties with an invitation to participate in a discussion over the Iowa Communications Network. All written comments and new suggestions were discussed in the ICN session on April 11, 1996. The proposed rules have been further revised in response to those comments. The noticed rules are being distributed directly to the same parties simultaneously with this filing.

It is the Department's intent that the rules continue to be similar to the ADA recognition requirements, but with a little more flexibility. The changes are summarized below.

641—9.1(135): No change.

641—9.2(135): Several additions and minor changes to the definitions. The only substantive one is to change the definition of dietitian from a licensed, registered dietitian to a licensed dietitian. This is consistent with state law and many other state rules.

641—9.3(135): Name changes and minor wording changes.

641—9.4(135): Separates and clarifies the application procedure for ADA recognized program. Allows pharmacist to participate as an advisory committee member.

641—9.5(135): Separates and clarifies the renewal procedure for ADA recognized program and coordinates expiration date to follow the expiration date for ADA recognition.

641—9.6(135): Isolates application procedure for non-ADA recognized program and revises curriculum topics to match ADA revisions.

641—9.7(135): Minor rewording.

641—9.8(135): Clarifies and revises staff requirements for non-ADA recognized programs. Requires an advisory committee and specifies membership and duties. Requires

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individuals from two different professions to be instructors. Clarifies and revises continuing education requirements for primary and supporting instructors and advisory committee members. Requires new instructors to meet continuing education requirements within a specific time frame.

641—9.9(135): Clarifies and revises continuing education requirements for program staff for renewal of certification.

641—9.10(135): Places requirement for annual report in separate section.

641—9.11(135) to 9.14(135): Numbering and name changes and minor wording changes.

The Iowa Department of Public Health will hold a public hearing on August 14, 1996, from 1 p.m. to 2:30 p.m. over the Iowa Communications Network. The origination site will be Room 326 of the Lucas State Office Building, Des Moines. Other sites will be:

Ames High School, Fiber Optic Room, 1921 Ames High Drive, Ames, Iowa;

University of Northern Iowa, 130C Schindler, Cedar Falls, Iowa;

Loess Hills Area Education Agency 13, Hills Building, 24997 Highway 92, Council Bluffs, Iowa;

University of Iowa Hospitals and Clinics, Room 8786 JJP, 8th Floor, 200 Hawkins Drive, Iowa City, Iowa;

North Iowa Area Community College, 500 College Drive, Activity Center, Room AC106, Mason City, Iowa;

Red Oak National Guard Armory, RR1 Parkwest Road, Red Oak, Iowa.

Any oral or written comments must be received on or before August 14, 1996. Comments should be addressed to Ronald D. Eckoff, Medical Director, Division of Substance Abuse and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code chapter 135.

The following **new** chapter is proposed:

CHAPTER 9

OUTPATIENT DIABETES EDUCATION PROGRAMS

641—9.1(135) Scope. The scope of this chapter is to describe the standards for outpatient diabetes self-management education programs and the procedures programs must follow for certification by the Iowa department of public health that will allow for third-party reimbursement.

641—9.2(135) Definitions. For the purpose of these rules, the following terms shall have the meaning set forth below.

“ADA” means the American Diabetes Association.

“Certification” means the review and approval and assignment of a program site number of an outpatient diabetes education program which meets minimum standards.

“Certified diabetes educator” means a person currently certified by the National Certification Board for Diabetes Educators.

“Department” means the Iowa department of public health.

“Diabetes mellitus” includes the following:

1. “Type I diabetes” means insulin-dependent diabetes (IDDM) requiring lifelong treatment with insulin.

2. “Type II diabetes” means noninsulin-dependent diabetes often managed by food plan, exercise, weight control, and in some instances, oral medications or insulin.

3. “Gestational diabetes” means diabetes diagnosed during pregnancy.

4. “Impaired glucose tolerance” means a condition in which blood glucose levels are higher than normal, diagnosed by a physician, and treated with food plan, exercise or weight control.

5. “Secondary diabetes” means diabetes induced by drugs or chemicals as well as by pancreatic or endocrine disease and treated appropriately.

“Director” means the director of the Iowa department of public health.

“Licensed dietitian” means a person currently licensed to practice dietetics under Iowa Code chapter 152A.

“Participant” means a patient who is referred to, is active in, or has completed the educational diabetes program.

“Pharmacist” means a person currently licensed to practice pharmacy under Iowa Code chapter 155.

“Physician” means a person currently licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy under Iowa Code chapters 148 and 150A.

“Primary instructor” means an instructor with major or broad teaching responsibility.

“Professional health educator” means a person having successfully completed a degree designated “health education” from an accredited college or university.

“Program” means an outpatient diabetes self-management education program in which instruction shall be provided which shall enable people with diabetes and their families to understand the diabetes disease process and the daily management of diabetes.

“Program coordinator” means the person responsible for the direction and supervision of a program including, but not limited to, planning, arranging implementation, and assuring quality.

“Program staff” means the program coordinator, program physician, primary and supporting instructors, and advisory committee members.

“Registered nurse” means a person currently licensed to practice professional nursing under Iowa Code chapter 152.

“Standards” means the outpatient diabetes education program standards developed by the department.

“Supporting instructor” means an instructor who teaches only one or two specific topics of the program, on a voluntary or paid basis.

641—9.3(135) Powers and duties. The department shall be responsible for taking the following actions:

9.3(1) Develop minimum standards in consultation with the American Diabetes Association, Great Plains affiliate.

9.3(2) Annually review and update the standards as needed, and provide revised standards to programs and others.

9.3(3) Develop certification packages.

a. Certification packages shall be provided on request to programs and to the general public.

b. The package shall contain certification procedures, rules, and standardized forms.

c. The certification package is available from the Bureau of Health Promotion, Division of Substance Abuse and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

9.3(4) Evaluate each application submitted and determine adequacy of program for certification.

9.3(5) Assign a program site number and an expiration date and issue a certificate to each program that meets the standards. A certificate shall be valid for three years from issuance unless specified otherwise on the certificate or unless sooner revoked.

9.3(6) Maintain a list of certified programs.

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641—9.4(135) Application procedures for American Diabetes Association recognized programs. When the program is recognized by the American Diabetes Association, the program shall apply for certification to the department by submitting a copy of the Certificate of Recognition provided by ADA, the name, address and telephone number for the program, the name of the program coordinator, the name of the program physician, and the name(s), license number(s) and continuing education hours of the licensed pharmacist(s) who serve as program staff. A licensed pharmacist shall be a primary or supporting instructor or advisory committee member and shall meet the education requirements in 9.8(6), 9.8(7) or 9.8(8).

641—9.5(135) Renewal procedures for American Diabetes Association recognized programs. The expiration date for the certification of an ADA recognized program shall be six months after the expiration date of the ADA recognition. To apply for renewal of certification, the ADA recognized program shall submit a copy of the new ADA Certificate of Recognition, the name, address and telephone number for the program, the name of the program coordinator, the name of the program physician, and the name(s), license number(s), and continuing education hours of the licensed pharmacist(s) who serve as program staff. A licensed pharmacist shall be a primary or supporting instructor or advisory committee member and shall meet the continuing education requirements in 9.9(6).

641—9.6(135) Application procedures for programs not recognized by the American Diabetes Association.

9.6(1) Each program shall apply for certification with the department.

9.6(2) Applications from programs not recognized by ADA shall provide the following information:

- a. Name, address and telephone number for the program, program physician and program coordinator.
- b. Identification of the target population, an estimate of the program caseload, estimated number of programs to be conducted annually, minimum and maximum class size, and a calendar identifying the hours per day and number of days per week scheduled to meet the minimum course requirements.
- c. A description of goals and objectives, participant referral mechanism, and means of coordinating between the community, physicians, and program staff.
- d. Evaluation methods designed by individual programs and samples of documents to be used.
- e. A description of the curriculum designed to instruct the participant with diabetes how to achieve self-management competency. The curriculum must cover each of the topics listed below.

- (1) Diabetes overview.
- (2) Stress and psychological adjustment.
- (3) Family involvement and social support.
- (4) Nutrition.
- (5) Exercise and activity.
- (6) Medications.
- (7) Monitoring and use of results.
- (8) Relationship among nutrition, exercise, medication and blood glucose levels.
- (9) Prevention, detection, and treatment of acute complications.
- (10) Prevention, detection, and treatment of chronic complications.
- (11) Foot, skin, and dental care.
- (12) Behavior change strategies, goal setting, risk-factor reduction, and problem solving.

(13) Benefits, risks, and management options for improving glucose control.

(14) Preconception care, pregnancy, and gestational diabetes.

(15) Use of health care systems and community resources.

641—9.7(135) Diabetes program management for programs not recognized by the American Diabetes Association.

9.7(1) Pertinent information related to the recent medical history, physical examination, and test results performed by the participant's health care provider shall be provided when the participant is referred to the program. Program staff shall remain in contact with the participant's health care provider and shall make recommendations relative to the medical care and treatment of the participant's diabetes when appropriate.

9.7(2) When the participant completes the program, arrangements shall be made by program staff for optimal follow-up care.

9.7(3) Program staff members shall take an active role in the care of the participant's diabetes during the course of the program to optimize diabetes control. The program staff shall be prepared to make necessary recommendations to the referring health care provider in the participant's diabetes management which may include the following:

- a. Changes in the insulin regimen.
- b. Changes in the medications.
- c. Changes in the food plan.
- d. Changes in exercise.

9.7(4) Written materials supporting the program curriculum are to be made available to the participants. Educational materials from commercial sources shall be carefully evaluated by staff and be consistent with the program curriculum.

641—9.8(135) Program staff for programs not recognized by the American Diabetes Association.

9.8(1) A program coordinator and a program physician shall be designated.

a. The program coordinator shall provide direction and supervision of the program including, but not limited to, planning, arranging implementation, and assuring quality. If the program coordinator is an instructor, the program coordinator shall be a health care professional and meet the requirements for primary or supporting instructor.

b. The program physician shall provide medical direction for the program. The program physician shall maintain contact with the participant's attending physician and shall make recommendations relative to the medical care and treatment of the participant's diabetes where appropriate.

9.8(2) The program shall have an advisory committee composed of at least one licensed physician, one registered nurse, one licensed dietitian and one licensed pharmacist to oversee the program. It is recommended the advisory committee include an individual with behavioral science expertise, a consumer, and a community representative. The advisory committee shall participate in the annual planning process, including determination of target audience, program objectives, participant access mechanisms, instructional methods, resource requirements, participant follow-up mechanisms, and program evaluation.

9.8(3) The primary instructors shall be one or more of the following health care professionals: physicians, registered nurses, licensed dietitians, and licensed pharmacists who are knowledgeable about the disease process of diabetes and the treatment of diabetes. If there is only one primary instructor, there shall be at least one supporting instructor. The supporting instructor shall be from one of the four professions listed

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as possible primary instructors, but a different profession than from the single primary instructor.

9.8(4) The program may have additional supporting instructors including but not limited to dentist, exercise physiologist, health educator, ophthalmologist, pediatric diabetologist, podiatrist, psychologist, psychiatrist, or social worker.

9.8(5) The names and license or registration numbers of the program physician, program coordinator, and all primary and supporting instructors shall be included with the program application.

9.8(6) All primary instructors shall show evidence of knowledge about the disease process of diabetes and the treatment and management of people with diabetes by documentation of one or more of the following:

a. Within the last three years, completion of a minimum of 24 hours of professional education in diabetes, diabetes management, or diabetes education; or

b. Equivalent training or experience including, but not limited to, endocrinology fellowship training or masters level preparation in diabetes nursing/nutrition. Unsupervised teaching of patients is not an acceptable equivalent.

c. Current certification as a certified diabetes educator.

9.8(7) All supporting instructors shall show evidence of knowledge about the disease process of diabetes and the treatment and management of people with diabetes by documentation of completion of a minimum of 12 hours of professional education in diabetes, diabetes management, or diabetes education within the last three years or have current certification as a certified diabetes educator.

9.8(8) The four professionals required in 9.8(2) to be on the advisory committee shall have completed six hours of professional education in diabetes within the past three years.

9.8(9) The program coordinator shall determine that each primary or supporting instructor has current licensure or registration required to practice in Iowa.

9.8(10) The program coordinator shall determine that new primary or supporting instructors, who join the program staff during a certification period, meet the requirements for initial certification in 9.8(6) or 9.8(7) within six months of when they join the program staff.

641—9.9(135) Renewal application procedures for programs not recognized by the American Diabetes Association. Every three years, programs shall provide the following information to the department at least 30 days prior to the expiration date.

9.9(1) Name, address and telephone number of the program, program physician and program coordinator.

9.9(2) Identification of the target population, an estimate of program caseload, and the number of participants served in the certification period.

9.9(3) A description of goals and objectives, participant referral mechanism, and means of coordinating between the community, physicians, and program staff.

9.9(4) A description of any changes from the previous application.

9.9(5) A list of new program staff by name, license number or registration number, and position with the program. New staff who will serve as primary instructors shall submit documentation of their training in diabetes as addressed in 9.8(6). New staff serving as supporting instructors shall submit documentation of their training as addressed in 9.8(7).

9.9(6) Documentation of continuing education hours accrued since the previous application for current staff and new staff.

a. All primary instructors shall complete a minimum of 18 hours of continuing education in diabetes, diabetes management or diabetes education within the past three years.

b. All supporting instructors shall complete a minimum of nine hours of continuing education in diabetes, diabetes management, or diabetes education within the past three years.

c. The four professionals required in 9.8(2) to be on the advisory committee shall complete a minimum of five hours of continuing education in diabetes within the past three years.

641—9.10(135) Annual report. Summary data shall be completed annually by each program and sent to the department. The data shall include the number of times the program was presented, the number of outpatients that participated, and a summarized description of program participants including type of diabetes, age, race and sex.

641—9.11(135) Enforcement.

9.11(1) The department may annually or more frequently conduct on-site visits of certified programs.

9.11(2) The department shall furnish a written report of each visit to the program coordinator.

9.11(3) Programs determined by the department to no longer meet the minimum standards for certification shall be given 30 days following receipt of the department's notification of deficiencies to submit a plan of correction.

9.11(4) Notification of cancellation shall be provided to the Iowa insurance division of the Iowa department of commerce and the public.

641—9.12(135) Complaints.

9.12(1) The department shall accept complaints of alleged problems relating to certified outpatient diabetes self-management programs. The information shall state in a reasonably specific manner the basis of the complaints and be presented in writing, in person or by telephone to: Bureau of Health Promotion, Division of Substance Abuse and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; (515)281-6779.

9.12(2) The department shall, within 20 working days of the receipt of the complaint, contact the program coordinator for initial evaluation of the specific matters alleged in the complaint. The program shall receive a written report of the results of department activities relating to the complaint investigation. The complainant shall be promptly informed of the results of the investigation or any action taken by the department.

641—9.13(135) Appeal process.

9.13(1) Denial. Programs shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for denial. The denial shall become effective 30 days after receipt by the aggrieved party unless the grievant within that 30-day period gives written notice to the department requesting a hearing in which case the notice shall be deemed to be suspended.

9.13(2) Revocation. Programs shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for revocation. The revocation shall become effective 30 days after receipt by the aggrieved party unless the grievant within that 30-day period gives written notice to the department requesting a hearing in which case the notice shall be deemed to be suspended.

9.13(3) Contested case. Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded

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within five working days to the department of inspections and appeals pursuant to the rule adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

641—9.14(135) Formal contest.

9.14(1) Hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

9.14(2) Decision of administrative law judge. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in 9.14(3).

9.14(3) Appeal to director. Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

9.14(4) Record of hearing. Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

9.14(5) Decision of director. The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

9.14(6) Exhausting administrative remedies. It is not necessary to file an application or a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

9.14(7) Petition for judicial review. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the director by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 135.11.

ARC 6557A**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 136C.3, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 38, "General Provisions"; Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials"; Chapter 40, "Standards for Protection Against Radiation"; Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials"; Chapter 42, "Operating Procedures and Standards for Use of Radiation Emitting Equipment"; Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations"; and Chapter 46, "Minimum Requirement for Tanning Facilities," Iowa Administrative Code.

Chapters 38, 39, 40, 41, 42 and 45 are revised to incorporate changes in references for clarification, changes made at the federal level which establish national radiation protection standards, and changes to avoid legislating the practice of medicine. The Department does not expect opposition to the changes.

Chapter 46 is revised to better regulate the tanning industry and protect the health and safety of the consumers. Most changes were identified as necessary for clarification as the result of inspections and questions from the regulated community. The proposed changes were sent to the tanning advisory committee. All comments received were supportive. No indication of opposition to these rules has been received in writing or by telephone.

A summary of the changes follows:

Items 1, 5, 8, 17, 53, and 59. Change date to incorporate federal regulations.

Items 2, 6, 9, 18, 52, 54, and 60. Add statement to definitions in Chapters 38 to 41, 45 and 46 to link all chapters together.

Item 3. Move definition from Chapter 41 to 38 and add "human research subject" to meet federal code.

Item 4. Change to reflect current agency name.

Items 7, 33, 56, 63, 65. Correct reference.

Items 10, 11, 13-16, 19-32, 34-51. Correct to meet federal code.

Item 12. Correct to reflect current record requirements.

Items 55, 57, 58, 62. Clarify definition.

Item 61. Add definition for clarification.

Item 62. Delete grandfathering.

Item 64. Add requirement to ensure that proper health warnings are being presented.

Item 66. Correlate Chapter 38 fee requirements with Chapter 46 and allow better enforcement.

Item 67. Allow for enforcement according to agency procedures.

Item 68. Discourage posting of an illegal permit to operate.

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Item 69. Help inform and enforce federal requirements for tanning units.

Items 70-73, 75, 76. Clarify requirements and properly regulate unsafe conditions found routinely during inspections.

Item 74. Bring record-keeping requirements up to date with the computer age.

A public hearing will be held on August 6, 1996, at 10 a.m. in the Third Floor Conference Room, Side 2, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to state their names, addresses, and whom they represent. Presenters will also be asked to confine their remarks to the subject of the amendments.

Any interested person may make written suggestions or comments on the proposed amendments by 4:30 p.m. on August 6, 1996. Such written material should be directed to Donald A. Flater, Chief, Bureau of Radiological Health, Lucas State Office Building, Des Moines, Iowa 50319, fax (515)242-6284.

The proposed amendments are intended to implement Iowa Code chapters 136C and 136D.

The following amendments are proposed.

ITEM 1. Amend rule 641—38.1(136C) as follows:

641—38.1(136C) Purpose and scope. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own, or acquire any source of radiation; provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. Attention is directed to the fact that regulation by the state of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the U.S. Nuclear Regulatory Commission and to 10 CFR Part 150 of the Commission's regulations. All references to Code of Federal Regulations (CFRs) in this chapter are those in effect as of ~~September 1, 1995~~ *October 1, 1996*.

ITEM 2. Amend rule 641—38.2(136C), introductory paragraph, as follows:

641—38.2(136C) Definitions. As used in these rules, these terms have the definitions set forth below ~~Additional definitions used only in a certain chapter will be found in that chapter, and are adopted by reference and included herein for 641—Chapters 39 to 46.~~

ITEM 3. Amend rule **641—38.2(136C)** by amending four definitions and adding the following new definition:

“Medical use” means the intentional internal or external administration of by-product material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.

“Misadministration” means the administration of:

1. A radiopharmaceutical dosage greater than 30 microcuries of either sodium iodide I-125 or I-131:

Involving the wrong patient or *human research subject*, or wrong radiopharmaceutical; or

When both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries.

2. A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

Involving the wrong patient or *human research subject*, wrong radiopharmaceutical, or wrong route of administration; or

When the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage.

3. A gamma stereotactic radiosurgery radiation dose:

Involving the wrong patient or *human research subject*, or wrong treatment site; or

When the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.

4. Radiation doses received from teletherapy, linear accelerator therapy, deep X-ray machine therapy or superficial therapy; involving the wrong patient or *human research subject*, wrong mode of treatment or wrong treatment site;

When the treatment consists of three or fewer fractions or the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

When the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

5. A brachytherapy radiation dose:

Involving the wrong patient or *human research subject*, wrong radioisotope, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

Involving a sealed source that is leaking;

When, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

When the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

6. A diagnostic radiopharmaceutical dosage, other than quantities greater than 30 microcuries of either sodium iodide I-125 or I-131, both:

Involving the wrong patient or *human research subject*, wrong radiopharmaceutical, wrong route of administration; or when the administered dosage differs from the prescribed dosage; and

When the dose to the patient or *human research subject* exceeds 5 rem effective dose equivalent or 50 rem dose equivalent to any individual organ.

“Occupational dose” means the dose received by an individual in the course of employment ~~while engaged in activities licensed by the Commission~~ in which the individual's assigned duties involve exposure to radiation, *from licensed or unlicensed and registered or unregistered sources of radiation*, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

“Public dose” means the dose received by a member of the public from exposure to sources of radiation ~~within a licensee's or registrant's unrestricted areas possessed by a licensee, registrant, or other person, or to any other source of radiation under the control of a licensee, registrant, or other person.~~ It does not include occupational dose or doses, ~~dose~~ received from background radiation, ~~dose received as a patient from medical practices, or dose from voluntary participation in medical research programs.~~

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"Written directive" means an order in writing for a specific patient or *human research subject*, dated and signed by an authorized user or individual qualified by training and experience to conduct particle accelerator or X-ray therapy prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph "6" of this definition, containing the following information:

1. For any administration of quantities greater than 30 microcuries of either sodium iodide I-125 or I-131: the dosage;
2. For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;
3. For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;
4. For teletherapy, particle accelerator or X-ray: the total dose, dose per fraction, treatment site, and overall treatment period;
5. For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or
6. For all other brachytherapy:
 - a. Prior to implantation: the radioisotope, number of sources, and source strengths; and
 - b. After implantation but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

ITEM 4. Amend paragraph 38.9(7)"a" as follows:

- a. Any person may file a request to institute a proceeding pursuant to 38.9(3) to modify, suspend, or revoke an authorization as may be proper. Such a request shall be addressed to the Chief, Bureau of Environmental Radiological Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319. The requests shall specify the action requested and set forth the facts that constitute the basis for the request. The bureau chief will discuss the matter with staff to determine appropriate action in accordance with 38.9(7)"b."

ITEM 5. Amend subrule 39.1(3) as follows:

39.1(3) All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of September 1, 1995 October 1, 1996.

ITEM 6. Amend rule 641—39.2(136C) as follows:

641—39.2(136C) Definitions. As used in this chapter, "facility" means the location at which one or more devices or sources are installed and located within one building, vehicle, or under one roof and are under the same administrative control.

39.2(1) For the purpose of this chapter, the definitions in 641—Chapter 39 may also apply to Chapters 38 and 40 to 46.

39.2(2) As used in this chapter, "facility" means the location at which one or more devices or sources are installed and located within one building, vehicle, or under one roof and are under the same administrative control.

ITEM 7. Amend 641—Chapter 39, Appendix D, title, as follows:

CHAPTER 39—APPENDIX D

LIMITS FOR BROAD LICENSES (39.4(27))(39.4(28))

ITEM 8. Amend subrule 40.1(5) as follows:

40.1(5) All references to Code of Federal Regulations (CFR) in this chapter are those in effect on or before September 1, 1995. October 1, 1996.

ITEM 9. Amend rule 641—40.2(136C) as follows:

641—40.2(136C) Definitions. As used in this chapter, these terms have the definitions set forth below.

40.2(1) For the purposes of this chapter, the definitions of 641—Chapters 38, 39, and 41 to 46 may also apply.

40.2(2) As used in this chapter, these terms have the definitions set forth below.

ITEM 10. Amend subrule 40.19(1) as follows:

40.19(1) For each individual who may enter the licensee's or registrant's restricted or controlled area and is likely to receive, in a year, an occupational dose requiring monitoring pursuant to this rule, the licensee or registrant shall:

- a. Determine the occupational radiation dose received during the current year; and
- b. Attempt to obtain the records of lifetime cumulative occupational radiation dose.

ITEM 11. Amend subrule 40.50(4) as follows:

40.50(4) The licensee shall notify the agency in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either 40.50(1) or 40.50(2). The agency may impose restrictions in addition to those listed in these rules in order to limit individual exposures.

ITEM 12. Amend subrule 40.80(1) as follows:

40.80(1) Each licensee or registrant shall use the special units curie, rad, rem and roentgen, *counts per minute (cpm)*, *disintegrations per minute (dpm)*, or the SI units becquerel, gray, sievert and coulomb per kilogram, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this chapter.

ITEM 13. Amend paragraph 40.95(1)"b" as follows:

b. Within 30 days after its occurrence becomes known to the licensee, lost, stolen, or missing licensed radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C that is still missing.

ITEM 14. Amend subrule 40.101(2) as follows:

40.101(2) When a licensee or registrant is required pursuant to 40.97(136C), 40.98(136C), or 40.100(136C) to report to the agency any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation or radioactive material, the licensee or registrant shall also notify provide a copy of the report submitted to this agency to the individual. Such notice shall be transmitted at a time not later than the transmittal to the agency, and shall comply with the provisions of 40.112(1).

ITEM 15. Amend subrule 40.111(1), introductory paragraph, and paragraphs "a" and "c," as follows:

40.111(1) All individuals likely to receive an occupational dose who in the course of employment are likely to receive in a year an occupational dose in excess of 100 mrem (1 mSv):

- a. Shall be kept informed of the storage, transfer, or use of sources of radiation; in such portions of the restricted area;
- c. Shall be instructed in, and instructed required to observe, to the extent within the worker's control, the applicable provisions of these rules and licenses for the protection of personnel from exposures to radiation or radioactive material occurring in such areas;

ITEM 16. Amend subrule 40.111(2) as follows:

40.111(2) The extent of these instructions shall be commensurate with potential radiological health protection problems in the restricted area. In determining those individuals subject to the requirements of 40.111(1), consideration must

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be given to assigning activities during normal and abnormal situations involving exposure to sources of radiation which can reasonably be expected to occur during the life of the facility. The extent of these instructions must be commensurate with potential radiological health protection problems present in the workplace.

ITEM 17. Amend subrule 41.1(1) as follows:

41.1(1) Scope. This rule establishes requirements, for which a registrant is responsible, for use of X-ray equipment by or under the supervision of an individual authorized by and licensed in accordance with state statutes to engage in the healing arts or veterinary medicine. The provisions of this rule are in addition to, and not in substitution for, any other applicable provisions of these rules. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~September 1, 1995.~~ *October 1, 1996.*

ITEM 18. Amend subrule 41.1(2), introductory paragraph, as follows:

41.1(2) Definitions. ~~As used in this chapter, the following definitions apply: For the purpose of this chapter, the definitions of 641—Chapters 38 to 40 and 45 may also apply.~~

ITEM 19. Amend subrule **41.2(2)** by amending two definitions and adding two new definitions as follows:

“Authorized nuclear pharmacist” means a pharmacist who is:

1. *Board certified as a nuclear pharmacist by the board of pharmaceutical specialties;*

2. *Identified as an authorized nuclear pharmacist on an NRC or Agreement State license that authorizes the use of by-product material in the practice of nuclear pharmacy; or*

3. *Identified as an authorized nuclear pharmacist on a permit issued by an NRC or Agreement State specific licensee of broad scope that is authorized to permit the use of by-product material in the practice of nuclear pharmacy.*

“Authorized user” means a practitioner of the healing arts physician, dentist, or podiatrist who is:

1. *Identified as an authorized user on an agency [, agreement state, licensing state or U.S. Nuclear Regulatory Commission] license that authorizes the medical use of radioactive material.*

2. *Board certified by at least one of the boards listed in 41.2(67) “a,” 41.2(68) “a,” 41.2(69) “a,” 41.2(70) “a,” 41.2(71) “a,” 41.2(72) “a,” and 41.2(73) “a.”*

3. *Identified as an authorized user on a permit issued by an NRC or Agreement State specific licensee of broad scope that is authorized to permit the medical use of by-product material.*

“Medical use” means the intentional internal or external administration of radioactive material, or the radiation therefrom, to humans in the practice of the healing arts.

“Pharmacist” means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

ITEM 20. Amend subrule **41.2(3)** by adding new paragraphs “c,” “d,” and “e” as follows:

c. An individual may prepare unsealed by-product material for medical use in accordance with these rules under the supervision of an authorized nuclear pharmacist or authorized user as provided in 41.2(11) unless prohibited by license condition.

d. A licensee may conduct research involving human subjects using by-product material provided that the research is conducted, funded, supported, or regulated by another federal agency which has implemented the Federal Policy for the

Protection of Human Subjects. Otherwise, a licensee shall apply for and receive approval of a specific amendment to its license before conducting such research. Both types of licensees shall, at a minimum, obtain informed consent from the human subjects and obtain prior review and approval of the research activities by an Institutional Review Board in accordance with the meaning of these terms as defined and described in the Federal Policy for the Protection of Human Subjects.

Nothing in this subrule relieves the licensee from complying with applicable FDA, federal, and other state requirements governing radioactive drugs or devices.

e. An applicant that satisfies the requirements of 641—paragraph 39.4(28)“b” may apply for a Type A specific license of broad scope.

ITEM 21. Amend paragraph **41.2(4)“b”** as follows:

~~b. Before permitting anyone, except a visiting authorized user described in 41.2(12), to work as an authorized user under the license;~~

Before permitting anyone to work as an authorized user or authorized nuclear pharmacist under the license, except an individual who is:

(1) *An authorized user certified by the organizations specified in 41.2(67) “a,” 41.2(68) “a,” 41.2(69) “a,” 41.2(70) “a,” 41.2(71) “a,” 41.2(72) “a,” or 41.2(73) “a”;*

(2) *An authorized nuclear pharmacist certified by the organization specified in 41.2(78) “a”;*

(3) *Identified as an authorized user or an authorized nuclear pharmacist on an NRC or Agreement State license that authorizes the use of by-product material in medical use or in the practice of nuclear pharmacy, respectively; or*

(4) *Identified as an authorized user or an authorized nuclear pharmacist on a permit issued by the NRC or Agreement State specific licensee of broad scope that is authorized to permit the use of by-product material in medical use or in the practice or nuclear pharmacy, respectively.*

ITEM 22. Amend subrule 41.2(5) as follows:

41.2(5) Notifications. ~~A licensee shall notify the agency in writing within 30 days when an authorized user, radiation safety officer, or teletherapy physicist permanently discontinues performance of duties under the license.~~

a. *A licensee shall provide to the agency a copy of the board certification, the NRC or Agreement State license, or the permit issued by a licensee of broad scope for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user or an authorized nuclear pharmacist pursuant to 41.2(4) “b”(1) to 41.2(4) “b”(4).*

b. *A licensee shall notify the agency by letter no later than 30 days after:*

(1) *An authorized user, an authorized nuclear pharmacist, radiation safety officer, or teletherapy physicist permanently discontinues performance of duties under the license or has a name change; or*

(2) *The licensee’s mailing address changes.*

c. *The licensee shall mail the documents required in this subrule to the Iowa Department of Public Health, Des Moines, Iowa.*

d. *Exemptions regarding Type A specific licenses of broad scope. A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:*

(1) *The provision of 41.2(4) “b”;*

(2) *The provisions of 41.2(4) “e” regarding additions to or changes in the areas of use only at the addresses specified in the license;*

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- (3) *The provision of 41.2(5) "a";*
 (4) *The provisions of 41.2(5) "b"(1) for authorized user or an authorized nuclear pharmacist.*

ITEM 23. Amend subparagraph 41.2(9)"b"(2) as follows:

(2) Review:

1. *Review, on the basis of safety and with regard to the training and experience standards of this rule, and approve or disapprove any individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the radiation safety officer, or teletherapy physicist before submitting a license application or request for amendment or renewal;*

2. *Review, pursuant to 41.2(4) "b"(1) to 41.2(4) "b"(4), on the basis of the board certification, the license, or the permit identifying an individual, and approve or disapprove any individual prior to allowing that individual to work as an authorized user or authorized nuclear pharmacist.*

ITEM 24. Amend subparagraph 41.2(11)"a"(5) as follows:

(5) Require that only those individuals specifically trained, and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients or human research subjects.

ITEM 25. Amend subrule 41.2(11) by adding **new** paragraphs "c" and "d" as follows:

c. A licensee that permits the preparation of by-product material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by 41.2(3)"c," shall:

(1) Instruct the supervised individual in the preparation of by-product material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of by-product material;

(2) Require the supervised individual to follow the instructions given pursuant to 41.2(11)"c" and to comply with the regulations of this chapter and license conditions; and

(3) Require the supervising authorized nuclear pharmacist or physician who is an authorized user to periodically review the work of the supervised individual as it pertains to preparing by-product material for medical use and the records kept to reflect that work.

d. A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

ITEM 26. Amend subrule 41.2(14) as follows:

41.2(14) Records and reports of misadministrations.

a. When a misadministration involves any therapy procedure, the licensee shall notify the agency by telephone. The licensee shall also notify the referring physician of the affected patient or human research subject and the patient or human research subject or a responsible relative or guardian, unless the referring physician agrees to inform the patient or human research subject or believes, based on medical judgment, that telling the patient or human research subject or the patient's or human research subject's responsible relative or guardian would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the misadministration. If the referring physician, patient or human research subject, or the patient's or human research subject's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or human research subject or the patient's or human research subject's responsible relative or guardian

without first consulting the referring physician; however, the licensee shall not delay medical care for the patient or human research subject because of this including remedial care as a result of the misadministration because of any delay in notification.

b. Within 15 days after an initial therapy misadministration report to the agency, the licensee shall report, in writing, to the agency and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative or guardian if either was previously notified by the licensee as required by 41.2(14)"a." The written report shall include the licensee's name; the referring physician's name; a brief description of the event; the effect on the patient; what improvements are needed to prevent recurrence; the action taken to prevent recurrence; whether the licensee informed the patient or the patient's responsible relative or guardian, and if not, why not. The report shall not include the patient's name or other information that could lead to identification of the patient.

b. Written reports.

(1) The licensee shall submit a written report to the agency within 15 days after discovery of the misadministration. The written report must include the licensee's name, the prescribing physician's name, a brief description of the event, why the event occurred, the effect on the patient or the human research subject, what improvements are needed to prevent recurrence, actions taken to prevent recurrence, whether the licensee notified the patient or the human research subject or the patient's or the human research subject's responsible relative or guardian (this individual will subsequently be referred to as "the patient or the human research subject"), and if not, why not, and if the patient or the human research subject was notified, what information was provided to that individual. The report must not include the patient's or the human research subject's name or other information that could lead to identification of the patient or the human research subject.

(2) If the patient or the human research subject was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the patient or the human research subject by sending either:

1. A copy of the report that was submitted to the agency; or

2. A brief description of both the event and the consequences as they may affect the patient or the human research subject, provided a statement is included that the report submitted to the agency can be obtained from the licensee.

c. When a misadministration involves a diagnostic procedure, the radiation safety officer shall promptly investigate its cause, make a record for agency review, and retain the record as directed in 41.2(14)"d." The licensee shall also notify the referring physician and the agency in writing on IDPH Form #588-2608 within 15 days if the misadministration involved the use of radioactive material not intended for medical use, administration of dosage fivefold different from the intended dosage, or administration of radioactive material such that the patient or human research subject is likely to receive an organ dose greater than 2 rems (0.02 Sv) or a whole body dose greater than 500 millirem (5 mSv). Licensees may use dosimetry tables in package inserts, corrected only for amount of radioactivity administered, to determine whether a report is required.

d. Each licensee shall retain a record of each misadministration for ten years. The record shall contain the names of all individuals involved in the event, including the physician, allied health personnel, the patient or human research sub-

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ject, and the patient's or human research subject's referring physician, the patient's or human research subject's social security number or identification number if one has been assigned, a brief description of the event, why it occurred, the effect on the patient or human research subject, what improvements are needed to prevent recurrence, and the action taken, if any, to prevent recurrence.

e. Aside from the notification requirement, nothing in 41.2(14)"a" to 41.2(14)"d" shall affect any rights or duties of licensees and physicians in relation to each other, patients or human research subjects, or responsible relatives or guardians.

f. Quality management program.

(1) Each licensee under this paragraph, as applicable, shall establish and maintain a written quality management program to provide high confidence that by-product material or radiation from by-product material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet the following specific objectives:

1. That, prior to administration, a written directive¹ is prepared for:

- Any teletherapy radiation dose;
- Any gamma stereotactic radiosurgery radiation dose;
- Any brachytherapy radiation dose;
- Any administration of quantities greater than 30 microcuries of either sodium iodide I-125 or I-131; or
- Any therapeutic administration of a radiopharmaceutical, other than sodium iodide I-125 or I-131;

2. That, prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive;

3. That final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

4. That each administration is in accordance with the written directive; and

5. That any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(2) The licensee shall:

1. Develop procedures for and conduct a review at intervals no greater than 12 months of the quality management program including, since the last review, an evaluation of:

- A representative sample of patient and human research subject administrations,
- All recordable events, and
- All misadministrations to verify compliance with all aspects of the quality management program;

2. Evaluate each of these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of paragraph "a" of this subrule; and

3. Retain records of each review, including the evaluations and findings of the review, in an auditable form for three years.

(3) The licensee shall evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by:

1. Assembling the relevant facts including the cause;
2. Identifying what, if any, corrective action is required to prevent recurrence; and
3. Retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if any, was taken.

(4) The licensee shall retain:

1. Each written directive; and
2. A record of each administered radiation dose or radiopharmaceutical dosage where a written directive is required in 41.2(14)"f"(1)"1," in an auditable form, for three years after the date of administration.

(5) The licensee may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased. The licensee shall furnish the modification to the agency within 30 days after the modification has been made.

(6) Each applicant for a new license, as applicable, shall submit to the agency a quality management program as part of the application for a license and implement the program upon issuance of the license by the agency. Each existing licensee, as applicable, shall submit to the agency by March 31, 1995, a written certification that the quality management program has been implemented along with a copy of the program.

ITEM 27. Amend subrule 41.2(17), paragraphs "a," "b," and "e" as follows:

a. A medical use licensee authorized to administer radiopharmaceuticals shall possess a dose calibrator and use it to measure the amount of activity administered to each patient or human research subject.

b. A licensee shall:

(1) Check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy the requirement of this section, the check shall be done on a frequently used setting with a sealed source of not less than 10 microcuries (370 kBq) of radium-226 or 50 microcuries (1.85 MBq) of any other photon-emitting radionuclide with a half-life greater than 90 days;

(2) Test each dose calibrator for accuracy upon installation and at intervals not to exceed 12 months thereafter by assaying at least two sealed sources containing different radionuclides, the activity of which the manufacturer has determined within 5 percent of the stated activity, with minimum activity of 10 microcuries (370 kBq) for radium-226 and 50 microcuries (1.85 MBq) for any other photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;

(3) Test each dose calibrator for linearity upon installation and at intervals not to exceed three months thereafter over the range of use between ~~10 microcuries (370 kBq)~~ 30 microcuries (1.1 megabecquerels) and the highest dosage that will be administered; and

(4) Test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

¹If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision.

Also, a written revision to an existing written directive may be made for any diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next teletherapy fractional dose.

If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared within 24 hours of the oral directive.

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e. A licensee shall retain a record of each check and test required by 41.2(17) for three years. The records required by 41.2(17)“b” shall include:

(1) For 41.2(17)“b”(1), the model and serial number of the dose calibrator, the identity and calibrated activity of the radionuclide contained in the check source, the date of the check, the activity measured, the instrument settings, and the initials of the individual who performed the check;

(2) For 41.2(17)“b”(2), the model and serial number of the dose calibrator, the model and serial number of each source used and the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, the instrument settings, *the identity of the individual performing the test* and the signature of the radiation safety officer;

(3) For 41.2(17)“b”(3), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, *the identity of the individual performing the test*, and the signature of the radiation safety officer; and

(4) For 41.2(17)“b”(4), the model and serial number of the dose calibrator, the configuration and calibrated activity of the source measured, the activity of the source, the activity measured and the instrument setting for each volume measured, the date of the test, *the identity of the individual performing the test*, and the signature of the radiation safety officer.

ITEM 28. Amend subrule 41.2(18) by adding new paragraph “g” as follows:

g. Possession, use, calibration, and check of instruments to measure dosages of alpha- or beta-emitting radionuclides.

(1) This section does not apply to unit dosages of alpha- or beta-emitting radionuclides that are obtained from a manufacturer or preparer licensed pursuant to 641—paragraph 39.4(29)“j,” CFR 32.72, or equivalent Agreement State requirements.

(2) For other than unit dosages obtained pursuant to 41.2(18)“g”(1), a licensee shall possess and use instrumentation to measure the radioactivity of alpha- or beta-emitting radionuclides. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha- or beta-emitting radionuclides prior to administration to each patient or human research subject. In addition, the licensee shall:

1. Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument, and make adjustments when necessary; and

2. Check each instrument for constancy and proper operation at the beginning of each day of use.

ITEM 29. Amend subrule 41.2(19) as follows:

41.2(19) Assay of radiopharmaceutical dosages. A licensee shall:

a. Assay, within 30 minutes before medical use, prior to medical use, the activity of each radiopharmaceutical dosage that contains more than ~~10 microcuries (370 kBq)~~ 30 microcuries (1.1 megabecquerels) of a photon-emitting radionuclide;

b. Assay, before medical use, the activity of each radiopharmaceutical dosage with a desired activity of ~~10 microcuries (370 kBq)~~ or less of a photon-emitting radionuclide to verify that the dosage does not exceed 30 microcuries (1.1 mBq); and

c. Measure, by direct measurement or by combination of measurements and calculations, the activity of each dosage of an alpha- or beta-emitting radionuclide prior to medical use, except for unit dosages obtained from a manufacturer or preparer licensed pursuant to 641—paragraph 39.4(29)“j” or equivalent NRC or Agreement State requirements.

e. d. Retain a record of the assays required by 41.2(19)“a” for three years. To satisfy this requirement, the record shall contain the:

(1) Generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(2) Patient’s or human research subject’s name and identification number if one has been assigned;

(3) Prescribed dosage and activity of the dosage at the time of assay, or a notation that the total activity is less than ~~10 microcuries (370 kBq)~~; 30 microcuries (1.1 megabecquerels);

(4) Date and time of the assay and administration; and

(5) Initials of the individual who performed the assay.

ITEM 30. Amend paragraph 41.2(22)“b” as follows:

b. A licensee shall require each individual who prepares or administers radiopharmaceuticals to use a syringe radiation shield unless the use of the shield is contraindicated for that patient or human research subject.

ITEM 31. Amend subrule 41.2(23) as follows:

41.2(23) Syringe labels. Unless utilized immediately, a licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical, with the radiopharmaceutical name or its abbreviation, the type of diagnostic study or therapy procedure to be performed, or the patient’s or human research subject’s name.

ITEM 32. Amend subrule 41.2(27) as follows:

41.2(27) Release of patients or human research subjects containing radiopharmaceuticals or permanent implants.

a. A licensee shall not authorize release from confinement for medical care any patient or human research subject administered a radiopharmaceutical until either:

(1) The dose rate from the patient or human research subject is less than 5 millirems (50 mSv) per hour at a distance of 1 meter; or

(2) The activity in the patient or human research subject is less than 30 millicuries (1.1 GBq).

b. A licensee shall not authorize release from confinement for medical care any patient or human research subject administered a permanent implant until the dose rate from the patient or human research subject is less than 5 millirems (50 mSv) per hour at a distance of 1 meter.

ITEM 33. Amend paragraph 41.2(34)“d” as follows:

d. A licensee shall report immediately to the agency each occurrence of molybdenum-99 concentration exceeding the limits specified in ~~41.2(32)“a.”~~ 41.2(34)“a.”

ITEM 34. Amend subrule 41.2(38), paragraphs “a” and “b,” as follows:

41.2(38) Safety instruction.

a. A licensee shall provide oral and written radiation safety instruction for all personnel caring for patients or human research subjects undergoing radiopharmaceutical therapy. Refresher training shall be provided at intervals not to exceed one year.

b. To satisfy 41.2(38)“a,” the instruction shall describe the licensee’s procedures for:

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- (1) Patient or human research subject control;
- (2) Visitor control;
- (3) Contamination control;
- (4) Waste control;
- (5) Notification of the radiation safety officer or authorized user in case of the patient's or human research subject's death or medical emergency; and
- (6) Training requirements specified in 641—40.110(136C) and 40.116(136C), and adopted by reference and included herein.

ITEM 35. Amend subrule 41.2(39) as follows:

41.2(39) Safety precautions.

a. For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with 41.2(27), a licensee shall:

(1) Provide a private room with a private sanitary facility;

(2) Post the patient's or human research subject's door with a "Caution: Radioactive Material" sign and note on the door or on the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(3) Authorize visits by individuals under 18 years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(4) Promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of 641—subrule 40.26(1) which is adopted by reference and included herein and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in millirems (mSv) per hour, the instrument used to make the survey, and the initials of the individual who made the survey;

(5) Either monitor material and items removed from the patient's or human research subject's room to determine that any contamination cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle these materials and items as radioactive waste;

(6) Provide the patient or human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient or human research subject;

(7) Survey the patient's or human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room must not be reassigned until removable contamination is less than 200 disintegrations per minute (3.33 Bq) per 100 square centimeters; and

(8) Measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three days after administering the dosage, and retain for the period required by 641—paragraph 40.82(2)"c" which is adopted and included herein a record of each thyroid burden measurement, date of measurement, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

b. A licensee shall notify the radiation safety officer or the authorized user immediately if the patient or human research subject dies or has a medical emergency.

ITEM 36. Amend subrule 41.2(44) as follows:

41.2(44) Safety instruction.

a. The licensee shall provide oral and written radiation safety instruction to all personnel caring for a patient or human research subject receiving implant therapy. Refresher training shall be provided at intervals not to exceed one year.

b. To satisfy 41.2(44)"a," the instruction shall describe:

(1) Size and appearance of the brachytherapy sources;

(2) Safe handling and shielding instructions in case of a dislodged source;

(3) Procedures for patient or human research subject control;

(4) Procedures for visitor control;

(5) Procedures for notification of the radiation safety officer or authorized user if the patient or human research subject dies or has a medical emergency; and

(6) Training requirements specified in 641—40.110(136C) and 40.116(136C) as adopted by reference and included herein.

c. A licensee shall maintain a record of individuals receiving instruction required by 41.2(44)"a," a description of the instruction, the date of instruction, and the name of the individual who gave the instruction for three years.

ITEM 37. Amend subrule 41.2(45) as follows:

41.2(45) Safety precautions.

a. For each patient or human research subject receiving implant therapy a licensee shall:

(1) Not place the patient or human research subject in the same room with a patient who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirement of 641—40.26(136C) as adopted by reference and included herein at a distance of 1 meter from the implant;

(2) Post the patient's or human research subject's door with a "Caution: Radioactive Materials" sign and note on the door or the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(3) Authorize visits by individuals under 18 years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(4) Promptly after implanting the sources, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with 641—40.26(136C) as adopted by reference and included herein; and retain for three years a record of each survey that includes the time and date of the survey, a sketch of the area or list of points surveyed, the measured dose rate at several points expressed in millirems (mSv) per hour, the instrument used to make the survey, and the initials of the individual who made the survey; and

(5) Provide the patient or human research subject with radiation safety guidance that will help keep the radiation dose to household members and the public as low as reasonably achievable before releasing the patient or human research subject if the patient or human research subject was administered a permanent implant.

b. A licensee shall notify the radiation safety officer or authorized user immediately if the patient or human research subject dies or has a medical emergency.

ITEM 38. Amend subrule 41.2(46) as follows:

41.2(46) Brachytherapy sources inventory.

a. Each time brachytherapy sources are returned to an area of storage from an area of use, the licensee shall immediately count or otherwise verify the number returned to ensure

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that all sources taken from the storage area have been returned.

b. A licensee shall make a record of brachytherapy source utilization which includes:

(1) The names of the individuals permitted to handle the sources;

(2) The number and activity of sources removed from storage, the room number of use and patient's *or human research subject's* name, the time and date they were removed from storage, the number and activity of sources in storage after the removal, and the initials of the individual who removed the sources from storage; and

(3) The number and activity of sources returned to storage, the room number of use and patient's *or human research subject's* name, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

c. Immediately after implanting sources in a patient *or human research subject* and immediately after removal of sources from a patient *or human research subject*, the licensee shall make a radiation survey of the patient *or human research subject* and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

d. A licensee shall maintain the records required in 41.2(46)"b" and "c" for three years.

ITEM 39. Amend subrule 41.2(47) as follows:

41.2(47) Release of patients *or human research subjects* treated with temporary implants.

a. Immediately after removing the last temporary implant source from a patient *or human research subject*, the licensee shall perform a radiation survey of the patient *or human research subject* with a radiation detection survey instrument to confirm that all sources have been removed. The licensee shall not release from confinement for medical care a patient *or human research subject* treated by temporary implant until all sources have been removed.

b. A licensee shall maintain a record of patient *or human research subject* surveys which demonstrate compliance with 41.2(47)"a" for three years. Each record shall include the date of the survey, the name of the patient *or human research subject*, the dose rate from the patient *or human research subject* expressed as millirems (microsieverts) per hour and measured within 1 meter from the patient *or human research subject*, and the initials of the individual who made the survey.

ITEM 40. Amend subparagraph 41.2(52)"a"(1) as follows:

(1) The procedure to be followed to ensure that only the patient *or human research subject* is in the treatment room before turning the primary beam of radiation "on" to begin a treatment or after a door interlock interruption;

ITEM 41. Amend subrule 41.2(55), paragraph "d," as follows:

d. A radiation monitor shall be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients *or human research subjects*.

ITEM 42. Amend subrule 41.2(56) as follows:

41.2(56) Viewing system. A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient *or human research subject* from the teletherapy unit console during irradiation.

ITEM 43. Amend paragraph 41.2(65)"a" as follows:

a. Be certified by the:

(1) American Board of Health Physics in comprehensive health physics;

(2) American Board of Radiology in radiological physics, therapeutic radiological physics, or medical nuclear physics;

(3) American Board of Nuclear Medicine;

(4) American Board of Science in Nuclear Medicine; or

(5) Board of Pharmaceutical Specialties in Nuclear Pharmacy or Science; or

(6) *American Board of Medical Physics in radiation oncology physics;*

(7) *Royal College of Physicians and Surgeons of Canada in nuclear medicine;*

(8) *American Osteopathic Board of Radiology; or*

(9) *American Osteopathic Board of Nuclear Medicine.*

ITEM 44. Amend subrule 41.2(67), paragraphs "a" and "b," as follows:

a. Is certified in:

(1) Nuclear medicine by the American Board of Nuclear Medicine;

(2) Diagnostic radiology by the American Board of Radiology;

(3) Diagnostic radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or

(4) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or

(5) *Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or*

b. Has completed 40 hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, and 20 hours of supervised clinical experience.

(1) To satisfy the basic instruction requirement, 40 hours of classroom and laboratory instruction shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Radiation biology; and

5. Radiopharmaceutical chemistry.

(2) To satisfy the requirement for 20 hours of supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and shall include:

1. Examining patients *or human research subjects* and reviewing their case histories to determine their suitability for radionuclide diagnosis, limitations, or contraindications;

2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

3. Administering dosages to patients *or human research subjects* and using syringe radiation shields;

4. Collaborating with the authorized user in the interpretation of radionuclide test results; and

5. Patient *or human research subject* follow-up; or

ITEM 45. Amend subrule 41.2(68), paragraphs "a" and "b," as follows:

a. Is certified in:

(1) Nuclear medicine by the American Board of Nuclear Medicine;

(2) Diagnostic radiology by the American Board of Radiology;

(3) Diagnostic radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or

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(4) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or

(5) *Nuclear medicine by the Royal College of Physicians and Surgeons of Canada*; or

b. Has completed 200 hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, 500 hours of supervised work experience, and 500 hours of supervised clinical experience.

(1) To satisfy the basic instruction requirement, 200 hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Radiopharmaceutical chemistry; and
5. Radiation biology.

(2) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
3. Calculating and safely preparing patient *or human research subject* dosages;
4. Using administrative controls to prevent the misadministration of radioactive material;
5. Using emergency procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Eluting technetium-99m from generator systems, assaying and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals.

(3) To satisfy the requirement for 500 hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

1. Examining patients *or human research subjects* and reviewing their case histories to determine their suitability for radionuclide diagnosis, limitations, or contraindications;
2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
3. Administering dosages to patients *or human research subjects* and using syringe radiation shields;
4. Collaborating with the authorized user in the interpretation of radionuclide test results; and
5. Patient *or human research subject* follow-up; or

ITEM 46. Amend subrule 41.2(69), paragraph "a," as follows:

- a. Is certified by:
 - (1) The American Board of Nuclear Medicine; or
 - (2) The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; or
 - (3) *Nuclear medicine by the Royal College of Physicians and Surgeons of Canada*; or
 - (4) *The American Osteopathic Board of Radiology after 1984*; or

ITEM 47. Amend subrule 41.2(72), paragraph "a," as follows:

- a. Is certified in:
 - (1) Radiology, diagnostic radiology with special competence in nuclear radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(2) Nuclear medicine by the American Board of Nuclear Medicine; or

(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(4) *Nuclear medicine by the Royal College of Physicians and Surgeons of Canada*; or

ITEM 48. Amend subparagraph 41.2(73)"b"(3) as follows:

(3) To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

1. Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment and any limitations or contraindications;
2. Selecting the proper dose and how it is to be administered;
3. Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' *or human research subjects'* progress and consideration of the need to modify originally prescribed doses as warranted by patients' *or human research subjects'* reaction to radiation; and
4. Postadministration follow-up and review of case histories.

ITEM 49. Amend paragraph 41.2(74)"a" as follows:

a. ~~Be certified by The American Board of Radiology in:~~

- (1) ~~Therapeutic radiological physics;~~
- (2) ~~Roentgen-ray and gamma-ray physics;~~
- (3) ~~X-ray and radium physics; or~~
- (4) ~~Radiological physics; or~~

a. *Be certified by:*

- (1) *The American Board of Radiology in:*
 1. *Therapeutic radiological physics;*
 2. *Roentgen-ray and gamma-ray physics;*
 3. *X-ray and radium physics, or*
 4. *Radiological physics; or*
- (2) *The American Board of Medical Physics in radiation oncology physics; or*

ITEM 50. Amend subrule 41.2(77) as follows:

41.2(77) Recentness of training. The training and experience specified in 41.2(65) to 41.2(74) 41.2(79) shall have been obtained within the ~~five~~ seven years preceding the date of application or the individual shall have had *related continuing education and continuing applicable experience* since the required training and experience was completed.

ITEM 51. Adopt new subrules 41.2(78) and 41.2(79) as follows:

41.2(78) Training for an authorized nuclear pharmacist. The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

- a. Has current board certification as a nuclear pharmacist by the board of pharmaceutical specialties, or
- b. Has completed:
 - (1) 700 hours in a structured educational program consisting of both:
 1. Didactic training in the following areas:
 - Radiation physics and instrumentation;
 - Radiation protection;

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- Mathematics pertaining to the use and measurement of radioactivity;
 - Chemistry of by-product material for medical use; and
 - Radiation biology; and
2. Supervised experience in a nuclear pharmacy involving the following:
- Shipping, receiving, and performing related radiation surveys;
 - Using and performing checks for proper operation of dose calibrators, survey meters, and if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;
 - Calculating, assaying, and safely preparing dosages for patients or human research subjects;
 - Using administrative controls to avoid mistakes in the administration of by-product material;
 - Using procedures to prevent or minimize contamination and using proper decontamination procedures; and
- (2) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

41.2(79) Training for experienced nuclear pharmacists. A licensee may apply for and must receive a license amendment identifying an experienced nuclear pharmacist as an authorized nuclear pharmacist before it allows this individual to work as an authorized nuclear pharmacist. A pharmacist who has completed a structured educational program as specified in 41.2(78)"b" before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist need not comply with the requirements on preceptor statement in 41.2(78)"b"(2) and recentness of training in 41.2(77) to qualify as an authorized nuclear pharmacist.

ITEM 52. Amend subrule 42.1(1), introductory paragraph, as follows:

42.1(1) Definitions. *For the purpose of this chapter, the definitions of 641—Chapters 38 to 41 and 43 to 46 may also apply.*

ITEM 53. Amend subrule 45.1(1) as follows:

45.1(1) Purpose and scope. The rules in this chapter establish radiation safety requirements for using sources of radiation for industrial radiography. The requirements of this chapter are in addition to, and not a substitution for, other applicable requirements of 641—Chapter 38, 39, 40, or 41. The rules in this chapter apply to all licensees or registrants who use sources of radiation for industrial radiography. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of September 1, 1995. *October 1, 1996.*

ITEM 54. Amend subrule 45.1(2), introductory paragraph, as follows:

45.1(2) Definitions. *For the purpose of this chapter, the definitions of 641—Chapters 38 to 41 may also apply.* As used in this chapter, the following definitions apply:

ITEM 55. Amend subrule 45.1(2), definition of "I.D. card," as follows:

"I.D. card" means the document issued by the agency, another Agreement State, a licensing state, or third-party certification, to industrial radiographers following completion of requirements stated in 45.1(10)"b."

ITEM 56. Amend paragraph 45.1(3)"a" as follows:

a. Uses of certified and certifiable cabinet X-ray systems designed to exclude individuals are exempt from the

requirements of this chapter, except for the requirements of 45.2(7)(6)"b" and "c."

ITEM 57. Amend subparagraph 45.1(10)"b"(3) as follows:

(3) Unless the individual possesses a current I.D. card issued pursuant to 45.1(10)"g"(1) or issued by the U.S. Nuclear Regulatory Commission, another agreement state, or a licensing state.

ITEM 58. Amend paragraph 45.1(17)"b" as follows:

b. Each radiographer at a job site shall possess a valid I.D. card issued by the agency.

ITEM 59. Amend rule 641—46.1(136D) as follows:

641—46.1(136D) Purpose and scope. This chapter provides for the registration/permitting and regulation of facilities and tanning devices used for the purpose of tanning human skin through the application of ultraviolet radiation. In addition to the requirements of this chapter, all facilities are subject to the applicable provisions of other chapters of the department's rules. Nothing in this chapter shall be interpreted as limiting the intentional exposure of patients to ultraviolet radiation for the purpose of treatment or therapy, provided treatment or therapy is supervised by a licensed physician trained in the use of phototherapy devices.

Reference to CFRs in this chapter are those in effect January 1, 1991. *October 1, 1995.*

ITEM 60. Amend rule 641—46.2(136D), introductory paragraph, and add a **new** definition as follows:

641—46.2(136D) Definitions. *For the purpose of this chapter, the definitions of 641—Chapters 38 and 39 may also apply.* The following terms are defined for purposes of this chapter:

"Health care professional" means an individual, licensed by the state of Iowa, who has received formal medical training in the use of phototherapy.

ITEM 61. Amend subrule 46.3(2) as follows:

46.3(2) Personal use: Tanning devices which are limited exclusively to personal use by an individual and this individual's immediate family. *Multiple ownership of the device by persons for personal use only does not qualify it for the "personal use only" exemption.*

ITEM 62. Amend subrule 46.4(1) as follows:

46.4(1) Permit requirements:

a.—~~Each person owning a tanning facility on March 13, 1991, shall apply on a form provided by the department for a permit for each facility no later than 60 days following March 13, 1991.~~

b. Each person acquiring or establishing a tanning facility after March 13, 1991, shall apply to the department for a permit prior to beginning operation.

ITEM 63. Amend paragraph 46.4(2)"b" as follows:

b. Pay the appropriate fee to the department as set forth in 641—38.8(11) *as adopted by reference and included herein*; and

ITEM 64. Amend subparagraph 46.4(2)"c"(5) as follows:

(5) ~~The geographic areas of the state to be covered, if the application is for a mobile tanning facility.~~

(5) *A copy of the consent form which has a signature block that reads, "I have read the IDPH health warnings," or equivalent.*

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ITEM 65. Amend paragraph 46.4(3)“d” as follows:

d. Permits shall be renewed annually upon acceptance of a renewal application provided by the department and upon receipt of the renewal fee set forth in 641—38.8(11) as adopted by reference and included herein.

ITEM 66. Amend paragraph 46.4(7)“a” by adding the following new subparagraphs (5) and (6):

(5) Failure to pay annual registration/permit fees required in 641—subrule 38.8(11), as adopted by reference and included herein;

(6) Violation of any of the provisions of 641—Chapters 38 and 46 and the provisions of Iowa Code chapter 136D.

ITEM 67. Amend paragraph 46.4(7)“c” as follows:

c. Any person aggrieved by a decision by the department to deny a permit or to suspend or revoke a permit after issuance may request a hearing under provisions of Iowa Code section 17A.20. 641—subrule 38.9(3) as adopted by reference and included herein.

ITEM 68. Amend paragraph 46.4(7)“d” and add a new paragraph “e” as follows:

d. ~~The department may terminate a permit upon receipt of a written request for termination from the registrant.~~

d. A permit issued under this Chapter 46 shall be returned to the department if the facility ceases business or otherwise ceases on a permanent basis, relocates, or changes ownership. The permit will then be terminated or reissued.

e. Actions against any permit holder for violations of these rules will follow the procedures in 641—38.9(136C) as adopted by reference and included herein.

ITEM 69. Amend subrule 46.5(2) as follows:

46.5(2) *Federal certification.*

a. Only tanning devices manufactured and certified under the provision of 21 CFR Part 1040.20, “Sunlamp products and ultraviolet lamps intended for use in sunlamp products,” shall be used in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR Part 1010.2 and 1010.3.

b. *Labeling shall meet the requirements of 21 CFR Part 1040.20 and be visible on each unit. Labeling shall include, in part, the lamp type to be used and maximum exposure time in minutes.*

ITEM 70. Amend subrule 46.5(3) as follows:

46.5(3) *Tanning device timers.*

a. Each tanning device shall have a timer which complies with the requirements of 21 CFR Part 1040.20. The maximum timer interval shall not exceed the manufacturer’s maximum recommended exposure time. No timer shall have an error factor greater than ± 10 percent of the indicated setting.

b. *Each tanning device must have a method of remote timing located so that customers may not control their own exposure time.*

c. *Tokens for token timers shall not be issued to any user of a tanning device in quantities greater than the device manufacturer’s maximum recommended exposure time for the user.*

ITEM 71. Amend subrule 46.5(6) as follows:

46.5(6) *Condition of tanning devices.*

a. There shall be physical barriers to protect consumers from injury induced by touching or breaking the lamps.

b. *The tanning devices shall be maintained in good repair and comply with all state and local electrical code requirements.*

ITEM 72. Amend paragraph 46.5(9)“a” as follows:

a. A trained operator must be present when a tanning device is operated. *The operator must be within hearing distance to allow the consumer to easily summon help if necessary. If the operator is not in the immediate vicinity during use, the following conditions must be met:*

(1) *The consumer can summon help through use of an audible device such as an intercom or buzzer; and*

(2) *The operator can reach the consumer within 30 seconds after being summoned.*

ITEM 73. Amend paragraph 46.5(9)“d” as follows:

d. A record shall be kept by the facility operator of each consumer’s total number of tanning visits and tanning times, exposure lengths in minutes, times and dates of the exposure, and any injuries or illness resulting from the use of a tanning device. *The operator must ensure that no individual is allowed to use a tanning device more frequently than is recommended by the device manufacturer.*

ITEM 74. Amend paragraph 46.5(9)“l” as follows:

l. Any records or documentation required by this chapter must be maintained in the tanning facility for a minimum of two years. *Records maintained on computer systems shall be regularly copied, at least monthly, and updated on storage media other than the hard drive of the computer. An electronic record must be retrievable as a printed copy.*

ITEM 75. Amend subrule 46.5(9) by adding new paragraphs “m” and “n” as follows:

m. The operator shall limit the exposure time of the customer to the maximum exposure time recommended by the manufacturer, taking the customer’s skin type into consideration.

n. When a tanning device is being used by an individual, no other person shall be allowed to remain in the tanning device area unless protective eyewear is worn.

ITEM 76. Amend subrule 46.6(3) as follows:

46.6(3) A tanning facility shall not claim, or distribute promotional materials that claim, that using a tanning device is safe or free from risk or that the use of the device will result in medical or health benefits. *The only claim that may be made is that the device is for cosmetic use only.*

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REAL ESTATE COMMISSION[193E]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 543B.9 and chapter 558A, the Iowa Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 1, “Business Conduct,” Iowa Administrative Code.

The amendments resulting from recent law changes are to clarify and provide reasonable assistance regarding use of nonlicensed support personnel, add number 19 to sample lan-

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guage seller property condition disclosure, and remove required examination of certain property management trust accounts. Additional amendments are for clarification and to remove the 10-point type size requirement for disclosures.

Consideration will be given to all written comments received by Roger L. Hansen, Executive Secretary, Iowa Real Estate Commission, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, on or before August 6, 1996.

In addition, a public hearing will be held on August 6, 1996, at 9 a.m. in the First Floor Conference Room of the Department of Commerce Building, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

These amendments are intended to implement Iowa Code section 543B.9.

The following amendments are proposed.

ITEM 1. Amend 193E—1.1(543B), definition of "Single agent," as follows:

"Single agent" means a licensee who ~~has entered into a brokerage relationship with a client and therefore~~ represents only one party in a real estate transaction. A single agent includes a broker and any affiliated broker associates or salespersons representing a party exclusively or nonexclusively, regardless of whether it be all affiliated broker associates or salespersons, or only identified broker associates or salespersons, or a group of identified broker associates or salespersons. A single agent may be one of the following:

1. "~~Exclusive seller's~~ Seller's agent" which means a licensee who ~~is engaged by and~~ represents the seller in a real estate transaction;

2. "~~Exclusive landlord's~~ Landlord's agent" which means a licensee who ~~is engaged by and~~ represents the landlord in a leasing transaction;

3. "~~Exclusive buyer's~~ Buyer's agent" which means a licensee who ~~is engaged by and~~ represents the buyer in a real estate transaction; and

4. "~~Exclusive tenant's~~ Tenant's agent" which means a licensee who ~~is engaged by and~~ represents the tenant in a leasing transaction.

ITEM 2. Adopt new rule 193E—1.2(543B) as follows:

193E—1.2(543B) Support personnel for licensees; permitted and prohibited activities. Whenever a licensee affiliated with a broker engages support personnel to assist the affiliated licensee in the activities of the real estate brokerage business, both the firm or sponsoring broker and the affiliated licensee are responsible for supervising the acts or activities of the personal assistant. Unless the support personnel holds a real estate license, the support personnel may not perform any activities, duties, or tasks of a real estate licensee as identified in Iowa Code sections 543B.3 and 543B.6 and may perform only ministerial duties that do not require discretion or the exercise of the licensee's own judgment. Personal assistants shall be considered support personnel.

1.2(1) Individuals actively licensed with one firm or broker may not work as support personnel for a licensee affiliated with another firm or broker. Individuals with an inactive status license may work as support personnel for a licensee, but may not participate in any activity that requires a real estate license.

1.2(2) Any real estate brokerage firm or broker that allows an affiliated licensee to employ, or engage under an independent contractor agreement, support personnel to assist the affiliated licensee in carrying out their brokerage activities must comply with the following:

a. Implement a written company policy authorizing the use of support personnel by licensees;

b. The written company policy shall specify any duties that the support personnel may perform in behalf of the affiliated licensee and may incorporate the duties listed in subrule 1.23(3);

c. Ensure that the affiliated licensee and the support personnel receive copies of the duties support personnel may perform.

1.2(3) Broker supervision and improper use of license and office. Individual and designated brokers shall be responsible for supervising the real estate related activities of all support personnel. A broker shall not be held responsible for inadequate supervision if:

a. The unlicensed person violates a provision of Iowa Code chapter 543B or IAC 193E that is in conflict with the supervising broker's specific written policies or instructions;

b. Reasonable procedures have been established to verify that adequate supervision was being performed;

c. The broker, upon hearing of the violation, attempted to prevent or mitigate the damage;

d. The broker did not participate in the violation; and

e. The broker did not attempt to avoid learning of the violation.

1.2(4) In order to provide reasonable assistance to licensees and their support personnel, but without defining every permitted activity, the commission has identified certain tasks that unlicensed support personnel under the direct supervision of a licensee affiliated with a firm or broker can and cannot perform.

a. Permitted activities include, but are not limited to, the following:

(1) Answer the telephone, provide information about a listing to other licensees, and forward calls from the public to a licensee;

(2) Submit data on listings to a multiple listing service;

(3) Check on the status of loan commitments after a contract has been negotiated;

(4) Assemble documents for closings;

(5) Secure documents that are public information from the courthouse and other sources available to the public;

(6) Have keys made for company listings;

(7) Write advertisements and promotional materials for the approval of the licensee and supervising broker;

(8) Place advertisements in magazines, newspapers, and other media as directed by the supervising broker;

(9) Receive, record, and deposit earnest money, security deposits, and advance rents;

(10) Type contract forms as directed by the licensee or the supervision broker;

(11) Monitor personnel files;

(12) Compute commission checks;

(13) Place signs on property;

(14) Order items of routine repair as directed by a licensee;

(15) Act as courier for such purposes as delivering documents or picking up keys. The licensee remains responsible for ensuring delivery of all executed documents required by Iowa law and commission rules;

(16) Schedule appointments with the seller or the seller's agent in order for a licensee to show a listed property;

(17) Arrange dates and times for inspections;

(18) Arrange dates and times for the mortgage application, the preclosing walk-through, and the closing;

(19) Schedule an open house;

(20) Perform physical maintenance on a property; or

(21) Accompany a licensee to an open house or a showing and perform the following functions as a host or hostess:

REAL ESTATE COMMISSION[193E](cont'd)

1. Open the door and greet prospects as they arrive;
2. Hand out or distribute prepared printed material;
3. Have prospects sign a register or guest book to record names, addresses and telephone numbers;
4. Accompany prospects through the home for security purposes and not answer any questions pertaining to the material aspects of the house or its price and terms.

b. Prohibited activities include, but are not limited to, the following:

- (1) Making cold calls by telephone or in person or otherwise contacting the public for the purpose of securing prospects for listings, leasing, sale, exchanges, or property management;
- (2) Hosting open houses, kiosks, home show booths, or fairs independently;
- (3) Preparing promotion materials or advertisements without the review and approval of license and supervising broker;
- (4) Showing property independently;
- (5) Answering any questions on title, financing, or closings (other than time and place);
- (6) Answering any questions regarding a listing except for information on price and amenities expressly provided in writing by the licensee;
- (7) Discussing or explaining a contract, listing, lease, agreement, or other real estate document with anyone outside the firm;
- (8) Negotiating or agreeing to any commission, commission split, management fee, or referral on fee on behalf of a licensee;
- (9) Discussing with the owner of real property the terms and conditions of the real property offered for sale or lease;
- (10) Collecting or holding deposit moneys, rent, other moneys or anything of value received from the owner of real property or from a prospective buyer or tenant;
- (11) Providing owners of real property or prospective buyers or tenants with any advice, recommendations or suggestions as to the sale, purchase, exchange, rental, or leasing of real property that is listed, to be listed, or currently available for sale or lease; or
- (12) Holding one's self out in any manner, orally or in writing, as being licensed or affiliated with a particular firm or real estate broker as a licensee.

ITEM 3. Adopt **new** rule 193—1.3(543B) as follows:

193E—1.3(543B) Information provided by nonlicensed support personnel restricted. Nonlicensed support personnel may, on behalf of the employer licensee, provide information concerning the sale, exchange, purchase, rental, lease, or advertising of real estate, only to another licensee. Support personnel shall provide information only to another licensee that has been provided to them by the employer licensee either verbally or in writing. Support personnel shall provide the information only to another licensee.

ITEM 4. Rescind and reserve rule **193E—1.9(543B)**. [See rule 193E—1.40(543B).]

ITEM 5. Amend subrule **1.27(5)** by adding **new** paragraph "**d**" as follows:

d. A consent to examine is not required for a separate property management account in the name of the owner or owners and used by either the property owner or property manager or agent to conduct property management as a part of a property management agreement.

ITEM 6. Amend subrule **1.39(6)** by adding **new** question number "**19**" to the list as follows:

19. Is the property located in a real estate improvement district? Yes [] No []

If yes, indicate the amount of any special assessment against the property: \$ _____

ITEM 7. Amend rule 193E—1.40(543B) as follows:

193E—1.40(543B) Disclosure of licensee interest, acting as a principal, and status as a licensee required. A licensee shall not act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family, including but not limited to a spouse, parent, child, grandparent, grandchild, brother, or sister, or on behalf of the brokerage, or on behalf of an organization or business entity in which the licensee has an interest, including an affiliated business arrangement as defined in subrule 1.50(1), unless the licensee ~~has the~~ provides written ~~consent~~ disclosure of that interest to all parties to the transaction. *Disclosure required under this rule must be made at the time of or prior to the licensee's providing specific assistance to the party or parties to the transaction. Copies of the disclosure may be provided in person or by mail, as soon as reasonably practical. If no specific assistance is provided, disclosure shall be provided prior to the parties' forming a legally binding contract, either prior to an offer being made by the buyer or tenant or prior to an acceptance by the seller or landlord, whichever comes first.*

1.40(1) Licensee acting as a principal. A licensee shall not acquire any interest in any property directly or indirectly nor shall the licensee sell any interest in which the licensee directly or indirectly has an interest without first making written disclosure of the licensee's true position clear to the other party. *Satisfactory proof of this fact must be produced by the licensee upon request of the commission. Whenever a licensee is in doubt as to whether an interest, relationship, association, or affiliation requires disclosure under this rule, the safest course of action is to make the written disclosure.*

1.40(2) Status as a licensee. Before buying, selling, or leasing real estate as described above, the licensee shall disclose in writing any ownership, or other interest, which the licensee has or will have and the licensee's status to all parties to the transaction. *An inactive status license shall not exempt a licensee from providing the required disclosure.*

1.40(3) Dual capacity. The licensee shall not act in a dual capacity of agent and undisclosed principal in any transaction.

ITEM 8. Amend subrule **1.42(6)**, paragraph "**e**," as follows:

e. A licensee shall not give or pay an undisclosed commission to any other licensee for a transaction, *except payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service.*

ITEM 9. Amend subrule 1.45(1), introductory paragraph, as follows:

1.45(1) A brokerage which has a company policy that permits disclosed dual agency for in-house transactions shall provide a disclosed dual agency consent agreement to the client, or prospective client prior to engaging in any activities of a dual agent. Such consent agreement shall comply with Iowa law and commission rules *including, but not limited to, the requirement to inform the prospective clients that they are not required to consent to dual agency representation as provided by subrule 1.45(2).*

REAL ESTATE COMMISSION[193E](cont'd)

ITEM 10. Adopt the following new subrule:

1.45(4) Potential dual agency agreement. A brokerage which has a company policy that permits disclosed dual agency for in-house transactions that elects to use a potential dual agency agreement shall provide the agreement to the client or prospective client prior to engaging in any activities of a dual agent. Such consent agreement shall comply with Iowa law and commission rules.

a. The potential dual agency agreement should be provided to the seller or landlord prior to entering into a listing agreement, or a contract for seller or landlord brokerage services.

b. The potential dual agency agreement should be provided to the buyer or tenant prior to entering into a buyer or tenant agency agreement, or a contract for buyer or tenant brokerage services.

c. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure shall be presented to the buyer or tenant prior to signing an offer to purchase or a rental or lease agreement. The buyer or tenant may accept or reject dual agency at this point in the transaction.

d. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure shall be presented to the seller or landlord prior to signing or accepting an offer to purchase or a rental or lease agreement. The seller or landlord may accept or reject dual agency at this point in the transaction.

e. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, the required subsequent dual agency consent disclosure shall be property specific and comply with Iowa law and commission rules.

ITEM 11. Amend 193E—1.49(543B), introductory paragraph, as follows:

193E—1.49(543B) Disclosure of agency relationship required. No person licensed pursuant to Iowa Code chapter 543B shall represent any party or parties to a real estate transaction involving a sale, lease, trade, exchange, or option, or otherwise act as a real estate broker or salesperson unless that licensee makes an affirmative written disclosure to all parties to the transaction identifying which party or parties that licensee represents and the duties and responsibilities that licensee owes to the party or parties. *If the brokerage has a company policy of disclosed dual agency for in-house transactions, the disclosure of agency relationship shall comply with Iowa law and commission rules including, but not limited to, the requirement to inform the prospective clients that they are not required to consent to dual agency representation as provided by subrule 1.45(2).* The disclosure shall be dated and acknowledged by separate signatures of the buyer or seller or tenant and landlord. All disclosures required by statute or rule must be *clear and legible and typeset in bold print no smaller than ten point type.*

ITEM 12. Amend subrule **1.50(1)** by adding new paragraph “c” as follows:

c. An affiliated business arrangement shall not include an arrangement in which a real estate licensee, or an associate of a real estate licensee, gives or pays an undisclosed commission in a transaction to any other licensee for a referral to provide real estate brokerage services, including franchise affiliates, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service. Referral fees or commissions paid by a licensee to another licensee under these conditions are exempted from the disclosure requirement.

ARC 6565A

REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 38, “Administration,” Chapter 39, “Filing Return and Payment of Tax,” Chapter 40, “Determination of Net Income,” Chapter 41, “Determination of Taxable Income,” Chapter 42, “Adjustments to Computed Tax,” and Chapter 46, “Withholding,” Iowa Administrative Code.

1996 Iowa Acts, House File 2229, and Senate Files 2168, 2324, 2351, 2449, and 2467, made numerous changes in the corporate income tax, individual income tax, and withholding tax laws. Most of the changes are retroactively applicable to January 1, 1996, for tax years beginning on or after that date; however, one revision is retroactively applicable to January 1, 1992, and another revision is retroactively applicable on January 1, 1995. In addition, one legislative change will apply on July 1, 1996, and another change will not be in effect until January 1, 1997.

The amendments provide that starting with the 1996 calendar year the tax rate brackets and the standard deduction amounts will be indexed for 100 percent of inflation instead of 50 percent under the prior law. In addition, the amendments describe the indexing which was applicable to the 1995 tax year. The amendments describe a provision for giving taxpayers a tax benefit in the current tax year for income that is repaid in the current year which had been reported in a prior tax year or years.

The revisions describe military personnel serving in a hazardous duty zone and other military personnel serving in support of the persons in the hazardous duty zone which are eligible for certain tax benefits which previously had been authorized only for individuals who served in an area designated as a combat zone.

The amendments reflect changes in the characteristics of individual development accounts so that certain transactions which originally resulted in income being taxed to the beneficiaries of the accounts are no longer taxable.

The amendments provide that the deduction for amounts incurred for tuition and textbooks of dependents in schools in Iowa is repealed. The credit for tuition and textbook expenses is increased from 5 percent to 10 percent and is still computed on up to the first \$1,000 the taxpayer paid for tuition and textbook expenses. Taxpayers that itemize deductions and have tuition and textbook expenses are now eligible for the credit. The provision which prohibited taxpayers with net incomes of \$45,000 or more from claiming the credit has been repealed.

The amendments describe state income tax withholding on certain unemployment benefits starting in 1997. The amendments describe changes in the work force development program.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than August 6, 1996, to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 16, 1996. Such written comments should be directed to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 9, 1996.

These amendments are intended to implement Iowa Code sections 96.3, 422.3, 422.4, 422.5, 422.7, 422.9, 422.12, and 422.16A as amended by 1996 Iowa Acts, House File 2229, and Senate Files 2168, 2324, 2351, 2449, and 2467.

The following amendments are proposed.

ITEM 1. Amend rule **701—38.10(422)** by adding the following new subrules and by amending the implementation clause as follows:

38.10(16) The cumulative inflation factor for tax years beginning in the 1995 calendar year was 107 percent, which is an increase of 1.01 percent from the factor in effect for 1994. There was indexation of the brackets in the tax rate schedule for 1995 because the unobligated state general fund balance on June 30, 1994, was at least \$60 million. The standard deduction amounts for 1995 were increased to \$1,360 for taxpayers using filing status 1, 3, or 4 and to \$3,350 for taxpayers using filing status 2, 5, or 6. The increases are approximately 1.1 percent greater than the amounts for 1994, but the increases are affected by rounding of the increased amounts to the nearest ten-dollar amount.

38.10(17) The cumulative inflation factor for tax years beginning in the 1996 calendar year was 108.7 percent. There was indexation of the brackets in the tax rate schedule for 1996 because the unobligated state general fund balance on June 30, 1995, was at least \$60 million. Note that the increase in the cumulative inflation factor represents indexing for 100 percent of inflation computed from the gross domestic product price deflator for the second quarter of the prior calendar year. The indexation for the prior tax years was for 50 percent of the inflation change in the implicit price deflator for the gross national product computed for the second quarter of the prior calendar year. The standard deduction amounts for 1996 will be increased to \$1,380 for taxpayers using filing status 1, 3, or 4 and to \$3,400 for taxpayers using

filing status 2, 5, or 6. The increases are approximately 1.7 percent from the amounts for 1995, but the increases are affected by rounding of the increased amounts to the nearest ten-dollar amount.

This rule is intended to implement Iowa Code sections 422.4 and 422.21, as amended by 1996 Iowa Acts, Senate File 2449.

ITEM 2. Amend rule 701—38.12(422) and the implementation clause for the rule as follows:

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 and finance. 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 and finance 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. In determining the annual standard deduction factor for tax years beginning on or after January 1, 1990, but prior to January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the implicit price deflator for the gross national product computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the U.S. Department of Commerce and shall add one-half of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. 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, as amended by 1996 Iowa Acts, Senate File 2449.

ITEM 3. Amend Chapter 38 by adding the following new rule:

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 of revenue and finance 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

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

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.

ITEM 4. Amend rule 701—39.12(422) by adding the following new unnumbered paragraph and by amending the implementation clause as follows:

For tax years beginning on or after January 1, 1995, certain persons performing peacekeeping duties in a location designated by Congress as a qualified hazardous duty zone or other individuals performing military duties overseas in support of the persons in the hazardous duty area are eligible for the tax benefits described above. See rule 39.14 for additional information on the hazardous duty area.

This rule is intended to implement Iowa Code ~~section sections~~ 422.3 and 422.21: as amended by 1996 Iowa Acts, Senate File 2168.

ITEM 5. Amend Chapter 39 by adding the following new rule:

701—39.14(422) Tax benefits for persons serving in support of the Bosnia-Herzegovina hazardous duty area. For tax years beginning on or after January 1, 1995, a number of state tax benefits are authorized for individuals serving in a location designated by the President and Congress as a qualified hazardous duty area or other persons serving in support of the individuals in the hazardous duty area. Public Law No. 104-117 was enacted by Congress on March 20, 1996, and designated Bosnia, Herzegovina, Croatia, and Macedonia as a qualified hazardous duty area so that troops performing peacekeeping duties in the area would be eligible for tax benefits for federal income tax purposes on the same basis they would have been eligible for the same benefits if they had served in a combat zone under prior law.

For Iowa tax purposes, persons serving peacekeeping duties in the hazardous duty area or other persons serving overseas in support of the persons in the hazardous duty area will be eligible for the same tax benefits that were previously only available to persons serving military duties in a combat zone. The tax benefits that are available for persons serving in the hazardous duty area or persons serving overseas in support of the persons in the hazardous duty area are described in rule 39.12.

This rule is intended to implement Iowa Code section 422.3 as amended by 1996 Iowa Acts, Senate File 2168.

ITEM 6. Amend rule 701—40.44(422,541A), introductory paragraph, as follows:

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 ~~and subtractions~~ to the accounts are described in the following subrules:

ITEM 7. Amend subrule 40.44(1) as follows:

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 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. ~~to the extent the earnings or interest was not withdrawn.~~

ITEM 8. Rescind and reserve subrule 40.44(2).

ITEM 9. Amend the implementation clause for rule 40.44(422,541A) as follows:

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 1993 1996 Iowa Acts, Senate File 2324 268.

ITEM 10. Amend subrule 41.5(5), introductory paragraph, as follows:

41.5(5) Deduction for payments of tuition and textbooks for dependents in grades kindergarten through 12 in Iowa. For tax years beginning on or after January 1, 1987, *but prior to January 1, 1996*, individuals who itemize deductions for Iowa income tax purposes may claim a deduction of up to \$1,000 per dependent for amounts paid for tuition and textbooks for those dependents attending grades kindergarten through 12 in Iowa. *Taxpayers who itemize deductions on Iowa individual income tax returns for tax years beginning on or after January 1, 1996, and have tuition and textbook expenses may claim the tax credit described in subrule 42.2(8) if they meet the qualifications for the credit.* In order to qualify a taxpayer for the deduction for tuition and textbooks, the elementary school or secondary school the dependent is attending must meet the standards for accreditation of public and nonpublic schools in Iowa provided in Iowa Code section 256.11.

ITEM 11. Amend the implementation clause for rule 41.5(422) as follows:

This rule is intended to implement Iowa Code section 422.9 as amended by 1995 1996 Iowa Acts, Senate File 2467 Chapter-5.

ITEM 12. Amend subrule 42.2(8) as follows:

42.2(8) Tuition and textbooks credit for dependents in grades kindergarten through 12 in Iowa. For tax years beginning on or after January 1, 1987, *but prior to January 1, 1996*, individuals who elect the optional standard deduction may claim a tax credit of 5 percent of the qualifying expenditures. *For tax years beginning on or after January 1, 1996, all taxpayers, including individuals that have net incomes of \$45,000 or more, may claim a tuition and textbook credit of 10 percent of qualifying expenditures.* For purposes of this subrule, the qualifying expenditures are the same as *would have been eligible for the deduction allowed under 701—subrule 41.5(5) if the qualifying expenditures had been*

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

paid in a tax year when the deduction was applicable. All the qualifications, definitions, and criteria in 701—subrule 41.5(5) are equally applicable to the credit for amounts paid for tuition and textbooks for dependents attending grades kindergarten through 12 in Iowa. In the case of married taxpayers who are filing separate returns or separately on the combined return, the spouses can allocate the credit for tuition and textbooks between them in the same ratio as described in paragraph “g” of 701—subrule 41.5(5).

ITEM 13. Amend the implementation clause for rule **42.2(422)** as follows:

This rule is intended to implement Iowa Code Supplement section 422.10 *as amended by 1996 Iowa Acts, Senate File 2467*, and Iowa Code sections 422.11A, 422.12 and 422.12B.

ITEM 14. Amend rule **46.1(422)** by adding the following **new** subrule and by amending the implementation clause for the rule:

46.1(3) Voluntary state income tax withholding from unemployment benefit payments. Effective for unemployment benefit payments made on or after January 1, 1997, that pertain to a new application for benefits made after December 31, 1996, recipients of the benefits may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, 99F.18, and Iowa Code Supplement sections 422.15 and 422.16 *as amended by 1996 Iowa Acts, House File 2229*.

ITEM 15. Amend rule 46.6(422) and the implementation clause as follows:

701—46.6(422) Withholding tax credit to workforce development fund. Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E which occurs on or after July 1, 1995, ~~but prior to July 1, 1997~~, the community college which provided the training is to notify the department of economic development of the amount paid by the employer or business to the community college during the previous 12 months. The department of economic development is to notify the department of revenue and finance of this amount. The department is to credit 25 percent of this amount to the workforce development fund in each quarter for the next ten years from the withholding tax paid by the employer or business. If the withholding tax paid by the employer or business for a quarter is not sufficient to cover the sum to be credited to the workforce development fund, the sum to be credited is to be reduced accordingly. The aggregate amount from all employers to be transferred to the workforce development fund in a year is not to exceed \$10 \$2 million. For purposes of this rule, “year” means the period from July 1, 1995, through June 30, 1996, ~~or~~ the period from July 1, 1996, through June 30, 1997, *and subsequent fiscal year periods*.

This rule is intended to implement Iowa Code Supplement section 422.16A *as amended by 1996 Iowa Acts, Senate File 2351*.

ARC 6553A

AGRICULTURAL DEVELOPMENT
AUTHORITY[25]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 175.6, the Iowa Agricultural Development Authority (IADA) hereby rescinds Chapter 4, "IADA Loan Participation Program," Iowa Administrative Code, and adopts a new chapter with the same title.

The programs provided in Chapter 4 need to incorporate changes to align with federal guidelines which were recently provided to the Authority.

The new Chapter 4 is intended to assist qualified low-income farmers in the purchase of agricultural property by enabling lenders to request a "last-in/last-out" loan participation so the farmer can more readily secure a loan from a participating lender.

In compliance with Iowa Code section 17A.4(2), the Authority finds that notice and public participation are impracticable because of the immediate need for rule change to implement federal guidelines.

The Authority also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and this new chapter should be made effective upon filing with the Administrative Rules Coordinator, as it confers a benefit upon Iowa's low-income farmers.

The Iowa Agricultural Development Authority adopted this chapter on June 19, 1996. These rules are also published herein under Notice of Intended Action as ARC 6552A to allow public comment. This emergency filing permits the Authority to implement the new provisions of the law pending ordinary rule making.

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

These rules became effective June 20, 1996.

The following rules are adopted.

Rescind 25—Chapter 4 and adopt new 25—Chapter 4 as follows:

CHAPTER 4

IADA LOAN PARTICIPATION PROGRAM

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

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

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

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

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

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

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

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

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

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

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

"Agricultural property" means agricultural land, agricultural improvements, or depreciable agricultural property.

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

"Authority" means the agricultural development authority established in Iowa Code section 175.3.

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

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

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

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

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

AGRICULTURAL DEVELOPMENT AUTHORITY[25](cont'd)

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

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

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

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

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

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

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

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

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

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

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

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

25—4.3(175) Basic qualification criteria.

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

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

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

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

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

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

4.3(7) Net worth.
a. For an individual, an aggregate net worth of the individual and the individual’s spouse and minor children (if any) shall be less than \$200,000.

b. For a partnership, an aggregate net worth of all partners, including each partner’s net capital in the partnership, together with each partner’s spouse and minor children, shall be less than \$400,000. However, the aggregate net worth of each partner, including the partner’s net capital in the partnership together with that of the partner’s spouse and minor children, shall not exceed \$200,000.

c. For a corporation, an aggregate net worth of all corporate shareholders, including each shareholder’s net capital in the corporation plus the net capital of the corporation, all of which shall not exceed \$400,000. The aggregate net worth of each shareholder, including the shareholder’s net capital in the corporation together with that of the shareholder’s spouse and minor children (if any), shall not exceed \$200,000.

d. For a limited liability company, an aggregate net worth of all members, including each member’s ownership interest in the limited liability company, together with each member’s spouse and minor children, shall be less than \$400,000. However, the aggregate net worth of each member, including the member’s ownership interest in the limited liability company together with that of member’s spouse and minor children, shall not exceed \$200,000.

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

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

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

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

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

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

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

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

4.3(12) Collateral appraisals. All real estate and depreciable property intended for use as collateral on a participated loan must be evaluated/appraised by a qualified third-party appraiser. All real estate appraisals must meet the federal regulatory requirements of the lender's examiners and the uniform standards of professional appraisal practice of the appraisal foundation.

4.3(13) Loan-to-value ratio.

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

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

25—4.4(175) Eligible projects and activities.

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

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

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

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

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

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

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

4.4(4) Livestock used for breeding purposes. The participated loan can be used for the purchase of livestock for which

an income tax deduction for depreciation is allowed in computing state and federal income taxes.

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

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

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

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

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

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

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

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

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

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

25—4.6(175) Program maximums.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25—4.7(175) Loan application procedures. If an application is received in the IADA office by the 10th of the month it will be reviewed at the next board meeting. Lender and borrower are to submit a completed application and \$100 application fee along with the items covered below.

4.7(1) Application forms. Application forms for a participation are available from the authority. The application should be completed by the borrower and the lender and submitted to the authority. Borrowers are encouraged to contact the authority if they have questions in completing the application.

4.7(2) Financial statement. Lenders may use their own form of financial statement and other forms deemed necessary and appropriate to document the eligibility of the borrower and the borrower's ability to make principal and interest payments. A copy of the borrower's most current financial statement (taken within one month preceding application submission) and the prior two years' financial statements, and a projected after-closing financial statement must be submitted with the application. If a participation is sought with respect to a partnership, a limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

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

4.7(3) Income statement. A copy of the borrower's most recent income statement, prior three years' income statements, and a projected income statement must be submitted with the application. If historical income statements are not available, then copies of income tax returns may be submitted. If a participation is sought with respect to a partnership, limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

4.7(4) Background letter. A "background letter" regarding the borrower must be submitted with the application. This letter should explain the borrower's background with respect to education and experience in the type of farming operation for which a participation is sought. The letter should also outline the borrower's access to machinery, if the participated loan is for land; or the borrower's access to land, if the participated loan is for agricultural improvements or depreciable agricultural property. The letter should also state where the borrower will obtain operating capital.

4.7(5) Application period. There is no formal or defined application period because the program is ongoing. A completed application received by the 10th of the month will be reviewed and considered by the authority at that month's board meeting.

4.7(6) Credit evaluation. The lender will submit a credit evaluation of the project for which a participation is sought. The lender will evaluate the borrower's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of a participation. Such evaluation will center on whether:

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

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

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

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

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

4.7(7) Processing loan applications. Applications for the program will be taken and processed by the authority on a first-come, first-served basis. The authority reserves the right to change the program or terminate the approval of participations under the program at any time. Grounds for termination/suspension of the program would include, but not be limited to, reaching the maximum allowable limit for total outstanding participations as established by the authority or changing the program by order of the Iowa general assembly or by rules promulgated by the authority.

4.7(8) Security for participated loans and use of security documents. The lender shall take any security, cosignatures, guarantees, sureties, for example, that are deemed necessary for any participated loan.

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

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

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

4.7(9) Loan terms. The lender and borrower must agree on terms of the participated loan including interest rate, length of loan, prepayment options, service fees, and repay-

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ment schedule. See loan terms in rule 25—4.6(175). Program maximums.

4.7(10) Fees. The lender or borrower must submit to the authority a nonrefundable application fee in the amount of \$100 when the application is submitted. A participation closing fee equal to 1 percent of the IADA participation will be deducted from the participation proceeds by the IADA. A minimum participation closing fee of \$200 will be charged.

4.7(11) Participation approval. The authority board and staff will review the application and make a determination regarding approval of a participation.

25—4.8(175) Loan closing procedures.

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

4.8(2) Before loan closing.

a. Lender will submit to IADA:

(1) Signed conditional commitment to participate.
(2) Preliminary title opinion on real estate collateral, if applicable.

(3) Appraiser's certification (completed by third-party appraiser).

(4) At least three days prior to closing, in the IADA office:

- Copy of the UCC search on the borrower.
- Credit Bureau report on the borrower.
- Copy of blank promissory note form to be used.

b. IADA will submit to lender:

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

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

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

4.8(3) On loan closing day:

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

(1) Original signed loan participation certificate and agreement.

(2) Copy of signed promissory note.

(3) Copy of signed mortgage, if applicable.

(4) Copy of signed security agreement.

(5) Copy of bill of sale, purchase agreement, or sales receipt of purchase(s).

(6) Copy of recorded UCC filing.

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

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

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

25—4.9(175) Loan administration procedures.

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

a. The lender shall:

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

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

b. The lender shall not, without prior consent of the authority:

(1) Make or consent to any substantial alterations in the terms of any participated loan instrument;

(2) Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;

(3) Lender will not use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;

(4) Accelerate the maturity of the participated loan;

(5) Sue upon any participated loan instrument;

(6) Waive any claim against any borrower, consignor, guarantor, obligor, or standby creditor arising out of any instruments.

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

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

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

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

4.9(6) Events of loan default.

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

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

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

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

4.9(8) Application of proceeds of loan liquidation. Application of proceeds of loan liquidation will be determined after a written liquidation plan is approved by the authority or the authority's loan committee. All amounts recovered upon liquidation or foreclosure will be applied first to the unpaid

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balance of the lender's portion and then to the unpaid portion of the participation's portion. All funds received from liquidation or foreclosure procedures shall be applied in the following order of priority:

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

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

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

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

25—4.11(175) Right to audit.

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

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

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

[Filed Emergency 6/20/96, effective 6/20/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6568A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development (IDED) hereby rescinds 261—Chapter 4 and transfers 261—Chapters 10, 14, 18 and 19 of the Iowa Administrative Code to the new Workforce Development Department (WDD) created by 1996 Iowa Acts, Senate File 2409, and the Director of the WDD accepts the transfer of the program rules on behalf of the newly created agency. The IDED Board adopted the transfer of these chapters on June 20, 1996.

Pursuant to 1996 Iowa Acts, Senate File 2409, several programs administered by IDED are transferred on July 1, 1996, to the WDD. The rules for the following programs are af-

fectured by the new legislation: 261—Chapter 10, "Labor-Management Cooperation Program," 261—Chapter 14, "Youth Affairs," 261—Chapter 18, "Work Force Investment Program," and 261—Chapter 19, "Iowa Job Training Partnership Program." To ensure an orderly transition of programs and services, IDED and WDD are providing for the transfer of program rules to the new department, effective July 1, 1996.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are impracticable and contrary to the public interest because 1996 Iowa Acts, Senate File 2409 transfers the identified IDED programs to WDD.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on July 1, 1996. These rules confer a benefit on the public by transferring program rules to the agency statutorily responsible for administration of the programs. The transfer of rules will allow the public to locate the correct agency to contact for program services.

The agencies are taking the following steps to notify potentially affected parties of the effective date of the rules: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These rules are intended to implement 1996 Iowa Acts, Senate File 2409.

These rules became effective on July 1, 1996.

The following amendments are adopted.

ITEM 1. Amend the following rules by striking the existing addresses and inserting "Workforce Development Department, 100 Des Moines Street, Des Moines, Iowa 50319":

10.5(2)	14.1(3)	14.3(2)	14.4(2)	14.7(2)	19.7(5)
19.8(2)"c"	19.10(1)	19.13(1)	19.23(2)"a"(2)	19.86(4)"c"	

ITEM 2. Rescind the following caption in **261—Part II: Part II Division of Work Force Development**

ITEM 3. Rescind **261—Chapter 4, "Division Responsibilities,"** and reserve the chapter for future use.

ITEM 4. Amend **261—10.3(76GA, ch204)** as follows: "~~IDED~~" means the Iowa department of economic development. "~~WDD~~" means the workforce development department.

ITEM 5. Amend **261—Chapter 10** by striking "IDED" and inserting "WDD".

ITEM 6. Amend **14.4(3)"d"** as follows:

d. The description of the proposed job slots will demonstrate the applicant's understanding of the program goals.

After the applications are screened for the four mandatory items, three persons designated by the director of the Iowa department of economic development workforce development department shall independently score each application using a 100-point system. The three scores will then be averaged and the applications ranked from highest to lowest average score of each county or an area served. Contracts for each county, counties or planning areas will be awarded to the applicant agencies scoring the highest point average. A maximum of 25 points will be given for budget factors (includes accuracy of budget calculations, budget detail provided, al-

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lowability of costs, firm commitments of local match, etc.); 50 points for program design factors (includes variety and quality of work projects, quality of support services program, comprehensiveness of program, completeness of responses, etc.); and 25 points for training and education; degree to which enrollees are provided with work skills, job retention skills, job search techniques, and work ethics.

ITEM 7. Amend 14.4(8) as follows:

14.4(8) Audit. Within 90 days from the contract's termination date, unless an extension of time is approved by the state youth coordinator, every organization awarded a contract shall submit to the ~~Iowa department of economic development workforce development department~~ two copies of an audit report performed by a certified public accountant or a public accountant, as defined by Iowa Code chapter 116. The audit report shall, at a minimum, include:

ITEM 8. Amend **14.5(6)"a"** as follows:

a. Persons participating in the Iowa corps will provide monthly progress reports as required by the ~~Iowa department of economic development workforce development department~~ and verified by the adult supervisor. A final report will be required by both the Iowa corps participant and the adult supervisor within 30 days of the completion of the volunteer project.

ITEM 9. Amend subrule **14.6(5)**, first unnumbered paragraph, as follows:

A review committee, composed of one person each appointed by the director of the ~~Iowa department of economic development workforce development department~~, the director of the department of natural resources, and a person appointed by the director of the department of elder affairs shall consider the project submissions. The review committee shall recommend for approval by the director of the ~~Iowa department of economic development workforce development department~~ a priority list of those project submissions which best fulfill the intent of the program. Those submissions that will provide continued employment for senior citizens currently employed on previously approved projects will be given first priority.

ITEM 10. Amend **18.2(1)** by inserting the following new definition:

"WDD" means the workforce development department.

ITEM 11. Amend **261—Chapter 18** by striking "IDED" and inserting "WDD".

ITEM 12. Amend **261—19.3(Executive Order 47, 29 U.S.C. 1501 et seq.)** as follows:

"Department" or "IDED" "~~WDD~~" means the ~~Iowa department of economic development workforce development department~~.

"State administrative entity (SAE)" means the department, ~~Iowa department of economic development workforce development department~~, administering the Job Training Partnership Act on behalf of the governor.

ITEM 13. Transfer **261—Chapter 10**, "Labor-Management Cooperation Program," to appear as **345—Chapter 11**; **261—Chapter 14**, "Youth Affairs," to appear as **345—Chapter 12**; **261—Chapter 18**, "Work Force Investment Program," to appear as **345—Chapter 13**; and **261—Chapter 19**, "Iowa Job Training Partnership Program," to appear as **345—Chapter 14**.

ITEM 14. Amend **345—Chapters 11 to 14**, implementation statutes, to reflect 1996 Iowa Acts, Senate File 2409.

[Filed Emergency 6/28/96, effective 7/1/96]
[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6570A**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 5, "Iowa Industrial New Jobs Training Program," Iowa Administrative Code.

The amendment defines the conditions by which community colleges determine which jobs under an Iowa Industrial New Jobs Training Project can utilize the supplemental new jobs credit from withholding.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because it would delay implementation of the credit, which is intended to encourage businesses to pay higher wages for new jobs created in Iowa.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the rule be made effective on July 1, 1996. This rule confers a benefit on the public by allowing earlier implementation of a provision that is intended to encourage businesses to pay higher wage rates for new jobs created in Iowa.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rule: simultaneously publishing the rule under Notice of Intended Action to allow for public comment, publishing the final rule in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

This amendment is also published herein under Notice of Intended Action as **ARC 6569A** to allow for public comments. This emergency filing permits the Department to implement the new provisions of the law.

This rule is intended to implement 1996 Iowa Acts, Senate File 2351, section 8.

This rule became effective on July 1, 1996.

The following amendment is adopted.

Amend **261—Chapter 5** by adding a new rule **261—5.13(76GA,SF2351)** as follows:

261—5.13(76GA,SF2351) Supplemental 1½ percent withholding. For the purposes of determining new jobs training programs established under Iowa Code chapter 260E eligible to receive supplemental new jobs credit of 1½ percent of gross wages from withholding, the following criteria shall be met:

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5.13(1) Only those new jobs training programs established by a 260E final agreement, approved by the community college board of directors after June 30, 1996, and including a provision for a supplemental new jobs credit from withholding from jobs created under the agreement are eligible for the supplemental credit.

5.13(2) For purposes of determining the average county or average regional wage, the department shall calculate the average county wage utilizing statistics compiled for the community economic betterment program. The average county wage will be calculated utilizing the most recent four quarters of historical wage averages available at the beginning of each fiscal year. The regional average wage shall be calculated based on service delivery areas as defined in Iowa Code section 84B.2. This average will be the sum of the county averages divided by the number of counties in the region.

5.13(3) The department will make available to the community colleges the averages at the beginning of each state fiscal year for use in determining supplemental withholding credit eligibility for that fiscal year.

5.13(4) For the purposes of determining eligibility for the supplemental credit, starting wages for a new job shall be determined on a one-time basis by the community college as follows:

a. The employer shall agree, as a part of the final agreement, to pay starting wages which are equal to or greater than the county or regional average, whichever is lower.

b. Only those individual jobs for which the starting wage is equal to or greater than the average county wage or average regional wage, whichever is lower, are eligible for the supplemental new jobs credit from withholding.

c. For purposes of comparing starting wages to the county or regional average, the community college shall reduce the annual gross wages to be paid for the job to an hourly wage based upon a 40-hour workweek.

d. Such determination by the community college shall be conclusive and the individual job shall thereafter be eligible and may be used for the supplemental credit from withholding to fund the supplemental project under the agreement.

e. Future annual changes in county or regional averages shall not affect the eligibility of those jobs that have been determined by the community college to be eligible at the time of final agreement for a project.

5.13(5) The community college may require the employer to supply appropriate payroll records and projections to verify eligibility of the supplemental credit.

This rule is intended to implement the provisions of 1996 Iowa Acts, Senate File 2351, section 8, effective July 1, 1996, and does not affect agreements included in Iowa Code section 15.326, New Jobs and Income Act, Iowa Code section 15A.9, Quality Jobs Enterprise Zone, or those agreements under Iowa Code chapter 260E, Iowa Industrial New Jobs Training Program, which do not contain a provision for a supplemental new jobs credit from withholding.

[Filed Emergency 6/28/96, effective 7/1/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6572A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development rescinds Chapter 7, "Iowa Jobs Training Program," Iowa Administrative Code and adopts a new chapter with the same title.

The rules implement program changes authorized by 1996 Iowa Acts, Senate File 2351.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because it would delay implementation of expanded program services for Iowa businesses.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the rules be made effective on July 1, 1996. These rules confer a benefit on the public by allowing earlier implementation of provisions that will improve the economic well-being of the state.

The agency is taking the following steps to notify potential affected parties of the effective date of these rules: simultaneously publishing the rules under Notice of Intended Action to allow for public comment, publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These rules are also published herein under Notice of Intended Action as **ARC 6571A** to allow for public comments. This emergency filing permits the Department to implement the new provisions of the law.

These rules are intended to implement 1996 Iowa Acts, Senate File 2351, sections 9 to 15.

These rules became effective on July 1, 1996.

The following rules are adopted.

Rescind 261—Chapter 7 and insert in lieu thereof the following **new** chapter:

CHAPTER 7

IOWA JOBS TRAINING PROGRAM

261—7.1(260F) Authority. The authority for establishing rules governing the development of training projects under the Iowa jobs training Act is provided in Iowa Code chapter 260F as amended by 1996 Iowa Acts, Senate File 2351.

261—7.2(260F) Purpose. The purpose of the Act is to foster the growth and competitiveness of Iowa's workforce and industry by ensuring that Iowa's workforce has the skills and expertise to compete with any workforce outside the state of Iowa.

261—7.3(260F) Definitions.

"Act" means Iowa Code chapter 260F as amended by 1996 Iowa Acts, Senate File 2351.

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“Business network” means five or more businesses which are located in two or more community college districts and which share a common training need. A business network training project must have a designated lead community college, unless the project is sponsored by the department, to serve as the administrative entity that will coordinate the training program.

“Community college” means a community college established under Iowa Code chapter 260C.

“Community college consortium” means two or more businesses located in the same community college district which share a common training need.

“Department” means the Iowa department of economic development.

“Program costs” means all necessary and incidental costs of providing program services.

261—7.4(260F) Program funding.

7.4(1) Program funds consist of any money allocated by department board for the purpose of this program, all repayments of loans or other awards or recaptures of awards, and earned interest, including interest earned on program funds held by the community colleges.

7.4(2) A community college 260F account is established in the department.

7.4(3) Ninety percent of the funds from the community college 260F account shall be distributed to each community college on a percentage basis using the distribution formula established in Iowa Code chapter 260D.

7.4(4) Ten percent of the funds from the community college 260F account shall be held by the department to fund community college-sponsored business network training projects and shall be available on a first-come, first-served basis, based on the date an application is received by the department.

7.4(5) Any unexpended or uncommitted funds remaining in the community college 260F account on May 1 of the fiscal year shall revert to a general account to be available on a first-come, first-served basis, based on the date an application is received by the department.

7.4(6) A department-sponsored business network training project account consisting of funds allocated by the department board is established in the department to fund department-sponsored business network training projects.

261—7.5(260F) Funding for projects which include one business.

7.5(1) The maximum award which may be approved for each project at a business site is \$25,000.

7.5(2) A business site may be approved for multiple projects, but the total of the awards for two or more projects shall not exceed \$50,000 within a three-year period. The three year period shall begin with the department approval date of the first project approved within the three-year period.

7.5(3) Awards shall be made in the form of forgivable loans.

7.5(4) Financial assistance awarded to a project must be based on the actual cost of allowable services as identified in 261—7.8(260F).

7.5(5) Funds requested must be commensurate with training needs. Program funds shall not be used to cash-flow a business.

7.5(6) Community colleges shall issue the proceeds of an award to a business on a reimbursement basis.

261—7.6(260F) Funding for projects which include multiple businesses.

7.6(1) A community college consortium of two or more businesses as defined in 261—7.3(260F) of these rules is eligible for a maximum award of \$50,000 per training project.

7.6(2) A community college-sponsored business network training project as defined in 261—7.3(260F) of these rules is eligible for a maximum project award of \$50,000 from each of the participating community colleges.

7.6(3) Department-sponsored business network training projects as defined in 261—7.3(260F) of these rules are not subject to a funding maximum.

7.6(4) Participation in a community college consortium or business network does not affect a business site's financial eligibility for individual project assistance.

261—7.7(260F) Matching funds requirement.

7.7(1) A business, community college consortium, or business network shall provide matching funds in order to be eligible for a program award.

7.7(2) A business, community college consortium, or business network requesting a program award of less than \$5,000 shall provide in-kind matching funds.

7.7(3) A business, community college consortium, or business network requesting a program award of \$5,000 or more shall provide cash to pay at least 25 percent of the total project cost, including training and administration costs.

7.7(4) In-kind matching funds include employee wages paid by the business during the training period, the value of business-provided facilities and equipment used for training, or the value of any other resources provided by the business to facilitate the training program.

261—7.8(260F) Use of program funds.

7.8(1) The following costs associated with the administration of any project are eligible for program funding:

a. Community college administrative costs associated with the development and operation of a project, not to exceed the rate charged for a 260E project.

b. Legal fees.

7.8(2) The following costs associated with the provision of services for any project are eligible for program funding:

a. Vocational and skill assessment testing.

b. Adult basic education.

c. Job-related training.

d. Cost of company, college, or contracted trainer or training services.

e. Training-related materials, equipment, software, and supplies.

f. Lease or rental of training facilities.

g. Training-related travel and meals.

h. Subcontracted services.

i. Contracted or professional services.

7.8(3) Reimbursement of employee wages while in training is not allowed.

7.8(4) Production equipment, when used for training, may be an allowable cost. The cost of equipment used in training but subsequently used in production shall be prorated with the percentage of “used in production” cost paid by the business.

7.8(5) A community college may use funds awarded to a project to cover reasonable administrative costs and legal fees for that project when such costs are not covered by application fees or interest earnings. This includes administrative and legal costs incurred for a project that is canceled after funds are released to the community college but before being released to the business.

7.8(6) A community college may not use funds from one project's program award to cover any costs incurred by another project.

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261—7.9(260F) Use of 260F earned interest.

7.9(1) The community college is authorized to use interest earned on program funds to pay administrative costs incurred as a result of administering the program. Administrative costs include all costs incurred from the time the application process commences minus any costs covered by application fees paid by applicants.

7.9(2) Earned interest which has not been spent by the end of any state fiscal year shall be refunded to the department within ten days of the end of the state fiscal year. The community college may designate and carry forward specified interest funds, as permitted by these rules, for identified payments which will occur during the next state fiscal year.

261—7.10(260F) Application fee.

7.10(1) Community colleges may charge each applicant an application fee to cover part or all administrative and legal costs incurred prior to project funding.

7.10(2) A community college which elects to charge an application fee must charge each business which applies a same or equitable fee.

261—7.11(260F) Separate account. The community college shall establish a separate program account in order to document all program transactions and from which repayments for loans shall be made to the department.

261—7.12(260F) Eligible business.

7.12(1) A business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, assembling products, warehousing, wholesaling, or conducting research and development is eligible. A business engaged in the provision of services must have customers outside of Iowa to be eligible.

7.12(2) The business site to receive training must be located in Iowa.

7.12(3) The project cannot be economically funded under Iowa Code chapter 260E.

261—7.13(260F) Ineligible business.

7.13(1) A business which is engaged in retail sales or provides health or other professional services is ineligible.

7.13(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

7.13(3) A business which is involved in a strike, lockout, or other labor dispute in Iowa is ineligible.

261—7.14(260F) Eligible employee.

7.14(1) An employee for whom training is planned must hold a current position intended by the employer to exist on an ongoing basis with no planned termination date.

7.14(2) Training is available only to an employee who is hired by the business, is currently employed by a business, and for whom the business pays withholding tax.

261—7.15(260F) Ineligible employee.

7.15(1) A replacement worker who is hired as a result of a strike, lockout, or other labor dispute is ineligible for program services.

7.15(2) Training is not available for an employee hired as a temporary worker.

261—7.16(260F) Agreement of intent.

7.16(1) A college and a business may, but are not required to, enter into an agreement of intent.

7.16(2) A college and a business which enter into an agreement of intent shall use Agreement of Intent, Form 260F-2.

7.16(3) An agreement of intent shall remain in effect for a maximum of one calendar year from the date of the agreement. An agreement of intent for one project does not establish the commencement date for subsequent projects.

261—7.17(260F) Project commencement date. The earliest date on which program funds may be used to pay training expenses incurred by the project is the effective date of the agreement of intent or the date the application is received by the department, whichever is first.

261—7.18(260F) Application process.

7.18(1) An application for training assistance must be submitted to the department by a community college on behalf of a business. An application shall not be accepted by the department if submitted directly by a business.

7.18(2) Community colleges shall use Application for Assistance, Form 260F-1, to apply for assistance.

7.18(3) Required contents of the application will be described in the application package.

7.18(4) Applications must be submitted to Iowa Department of Economic Development, Division of Workforce Development, Bureau of State Programs, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address.

7.18(5) The department will score applications according to the criteria specified in 261—7.19(260F).

7.18(6) To be funded, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified elsewhere in these rules.

7.18(7) The department may approve, reject, defer, or refer an application to another training program.

7.18(8) The department reserves the right to require additional information from the business.

7.18(9) Application approval shall be contingent on the availability of funds. The department shall reject or defer an application if funds are not available.

261—7.19(260F) Application scoring criteria. The criteria used for scoring an application and the points for each criteria are as follows:

1. More than 50 percent of the business's sales are out of state, 5 points.
2. More than 50 percent of the business's operating expenditures are spent within the state of Iowa, 5 points.
3. The number of the business's in-state competitors is low, 5 points.
4. The business's products have increased or will increase the business's customer base in Iowa, 5 points.
5. The business's products have resulted or will result in a decrease in the importation of foreign-made goods into the USA, 5 points.
6. The majority of the business's suppliers are located in Iowa, 5 points.
7. The business's current products help diversify Iowa's economy, 5 points.
8. The business indicates the potential for future growth and product diversification, 5 points.
9. The business's average wage rate for all employees is above the average wage rate in the county or region where the business is located, 5 points. "Region" is the service delivery area as defined in Iowa Code section 84B.2.
10. The business provides employee health insurance and other benefits, 5 points.

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11. The majority of the business's employees are employed full-time, 5 points.

12. New skills which employees acquire from the training program will increase the marketability of their skills, 10 points.

13. The application has established the business's need for training, 10 points.

14. The 260F-cost of training per employee does not exceed comparable costs for training at a state of Iowa community college or university, 5 points.

15. The business's contribution to the training project is above the minimum program match requirement, 5 points.

16. The application documents that all considerations, including funding required to begin the training project, have been addressed, 5 points.

17. The application establishes a positive training impact on the business's ability to survive, 10 points.

261—7.20(260F) Training contract.

7.20(1) A community college shall enter into a training contract with the business within 90 days of written notice of application approval from the department, using Training Contract, Form 260F-4.

7.20(2) A business shall not modify any provision of the contract without the written approval of the community college.

7.20(3) The community college, with the written consent of the business, has the authority to modify all provisions of the contract except modifications which result in a reduction of the number of employees to be trained or which significantly change the training program.

7.20(4) The community college and the business are authorized to change the ending date of training, training provider, or other minor modifications to the training program. A signed copy of the modification must be sent to the department.

7.20(5) Modifications which result in a reduction of the number of employees to be trained or change the training program content must be approved by the department, community college, and business.

7.20(6) The contract shall not be modified in any way that would result in a violation of the "Act."

261—7.21(260F) Special requirements for community college consortium projects.

7.21(1) The community college shall submit Consortium Application For Assistance, Form 260F-1A, to the department for project approval.

7.21(2) The community college shall enter into a training contract with the consortium within 90 days of written notice of application approval from the department, using Consortium Training Contract, Form 260F-4A.

7.21(3) All default provisions specified in 261—7.24(260F) of these rules shall apply to consortium projects.

7.21(4) In the event of a default, a financial penalty will be assigned by the department to the consortium business or businesses identified by the community college as being responsible for the default.

7.21(5) Each business that participates in the consortium shall complete a Final Performance Report, Form 260F-5, at the completion of training as a condition of the loan being forgiven.

261—7.22(260F) Special requirements for community college-sponsored business network projects.

7.22(1) A business network must have a designated community college to serve as the project coordinator.

7.22(2) The designated community college shall serve as the network's representative and shall serve as the department's contact regarding all project matters.

7.22(3) The participating community colleges shall select one college as the project's designated organization and representative.

7.22(4) Business Network Application For Assistance, Form 260F-1B, shall be signed by each participating community college and shall be submitted by the designated community college to the department for project approval.

7.22(5) The designated community college shall enter into a training contract with the business network within 90 days of written notice of application approval from the department, using Business Network Training Contract, Form 260F-4B.

7.22(6) All department communications concerning a business network project, including notice of project approval or denial and issuance of financial awards, shall be with the designated community college.

7.22(7) All default provisions specified in 261—7.24(260F) of these rules shall apply to college-sponsored business network training projects.

7.22(8) In the event of a default, a financial penalty will be assigned by the department to the network business or businesses identified by the designated community college as being responsible for the default.

7.22(9) Each business that participates in the network shall complete a Final Performance Report, Form 260F-5, at the completion of training as a condition of the loan being forgiven.

261—7.23(260F) Special requirements for department-sponsored business network projects.

7.23(1) Eligible applicants include a group of businesses who will be the beneficiaries of the proposed training program, a trade association, a labor organization, or other incorporated entity representing a group of businesses.

7.23(2) Each project shall designate a lead organization or business which shall serve as the project's representative.

7.23(3) An individual project may not be funded for more than three fiscal years.

7.23(4) Administrative costs shall be limited to 15 percent of the total project cost.

7.23(5) All administrative costs must be directly related to the project's operation, including but not limited to the costs of schedule coordination, securing facilities, and contracting with training providers.

7.23(6) The lead organization or business shall submit Business Network Application For Assistance, Form 260F-1C, to the department for project approval.

7.23(7) Applications shall be accepted on a first-come, first-served basis.

7.23(8) Application review shall be based on the positive impact that training will have on the skills, knowledge, and abilities of employees, improved competitive stance of the participating businesses, and economic benefits gained by the state.

7.23(9) Application approval is at the discretion of the department board and shall consider recommendations made by department staff.

7.23(10) The department shall enter into a training contract with the business network within 90 days of written notice of application approval from the department, using Business Network Training Contract, Form 260F-4C.

7.23(11) All default provisions specified in 261—7.24(260F) of these rules shall apply to college-sponsored business network training projects.

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7.23(12) In the event of a default, a financial penalty will be assigned by the department to the business or businesses identified responsible for the default.

7.23(13) The lead business or organization shall submit quarterly progress reports for the duration of the project which detail training progress to date.

7.23(14) Each business that participates in the business network shall complete a Final Performance Report, Form 260F-5, at the completion of training as a condition of the loan being forgiven.

7.23(15) Each project shall receive a two-month advance of total project funds to cover initial costs incurred, the use of which must be documented to the department, after which documented costs incurred will be reimbursed on a monthly basis.

261—7.24(260F) Events of default.

7.24(1) A business fails to complete the training project within the agreed period of time as specified in the training contract. Such business shall be required to repay 20 percent of total project funds expended by the community college and the business.

7.24(2) A business fails to train the agreed number of employees as specified in the training contract. Such business shall be required to repay a proportionate amount of total project funds expended by the community college and the business. The proportion shall be based on the number of employees not trained compared to the number of employees to have been trained.

7.24(3) If both 7.23(1) and 7.23(3) occur, both penalties shall apply.

7.24(4) A business fails to comply with any requirements contained in the training agreement. The business shall be sent written notice by the community college which specifies the issue(s) of noncompliance and shall be allowed 20 days from the date notice is sent to effect a cure. If noncompliance is of such a nature that a cure cannot be reasonably accomplished within 20 days, the community college has the discretion to extend the period of cure to a maximum of 60 days.

7.24(5) A business ceases or announces the cessation of operations at the project site prior to completion of the training program.

7.24(6) A business directly or indirectly makes any false or misleading representations or warranties in the program application or training agreement, reports, or any other documents which are provided to the community college or the department.

7.24(7) A business acts in any manner contrary to, or fails to act in accordance with, any provision of the training contract.

7.24(8) A business takes corporate action to effect any of the preceding conditions of default.

261—7.25(260F) Options and procedures on default.

7.25(1) The community college shall notify the department within five working days, using Notice of Possible Default, Form 260F-6, whenever the community college determines that an event of default has or is likely to occur.

7.25(2) The community college shall document its efforts to reconcile the condition(s) responsible for the default and shall provide the department with copies of all related correspondence and documents of the community college and the business.

7.25(3) The community college shall notify the department, using Declaration of Default, Form 260F-7, when it has determined that an event of default cannot be cured.

7.25(4) When notice of failure to cure the default is received from the community college, the department shall communicate with the business, in writing, in an attempt to resolve the default.

7.25(5) When the department's efforts to reconcile are successful, the department shall notify the community college, in writing, to continue project operations. Continuation of project operations may be subject to new conditions imposed by the department as part of the reconciliation.

7.25(6) When the department's efforts to reconcile are unsuccessful and upon the department's request, the community college shall assign the agreement to the department for appropriate proceedings at which time the department shall institute collection procedures or notify the attorney general to initiate appropriate legal actions.

7.25(7) When a community college assigns an agreement to the department for a project declared to be in default, the community college shall return all remaining 260F funds to the department within 45 days of assignment.

261—7.26(260F) Remedies upon default.

7.26(1) When a community college determines that a business is in default, and the default has not been cured within the time period stated in the contract, the school is authorized to withhold training funds and payments to the business, without notice to the business.

7.26(2) The attorney general may take whatever action at law or in equity as necessary and desirable to satisfy the default, including pursuit of a tax sale of the employer's business property as provided for under Iowa Code section 260F.3(6).

7.26(3) No demand of amount due, from the community college to the business, written or otherwise, is required to establish the business's financial liability.

7.26(4) No remedy conferred upon or reserved to the community college, the department, or the attorney general, by the Act, these rules, or the training agreement, is intended to be exclusive of any other current or future remedies existing in law, in equity, or by statute.

7.26(5) Any delay or omission by the community college, the department, or the attorney general, to exercise any right or power prescribed by the Act, these rules, or the training agreement does not relinquish or diminish authority to act and does not constitute a waiver of default status. Any such right or power may be exercised at any time required and as often as may be deemed expedient.

7.26(6) Unless required by these rules, neither the community college, department, nor attorney general is required to provide written or other notice to the business regarding any circumstance related to and including a declaration of an event of default.

7.26(7) In the event any requirement of the Act, these rules, or the training agreement, relating to a default, should be breached by either party and then waived by the other party, such waiver shall be limited to the specific breach being waived and shall have no bearing on any subsequent breach.

261—7.27(260F) Return of unused funds. The community college shall return all unused funds to the department within 45 days of project completion or within 45 days after being notified by the department that a project is in default.

261—7.28(260F) Open records. Information submitted to the department is subject to Iowa Code chapter 22, the public records law. Applications for training funds submitted to the department are available for public examination. Information which the business believes contains trade secrets recog-

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nized and protected by such as law, or the release of which would give an advantage to competitors and serves no public purpose or which meets other provisions for confidential treatment as authorized in Iowa Code section 22.7, shall be kept confidential. The department has adopted, with certain exceptions described in 261—Chapter 100, Uniform Rules on Agency Procedure, relating to public records and fair information practices. The uniform rules are printed in the first Volume of the Iowa Administrative Code. Uniform rule X.5 describes how a person may request a record to be treated as confidential and withheld from public examination. Businesses requesting confidential treatment of certain information submitted to the department shall follow the procedures described in the uniform rule. The department will process such requests as outlined in uniform rule X.5 and 261—Chapter 100.

261—7.29(260F) Required forms. Use of the following forms by the community college is required:

1. Application for Assistance, Form 260F-1;
2. Consortium Application for Assistance, Form 260F-1A;
3. Business Network Application for Assistance (Community College), Form 260F-1B;
4. Business Network Application for Assistance (Department), Form 260F-1C;
5. Agreement of Intent, Form 260F-2;
6. Request for Release of Funds, Form 260F-3;
7. Training Contract, Form 260F-4.
8. Consortium Training Contract, 260F-4A;
9. Business Network Training Contract (Community College), 260F-4B;
10. Business Network Training Contract (Department), 260F-4C;
11. Performance Report, Form 260F-5;
12. Notice of Possible Default, Form 260F-6;
13. Declaration of Default, Form 260F-7.

[Filed Emergency 6/28/96, effective 7/1/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6576A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts Chapter 26, "Variance Procedures for Tax Increment Financing (TIF) Housing Projects," Iowa Administrative Code.

The new chapter establishes the parameters for seeking a variance in the benefit to low- and moderate-income families and the procedures for making that request to the Department of Economic Development. The Department will review and approve/deny each request on a case-by-case basis.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because legislation allows making this provision in TIF effective on July

1, 1996. This filing makes implementation of this provision for housing development available to municipalities as of the July 1, 1996, effective date.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the new chapter, 35 days after publication, should be waived and the rules be made effective on July 1, 1996. These rules confer a benefit on the public by implementing the provisions of this portion of the legislation immediately.

The Department is taking the following steps to notify potentially affected parties of the effective date of the rules: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These rules are intended to implement 1996 Iowa Acts, Senate File 2464, section 24.

These rules are also published herein under Notice of Intended Action as ARC 6575A to allow public comment. This emergency filing permits the Department to implement the new provisions of the law.

These rules became effective on July 1, 1996.

The following new chapter is adopted:

CHAPTER 26

VARIANCE PROCEDURES FOR TAX INCREMENT FINANCING (TIF) HOUSING PROJECTS

261—26.1(76GA,SF2464) Goals and objectives. These rules implement 1996 Iowa Acts, Senate File 2464, section 24, "Financing Public Improvements Related to Low Income Housing and Residential Development." The Iowa department of economic development is given the responsibility to rule on requests for variances in the percentage of low- and moderate-income benefit required in certain tax increment financing (TIF) district for residential development, as prescribed in the law. These rules establish procedures and criteria for variances so that the highest possible level of benefit to low- and moderate-income families will be achieved while ensuring the financial feasibility of the project.

261—26.2(76GA,SF2464) Definitions.

"Department" means the Iowa department of economic development.

"Eligible applicant" means any county or incorporated city within the state of Iowa.

"Housing project" means a project in an urban renewal area established solely upon findings under Iowa Code section 403.2(3) that is primarily intended to support housing activities. These may include, but are not limited to, the following: public streets and utilities, site preparation, housing rehabilitation, real property acquisition, new housing construction, and conversion of existing structures into housing units.

"Low- and moderate-income families" (LMI) means those families earning no more than 80 percent of the median family income of the county as determined by the latest United States Department of Housing and Urban Development, Section 8 income guidelines. This includes single-person households.

"Tax increment financing district" means an area in an urban renewal area that the municipality has established by ordinance in an urban renewal area established solely upon findings under Iowa Code section 403.2(3) and has designated by ordinance that taxes levied on taxable property in that area each year by or for the benefit of the state, city,

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county, school district or other taxing district shall be divided as provided for in Iowa Code section 403.19.

"TIF-generated financial support" means the portion of the cost of a housing project which is financed from TIF revenues.

261—26.3(76GA,SF2464) Requirements for benefit to low- and moderate-income families. A municipality is required to ensure that a TIF-supported housing project will provide for housing assistance for low- and moderate-income families. Absent a variance, the amount of assistance to be provided is as follows:

26.3(1) In municipalities with a population over 15,000, the amount to be provided for low- and moderate-income family housing by TIF-supported housing projects shall be either equal to or greater than the percentage of low- and moderate-income residents in the county in which the urban renewal area is located times the TIF-generated financial support for the housing project within the urban renewal area. However, the amount of benefit shall not be less than an amount equal to 10 percent of the TIF-generated financial support.

26.3(2) In municipalities with a population of 15,000 or less, the amount to be provided for low- and moderate-income family housing shall be the same as for municipalities in subrule 26.3(1) except that municipalities of 15,000 or less shall not be subject to the minimum low- and moderate-income benefit level of 10 percent of the original project cost.

26.3(3) The percentage of low- and moderate-income persons in a county is provided by the U.S. Department of Housing and Urban Development using the most currently available U.S. Census information.

261—26.4(76GA,SF2464) Ability to request a variance. A municipality may request a variance in the low- and moderate-income benefit required (excluding the 10 percent minimum established in subrule 26.3(1)) from the department of economic development when the required low- and moderate-income benefit will make the TIF-supported housing project financially infeasible. The municipality must prepare a plan for the provision of assistance to low- and moderate-income families that provides the proposed alternate level of low- and moderate-income benefit. The plan shall be adopted by the municipality and approved by the department.

261—26.5(76GA,SF2464) Variance request procedure.

26.5(1) A municipality may request a variance at any time.

26.5(2) Requests for a variance shall be submitted on forms prescribed by the department. Requests for the necessary forms may be submitted in writing to: Bureau of Community Financing, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Information and forms may be received by calling the department at (515)242-4825.

26.5(3) Department staff will review requests for variance on a case-by-case basis.

26.5(4) Each request will be reviewed according to the criteria listed in rule 261—26.6(76GA,SF2464).

26.5(5) The department may modify the request in order to maximize the level of benefit to low- and moderate-income families, while preserving the financial feasibility of the TIF-supported housing project.

26.5(6) The department will issue a decision in a letter to the applicant. If the request is approved, the letter will provide the level of the variance and the conditions for compliance with the variance. If the request is denied, the letter will state reasons for the denial.

26.5(7) All requests for variances and related DED file material are available for public inspection. Names of applicants will also be provided to the public upon request.

261—26.6(76GA,SF2464) Criteria for review. A municipality must submit the following information and other information as may be required on forms developed by the department:

1. Narrative. A description of the project and explanation of the need for the variance on low- and moderate-income benefit percentage.
2. Total tax levy applied to TIF area, minus debt service levies.
3. Current tax rollback percentage.
4. Total project development cost.
5. Number of lots to be sold.
6. Projected average home value within the housing project area.
7. Value of unimproved lots.
8. Proposed debt structure, including interest rate, term of debt, transaction costs, repayment terms.
9. Projected revenue from a project by year, including amount from tax increment, sale of lots, development fees and other sources.
10. Projected sale of lots by year.
11. Projected number of homes completed by year.
12. Use of five-year extension, if available.
13. Comments solicited or received from parties affected by the variance.
14. Proposed amount of funds and activities to benefit housing needs of LMI persons.

[Filed Emergency 6/28/96, effective 7/1/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6574A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 58, "New Jobs and Income Program," Iowa Administrative Code.

The amendments implement changes authorized by 1996 Iowa Acts, House Files 2234 and 2481, which became effective on July 1, 1996. The amendments add new definitions, incorporate the expanded benefits authorized under the new laws, establish the process for requesting a waiver of program requirements, and delete the valuation of incentives procedures which were administrative, not statutory requirements.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because this emergency filing allows the Department to implement the new provisions of the law and provide assistance to eligible businesses with pending projects.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on July 1, 1996. These rules confer a benefit

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on the public by expeditiously implementing legislation which became effective on July 1, 1996, and permitting qualifying businesses to initiate the application process to access the expanded benefits.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rule: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These amendments are also published herein under Notice of Intended Action as **ARC 6573A** to allow for public comment.

These amendments are intended to implement 1996 Iowa Acts, House Files 2234 and 2481.

These amendments became effective on July 1, 1996.

The following amendments are adopted.

ITEM 1. Amend 261—58.2(15) by adding the following **new** definitions:

“Contractor” or “subcontractor” means a person who contracts with the eligible business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development area, of the eligible business or a supporting business.

“Economic development area” means a site or sites designated by the department of economic development for the purpose of attracting an eligible business and supporting businesses to locate facilities within the state.

“Project completion” means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the economic development area is at least 50 percent of the initial design capacity of the operation of the facility. The eligible business shall inform the department of revenue and finance in writing, on forms approved by the department of revenue and finance, within two weeks of project completion.

“Supporting business” means a business under contract with the eligible business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the economic development area, and the revenue from fulfilling the contract with the eligible business shall constitute at least 75 percent of the revenue generated by the business from all activities undertaken from the facility within the economic development area.

ITEM 2. Amend subrule 58.4(5) as follows:

58.4(5) Research activities credit. A corporate tax credit for increasing research activities in this state during the period the business is participating in the program. This credit equals 6½ percent of the state’s apportioned share of the qualifying expenditures for increasing research activities. The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. *Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest com-*

puted under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

ITEM 3. Amend 261—58.4(15) by inserting the following **new** subrules:

58.4(6) Refund of sales, service and use taxes paid to contractors or subcontractors.

a. An eligible business or supporting business may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

b. Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors the eligible business or supporting business must, within six months after project completion, make an application to the Iowa department of revenue and finance.

58.4(7) Sales and use tax exemption. An eligible business may claim an exemption from sales and use taxation property as defined under Iowa Code section 422.45, subsection 27, and also as defined under Iowa Code section 15.334. This effectively eliminates the sales and use taxes on industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes.

58.4(8) Exemption from land ownership restrictions for nonresident aliens.

a. An eligible business, if owned by nonresident aliens, may acquire and own up to 1,000 acres of land in the economic development area provided the eligible business is not actively engaged in farming within the economic development area. An eligible, nonresident alien-owned business may also lease up to an additional 280 acres of land in the economic development area. An eligible business owned by nonresident aliens may be allowed, before an application is submitted, to take out a purchase option on up to 1,000 acres the business intends to acquire and may be allowed to take out a lease option on up to an additional 280 acres. The purchase and lease options may be no longer than six months in duration, and the option acquired shall be contingent upon department approval of the business’s NJIP application. The eligible business may receive one year or more one-year extensions of the five-year time limit for complying with requirements for the development of agricultural land as stated in Iowa Code section 567.4. Each extension must be approved by the community prior to approval by the department. The eligible business, if owned by nonresident aliens, must comply with all other provisions of Iowa Code chapter 567 which govern land ownership by nonresident aliens, provided they do not conflict with Iowa Code section 15.331B.

b. “Actively engaged in farming” means any of the following:

(1) Inspecting agricultural production activities within the economic development area periodically and furnishing at least half value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in management decisions substantially contributing to or affecting the success of the farm operations within the economic development area.

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(3) Performing physical work which significantly contributes to crop or livestock production.

c. The nonresident alien owner is not considered to be actively engaged in farming if the nonresident alien owner cash rents the land to others for farming purposes.

d. An eligible business, if owned by nonresident aliens, may only receive the land ownership exemptions under this subrule provided the business has received final approval of a New Jobs and Income Program application before July 1, 1998.

e. The department will monitor the activities of eligible businesses owned by nonresident aliens that receive this exemption from land ownership restrictions. The department will submit a report to the general assembly by December 15 of each year.

ITEM 4. Amend paragraph 58.7(1)"a" as follows:

a. The community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. *If community approval is by resolution rather than ordinance and the business is requesting the exemption from land ownership restrictions for nonresident aliens under subrule 58.4(8), the community shall submit documentation that the public was afforded an opportunity to comment on the business's application and land ownership exemption request.*

ITEM 5. Amend 261—58.7(15) by adding the following new subrule:

58.7(4) Waiver of program qualification requirements. A community may request a waiver of the capital investment requirement listed in paragraph 58.7(1)"e." The community may also ask for a waiver of the requirement for the number of jobs to be created listed in paragraph 58.7(1)"f." The department may grant a waiver to the community for either or both of these requirements only when good cause is shown.

a. For any community requesting a waiver of these requirements, in order to remain eligible for participation in the program the eligible business shall, as a minimum, agree to the following:

(1) The business will make a minimum capital investment of at least \$3,000,000.

(2) The business shall agree to create a minimum of at least 15 full-time positions at a facility located or expanded in Iowa.

(3) Businesses that meet the minimum amounts listed above must also agree to a capital expenditure/job creation formula of at least \$200,000 in capital expenditures for every job created.

(4) The department may grant a waiver from the capital expenditures/job creation formula requirement listed above where it can be demonstrated the business otherwise far exceeds the requirements for eligibility in the program. Such waivers from the capital expenditures/job creation formula may include, but are not limited to, instances where the wages to be paid are far in excess of what is required; where the project can be demonstrated to have an extremely high positive multiplier effect on other Iowa businesses; or for other reasons where it can be demonstrated the project will bring substantial economic benefits to the state.

b. As used in this subrule, "good cause shown" includes but is not limited to:

(1) A demonstrated lack of growth in the community which may include population loss within the community or area or average per capita income levels or growth in per capita income levels that are below the statewide average.

(2) A community that has a higher than statewide average percentage of people that are considered to be living in poverty.

(3) A community whose unemployment rate is higher than the statewide average.

(4) When the project may provide a unique opportunity to use existing unutilized or underutilized facilities in the community such as the purchase or lease of any existing building.

(5) An immediate threat to the community's work force such as when there is the possibility a business is downsizing or closing and the business will eliminate a significant number of full-time jobs or when the community can document the loss of a significant number of jobs in the community within the two years prior to the application date.

(6) When the proposed project will have a significant multiplier effect on other Iowa businesses that will cause those other businesses to increase their employment or investment in Iowa.

(7) Other factors, not listed here, may be considered by the board in deciding whether to grant a waiver.

c. A waiver of the program qualification requirements will not be granted by the department if the business has not received final approval of a new jobs and income program application before July 1, 1998.

ITEM 6. Amend subrule 58.9(2) as follows:

58.9(2) Documentation that the business meets each of the threshold requirements of subrule 58.7(1) *or meets the waiver requirements of subrule 58.7(4)* including a copy of the ordinance or resolution of the community approving the start-up, location, or expansion of the business.

ITEM 7. Amend 261—58.9(15) by adding the following new subrule:

58.9(13) A description of the site that is proposed to become an economic development area. This description must, at a minimum, include a legal description of the site and a detailed map showing the boundaries of the proposed economic development area.

ITEM 8. Rescind and reserve **261—58.12(15)**.

ITEM 9. Amend 261—58.13(15), catchwords, as follows:

261—58.13(15) Compliance monitoring; notice of non-compliance and penalties.

ITEM 10. Amend 261—58.13(15) by adding the following new subrule:

58.13(4) False report of taxes paid. A contractor or subcontractor to an eligible business who willfully makes a false report to the eligible business under the sales and use tax refund provisions of subrule 58.4(6) is guilty of a simple misdemeanor and in addition is liable for the payments of the tax and any applicable penalty and interest.

[Filed Emergency 6/28/96, effective 7/1/96]
[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6555A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement section 455B.474, the Environmental Protection Commission hereby amends Chapter 133, "Rules for Determining Cleanup Actions and Responsible Parties," and Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

1995 Iowa Acts, chapter 215, section 30, established a technical advisory committee (TAC) consisting of representatives of various interested groups of citizens who were to work jointly with the Iowa Department of Natural Resources to develop rules implementing the provisions of Iowa Code Supplement section 455B.474. This section required the Department to implement rules applicable to releases of regulated substances from underground storage tanks consistent with "risk-based corrective action" principles.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 8, 1995, as ARC 6013A. The final public hearing was conducted on December 13, 1995. The Department received extensive public comments and compiled a "Responsiveness Summary" dated January 29, 1996. The TAC and the Department conducted 17 public meetings subsequent to the Notice of Intended Action to respond to issues raised by public comment and revise the proposed rules as published in the Notice of Intended Action. The TAC and the Department submitted a joint report to the Commission at its June 17, 1996, public meeting. The Department has compiled a second "Responsiveness Summary" dated June 7, 1996, which summarizes the revisions that have been made to the proposed rules.

Pursuant to Iowa Code section 17A.4(1)"b," the Notice of Intended Action was terminated due to the expiration of the 180-day statutory period which runs from the date of the last oral presentation. Pursuant to Iowa Code 17A.4(2), the Commission finds that notice and public participation would be unnecessary and contrary to the public interest given the extensive public participation in the development of these rules and the expiration of the 180-day termination period.

In compliance with Iowa Code section 17A.5(2)"b"(2), these rules are Adopted and Filed Emergency and will become effective on August 15, 1996. This effective date will allow the Department, in coordination with the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, to provide training on these rules and implement the groundwater professional training and examination requirements necessary for certification in accordance with 1995 Iowa Code Supplement section 455G.18.

Because there are a number of new rules and rescission of some provisions, these amendments also make revisions throughout the chapter to update previous citations to conform to these changes. These revisions are not substantive and are being filed with the Administrative Code editor, but are not published in this rule making. Item 11 makes a change to a provision not included in the original Notice of Intended Action. Subrule 135.9(5) deals with the applicability of the tank closure policy by reference to "the effective date of these rules." The applicable date for that reference is October 24, 1988, and the subrule has been amended to in-

corporate that date. This is not considered a material or substantive change warranting notice and comment.

In the interest of further public participation in the development of these rules, the Commission is publishing a Notice of Termination and Notice of Intended Action as ARC 6556A herein to solicit further public comment.

These amendments implement Iowa Code Supplement section 455B.474 and 1995 Iowa Acts, chapter 215, section 30.

These amendments will become effective on August 15, 1996.

The following amendments are adopted.

ITEM 1. Amend rule 567—133.1(455B) by adding the following new subrule:

133.1(5) This chapter is applicable to releases of petroleum from underground storage tanks subject to regulation under Iowa Code chapter 455B, Division IV, Part 8, to the extent they are not inconsistent with the corrective action rules in 567—135.6(455B) to 567—135.17(455B). This subrule is not intended to limit the authority of the department to establish liability against responsible parties other than owners and operators as defined in Iowa Code sections 455B.471(5) and 455B.471(6).

ITEM 2. Amend subrule 135.1(3) by adding the following new paragraph "e":

e. Nonpetroleum underground storage tank systems. Rules 135.8(455B) to 135.12(455B) do not apply to any non-petroleum underground storage tank system except as otherwise provided for by the department.

ITEM 3. Amend rule 567—135.2(455B) by rescinding the definition of "Site cleanup report," adding the following new definitions in alphabetical order, and amending the definitions for "Corrective action" and "Protected groundwater source" as follows:

"Active remediation" means corrective action undertaken to reduce contaminant concentrations by other than passive remediation or monitoring.

"ASTM" means the American Society of Testing and Materials.

"Bedrock" means siltstone, sandstone, or coarse-grained clastic rock, or carbonate rock of pre-Cenozoic geologic age. "Vulnerable bedrock" means bedrock (1) in areas where karst features or outcrops exist in the vicinity; (2) in an area designated as good bedrock or variable bedrock aquifers protected by thin drift confinement as shown on the DNR map titled "Groundwater Vulnerability Regions of Iowa"; or (3) any bedrock encountered before groundwater.

"Carcinogenic risk" means the incremental risk of a person developing cancer over a lifetime as a result of exposure to a chemical, expressed as a probability such as one in a million (10^{-6}). For carcinogenic chemicals of concern, probability is derived from application of certain designated exposure assumptions and a slope factor.

"Certified groundwater professional" means a person certified pursuant to 1995 Iowa Code section 455G.18 and 567—Chapter 134.

"Chemicals of concern" means the compounds derived from petroleum-regulated substances which are subject to evaluation for purposes of applying risk-based corrective action decision making. These compounds are benzene, ethylbenzene, toluene, and xylene (BTEX) and naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. (NOTE: measurement of these last four constituents may be done by a conversion method from total extractable hydrocarbons, see subrule 135.8(3)).

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“Conduit” means underground structures which act as pathways and receptors for chemicals of concern, including but not limited to gravity drain lines and sanitary or storm sewers.

“Corrective action” means an action taken to *reduce*, minimize, eliminate, or clean up, *control or monitor* a release to protect the public health and *welfare safety* or the environment. Corrective action includes, but is not limited to, *use of institutional controls, use of technological controls, excavation* of an underground storage tank for the purpose of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

“Drinking water well” means any groundwater well used as a source for drinking water by humans and groundwater wells used primarily for the final production of food or medicine for human consumption in facilities routinely characterized with the Standard Industrial Codes (SIC) group 283 for drugs and 20 for foods.

“Enclosed space” means space which can act as a receptor or pathway capable of creating a risk of explosion or inhalation hazard to humans and includes “explosive receptors” and “confined spaces.” Explosive receptors means those receptors designated in these rules which are evaluated for explosive risk. Confined spaces means those receptors designated in these rules for evaluation of vapor inhalation risks.

“Groundwater ingestion pathway” means a pathway through groundwater by which chemicals of concern may result in exposure to a human receptor as specified in rules applicable to Tier 1, Tier 2 and Tier 3.

“Groundwater plume” means the extent of groundwater impacted by the release of chemicals of concern.

“Groundwater to plastic water line pathway” means a pathway through groundwater which leads to a plastic water line.

“Groundwater vapor to enclosed space pathway” means a pathway through groundwater by which vapors from chemicals of concern may lead to a receptor creating an inhalation or explosive risk hazard.

“Hazard quotient” means the ratio of the level of exposure of a chemical of concern over a specified time period to a reference dose for that chemical of concern derived for a similar exposure period. Unless otherwise specified, the hazard quotient designated in these rules is one.

“Institutional controls” means the restriction on use or access (for example, fences, deed restrictions, restrictive zoning) to a site or facility to eliminate or minimize potential exposure to a chemical(s) of concern. Institutional controls include any of the following:

1. A law of the United States or the state;
2. A regulation issued pursuant to federal or state laws;
3. An ordinance or regulation of a political subdivision in which real estate subject to the institutional control is located;
4. A restriction on the use of or activities occurring at real estate which are embodied in a covenant running with the land which:
 - Contains a legal description of the real estate in a manner which satisfies Iowa Code section 558.1 et seq.;
 - Is properly executed, in a manner which satisfies Iowa Code section 558.1 et seq.;
 - Is recorded in the appropriate office of the county in which the real estate is located;

- Adequately and accurately describes the institutional control; and

- Is in the form of a covenant as set out in Appendix C or in such a manner reasonably acceptable to the department.

5. Any other institutional control the owner or operator can reasonably demonstrate to the department which will reduce the risk from a release throughout the period necessary to ensure that no applicable target risk is likely to be exceeded.

“MCLs” means the drinking water primary maximum contaminant levels set out in 567—41.3(455B).

“Noncarcinogenic risk” means the potential for adverse systemic or toxic effects caused by exposure to noncarcinogenic chemicals of concern, expressed as the hazard quotient.

“Non-drinking water well” means any groundwater well (except an extraction well used as part of a remediation system) not defined as a drinking water well including a groundwater well which is not properly plugged in accordance with department rules in 567—Chapters 39 and 49.

“Nonresidential area” means land which is not currently used as a residential area and which is zoned for nonresidential uses.

“Pathway” means a transport mechanism by which chemicals of concern may reach a receptor(s) or the location(s) of a potential receptor.

“Point of compliance” means the location(s) at the source(s) of contamination or at the location(s) between the source(s) and the point(s) of exposure where concentrations of chemicals of concern must meet applicable risk-based screening levels at Tier 1 or other target level(s) at Tier 2 or Tier 3.

“Point of exposure” means the location(s) at which an actual or potential receptor may be exposed to chemicals of concern via a pathway.

“Potential receptor” means a receptor not in existence at the time a Tier 1, Tier 2 or Tier 3 site assessment is prepared, but which could reasonably be expected to exist within 20 years of the preparation of the Tier 1, Tier 2 or Tier 3 site assessment or as otherwise specified in these rules.

“Preferential pathway” means conditions which act as a pathway permitting contamination to migrate through soils and to groundwater at a faster rate than would be expected through naturally occurring undisturbed soils or unfractured bedrock including but not limited to wells, cisterns, tile lines, drainage systems, utility lines and envelopes, and conduits.

“Protected groundwater source” means a saturated bed, formation, or group of formations which has a hydraulic conductivity of at least 0.44 meters per day (m/d) and a total dissolved solids of less than 2,500 milligrams per liter (mg/l) and a vulnerable bedrock aquifer with total dissolved solids of less than 2,500 milligrams per liter (mg/l) if bedrock is encountered before groundwater.

“Receptor” means enclosed spaces, conduits, protected groundwater sources, drinking and non-drinking water wells, surface water bodies, and public water systems which when impacted by chemicals of concern may result in exposure to humans and aquatic life, explosive conditions or other adverse effects on health, safety and the environment as specified in these rules.

“Reference dose” means a designated toxicity value established in these rules for evaluating potential noncarcinogenic effects in humans resulting from exposure to a chemical(s) of concern. Reference doses are designated in Appendix A.

“Residential area” means land used as a permanent residence or domicile, such as a house, apartment, nursing home,

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school, child care facility or prison, land zoned for such uses, or land where no zoning is in place.

"Risk-based screening level (RBSL)" means the risk-based concentration level for chemicals of concern developed for a Tier 1 analysis to be met at the point(s) of compliance and incorporated in the Tier 1 Look-up Table in Appendix A.

"Site cleanup report" means the report required to be submitted by these rules and in accordance with department guidance which may include the results of Tier 2 or Tier 3 assessment and analysis.

"Site-specific target level (SSTL)" means the risk-based target level(s) for chemicals of concern developed as the result of a Tier 2 or Tier 3 assessment which must be achieved at applicable point(s) of compliance at the source to meet the target level(s) at the point(s) of exposure.

"Soil leaching to groundwater pathway" means a pathway through soil by which chemicals of concern may leach to groundwater and through a groundwater transport pathway impact an actual or potential receptor.

"Soil plume" means the vertical and horizontal extent of soil impacted by the release of chemicals of concern.

"Soil to plastic water line pathway" means a pathway which leads from soil to a plastic water line.

"Soil vapor to enclosed space pathway" means a pathway through soil by which vapors from chemicals of concern may lead to a receptor creating an inhalation or explosive risk hazard.

"Surface water body" means general use segments as provided in paragraph 567—61.3(1)"a" and designated use segments of water bodies as provided in paragraph 567—61.3(1)"b" and subrule 567—61.3(5).

"Surface water criteria" means, for chemicals of concern, the Criteria for Chemical Constituents in Table 1 of rule 567—61.3(455B), except that "1,000 ug/L" will be substituted for the chronic levels for toluene for Class B designated use segments.

"Surface water pathway" means a pathway which leads to a surface water body.

"Target level" means the allowable concentrations of chemicals of concern established to achieve an applicable target risk which must be met at the point(s) of compliance as specified in these rules.

"Target risk" refers to an applicable carcinogenic and non-carcinogenic risk factor designated in these rules and used in determining target levels (for carcinogenic risk assessment, target risk is a separate factor, different from exposure factors, both of which are used in determining target levels).

"Technological controls" means a physical action which does not involve source removal or reduction, but severs or reduces exposure to a receptor, such as caps, containment, carbon filters, point of use water treatment, etc.

"Tier 1 level" means the groundwater and soil levels in the Tier 1 Look-up Table set out in rule 135.9(455B) and Appendix A.

"Tier 1 site assessment" means the evaluation of limited site-specific data compared to the Tier 1 levels established in these rules for the purpose of determining which pathways do not require assessment and evaluation at Tier 2 and which sites warrant a no further action required classification without further assessment and evaluation.

"Tier 2 site assessment" means the process of assessing risk to actual and potential receptors by using site-specific field data and designated Tier 2 exposure and fate and transport models to determine the applicable target level(s).

"Tier 3 site assessment" means a site-specific risk assessment utilizing more sophisticated data or analytic techniques than a Tier 2 site assessment.

"Underground utility vault" means any constructed space accessible for inspection and maintenance associated with subsurface utilities.

"Unreasonable risk to public health and safety or the environment" means the Tier 1 levels for a Tier 1 site assessment, the applicable target level for a Tier 2 site assessment, and the applicable target level for a Tier 3 site assessment.

"Utility envelope" means the backfill and trench used for any subsurface utility line, drainage system and tile line.

ITEM 4. Amend rule 567—135.6(455B) by adding the following new subrule:

135.6(3) Release investigation and confirmation steps. Owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 135.6(1) within seven days, or another reasonable time period specified by the department, using either the following steps or another procedure approved by the department:

a. System test. Owners and operators must conduct tests (according to the requirements for tightness testing in 135.5(4)"c" and 135.5(5)"b") that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping or both.

(1) Owners and operators must repair, replace or upgrade the UST system and begin corrective action in accordance with rule 135.9(455B) if the test results for the system, tank, or delivery piping indicate a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph "b" of this subrule if the test results for the system, tank, and delivery piping do not indicate a leak exists but environmental contamination is the basis for suspecting a release.

b. Site check. A certified groundwater professional must conduct a site check in accordance with the tank closure in place procedures as provided in 135.15(3) or they may conduct a Tier 1 assessment in accordance with subrule 135.9(3). Under either procedure, the certified groundwater professional must follow the policies and procedures applicable to determining if the site is located in an area designated as vulnerable bedrock as provided in 135.8(5) to avoid creating a preferential pathway for soil or groundwater contamination to reach a bedrock aquifer. The certified groundwater professional must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, the certified groundwater professional must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results of the site check indicate action levels in 135.14(455B) have been exceeded, owners and operators must begin corrective action in accordance with rules 135.7(455B) to 135.12(455B).

(2) If the test results for the excavation zone or the UST site do not indicate a release has occurred, further investigation is not required.

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ITEM 5. Rescind subparagraph 135.7(3)"a"(5) and subrule 135.7(4).

ITEM 6. Amend subrule 135.7(5) as follows:

135.7(5) Free product removal. At all sites where investigations under 135.7(3)"a"(6) indicate the presence .01 ft. or more of free product, owners and operators must remove free product to the maximum extent practicable as determined by the department while continuing, as necessary, any actions initiated under 135.7(2) to 135.7(4), or preparing for actions required under 135.8(455B) to 135.12(455B). In meeting the requirements of this subrule, owners and operators must:

a. Conduct free product removal at a frequency determined by the department and in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, state and federal regulations. *Owners and operators must report the results of free product removal activities on forms designated by the department;*

b. Use abatement of free product migration as a minimum objective for the design of the free product removal system;

c. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

d. Unless directed to do otherwise by the department, prepare and submit to the department, within 45 days after confirming a release, a free product removal report *and proposal for subsequent free product removal activities* that provides at least the following information:

(1) The names of the person(s) responsible for implementing the free product removal measures;

(2) The ~~estimated~~ quantity, type, and thickness of free product observed or measured in monitoring wells, boreholes, and excavations;

(3) *A detailed justification for the free product removal technology proposed for the site. Base the justification narrative on professional judgment considering the characteristics of the free product plume (i.e., estimated volume, type of product, thickness, extent), recovery costs, site hydrology and geology, when the release event occurred, and the potential for petroleum vapors or explosive conditions to occur in enclosed spaces.*

~~(3)~~ (4) A schematic and narrative description of the free product recovery system used;

(4) (5) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

~~(5)~~ (6) A schematic and narrative description of the treatment system, and the effluent quality expected from any discharge;

(6) (7) The steps that have been or are being taken to obtain necessary permits for any discharge;

~~(7)~~ (8) The disposition of the recovered free product;

(8) (9) Free product plume map; and

(9) (10) The estimated volume of free product present, how the volume was calculated, recoverable volume and estimated recovery time.

e. *Termination of free product recovery activities. Owners and operators may propose to the department to terminate free product recovery activities when significant amounts of hydrocarbons are not being recovered. The department will consider proposals to terminate free product recovery when the amount of product collected from a monitoring well is equal to or less than 0.1 gallon each month for*

a year unless another plan is approved by the department. When free product activities have been terminated, owners and operators must inspect the monitoring wells monthly for at least a year. The department must be notified and free product recovery activities reinitiated if during the monthly well inspections it is determined the product thickness in a monitoring well exceeds 0.02 foot. The monthly well inspection records must be kept available for review by the department.

f. Unless directed to do otherwise by the department, prepare and submit to the department within 180 days after confirming a release, a Tier 2 site cleanup report.

ITEM 7. Rescind subrule 135.7(6).

ITEM 8. Rescind rule 567—135.8(455B) and add **new** rules as follows:

567—135.8(455B) Risk-based corrective action.

135.8(1) General. The objective of risk-based corrective action is to effectively evaluate the risks posed by contamination to human health, safety and the environment using a progressively more site-specific, three-tiered approach to site assessment and data analysis. Based on the tiered assessment, a corrective action response is determined sufficient to remove or minimize risks to acceptable levels. Corrective action response includes a broad range of options including reduction of contaminant concentrations through active or passive methods, monitoring of contamination, use of technological controls or institutional controls.

a. Tier 1. The purpose of a Tier 1 assessment is to identify sites which do not pose an unreasonable risk to public health and safety or the environment based on limited site data. The objective is to determine maximum concentrations of chemicals of concern at the source of a release(s) in soil and groundwater. The Tier 1 assessment assumes worse-case scenarios in which actual or potential receptors could be exposed to these chemicals at maximum concentrations through certain soil and groundwater pathways. The point of exposure is assumed to be the source showing maximum concentrations. Risk-based screening levels (Tier 1 levels) contained in the Tier 1 Look-up Table have been derived from models which use conservative assumptions to predict exposure to actual and potential receptors. (These models and default assumptions are contained in Appendix A.) If Tier 1 levels are not exceeded for a pathway, that pathway may not require further assessment. If the maximum concentrations exceed a Tier 1 level, the options are to conduct a more extensive Tier 2 assessment, apply an institutional control, or in limited circumstances excavate contaminated soil to below Tier 1 levels. If all pathways clear the Tier 1 levels, it is possible for the site to obtain a no action required classification.

b. Tier 2. The purpose of a Tier 2 assessment is to use site-specific data to assess the risk from chemicals of concern to existing receptors and potential receptors using fate and transport models in accordance with 135.10(455B). See 135.10(2)"a."

c. Tier 3. Where site conditions may not be adequately addressed by Tier 2 procedures, a Tier 3 assessment may provide more accurate risk assessment. The purpose of Tier 3 is to identify reasonable exposure levels of chemicals of concern and to assess the risk of exposure to existing and potential receptors based on additional site assessment information, probabilistic evaluations, or sophisticated chemical fate and transport models in accordance with 135.11(455B).

135.8(2) Certified groundwater professional. All assessment, corrective action, data analysis and report develop-

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ment required under rules 135.6(455B) to 135.12(455B) must be conducted by or under the supervision of a certified groundwater professional in accordance with these rules and department guidance as specified.

135.8(3) Chemicals of concern. Soil and groundwater samples from releases of petroleum regulated substances must always be analyzed for the presence of benzene, ethylbenzene, toluene, and xylene. In addition, if the release is suspected to include any petroleum regulated substance other than gasoline or gasoline blends, or if the source of the release is unknown, the samples must be tested for the presence of Total Extractable Hydrocarbons (TEH). Appendices A and B and department Tier 2 guidance define a method for converting TEH values to a default concentration for naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene and conversion back to a representative TEH value. These default values must be used in order to apply Tier 2 modeling to these constituents in the absence of accurate laboratory analysis. At Tier 2 and Tier 3, owners and operators have the option of analyzing for these specific constituents and applying them to the specific target levels in Appendices A and B instead of using the TEH conversion method if an approved laboratory and laboratory technique are used.

135.8(4) Boring depth for sampling. When drilling for the placement of groundwater monitoring wells, if groundwater is encountered, drilling must continue to the maximum of 10 feet below the first encountered groundwater or to the bottom of soil contamination as estimated by field screening. If groundwater is not encountered, drilling must continue to the deeper of 10 feet below the soil contamination as estimated by field screening or 75 feet from the ground surface.

135.8(5) Bedrock aquifer assessment. Prior to conducting any groundwater drilling, a groundwater professional must determine if the site is located in an area designated as vulnerable bedrock. The purpose of this determination is to prevent drilling through contaminated subsurface areas thereby creating a preferential pathway to a bedrock aquifer. If the first encountered groundwater is above bedrock, site assessment may proceed under the site check procedure in 135.6(455B), the Tier 1 procedure in 135.9(455B) or the Tier 2 procedure in 135.10(455B) as would be customary regardless of the bedrock designation. If vulnerable bedrock is encountered before groundwater, the groundwater professional must conduct a Tier 2 assessment for all pathways under 135.10(455B), including specified bedrock procedures.

567—135.9(455B) Tier 1 site assessment policy and procedure.

135.9(1) General. The main objective of a Tier 1 site assessment is to reasonably determine the highest concentrations of chemicals of concern which would be associated with any suspected or confirmed release. In addition, the placement and depth of borings and the construction of monitoring wells must be sufficient to determine the sources of all releases, the vertical extent of contamination, an accurate description of site stratigraphy, a reliable determination of groundwater flow direction and an accurate identification of applicable receptors.

a. **Pathway assessment.** The pathways to be evaluated at Tier 1 are the groundwater ingestion pathway, soil leaching to groundwater pathway, groundwater vapor to enclosed space pathway, soil vapor to enclosed space pathway, soil to plastic water line pathway, groundwater to plastic water line pathway and the surface water pathway. Assessment requires a determination of whether a pathway is complete, an evaluation of actual and potential receptors, a determination of whether conditions are satisfied for obtaining no further

action clearance for individual pathways, or for obtaining a complete site classification of "no action required." A pathway is considered complete if a chemical of concern has a route which could be followed to reach an actual or potential receptor.

b. **Pathway clearance.** If field data for an individual pathway does not exceed the applicable Tier 1 levels or if a pathway is incomplete, no further action is required to evaluate the pathway unless otherwise specified in these rules. If the field data for a pathway exceeds the applicable Tier 1 level(s) in the "Iowa Tier 1 Look-up Table," the response is to conduct further assessment under Tier 2 or Tier 3 unless an effective institutional control is approved. In limited circumstances excavation of contaminated soils may be used as an option to obtain pathway clearance. If further site assessment indicates site data exceeds an applicable Tier 1 level(s) for a previously cleared pathway or the conditions justifying a determination of pathway incompleteness change, that pathway must be reevaluated as part of a Tier 2 or Tier 3 assessment.

c. **Chemical group clearance.** If field data for all chemicals of concern within a designated group of chemicals is below the Tier 1 levels, no further action is required as to the group of chemicals unless otherwise specified in these rules. Group one consists of benzene, ethylbenzene, toluene, and xylene (BTEX). Group two consists of naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene; TEH default values are incorporated into the Iowa Tier 1 Look-up Table and Appendix A for Group two chemicals.

d. **Site classification.** A site can be classified as no action required only after all pathways have met the conditions for pathway clearance as provided in this rule.

e. **Groundwater sampling procedure.** Groundwater sampling and field screening must be conducted in accordance with department Tier 1 guidance. A minimum of three properly constructed groundwater monitoring wells must be installed, subject to the limitations on maximum drilling depths, for the purpose of identifying maximum concentrations of groundwater contamination, suspected sources of releases, and groundwater flow direction.

(1) Field screening must be used to locate suspected releases and to determine locations with the greatest concentrations of contamination. Field screening is required as per department guidance at each former and current tank basin, each former and current pump island, along the piping, and at any other areas of actual or suspected releases. In placing monitoring wells, the following must be considered: field screening data, available current and historical information regarding the releases, tank and piping layout, site conditions, and drilling data available from sites in the vicinity. At least one well must be placed at each suspected source of release which shall include at a minimum: the pump island with the greatest field screening level, each current and former underground storage tank basin, and if field screening shows greater levels than at the pump islands or tank basins, at other suspected sources of releases. A well must be installed in a presumed downgradient direction and within 30 feet of the source with the greatest field screening level. Three of the wells must be placed in a triangular arrangement to determine groundwater flow direction.

(2) Where the circumstances which prompt a Tier 1 assessment identify a discreet source and cause of a release, and the groundwater professional is able to rule out other suspected sources or contributing sources such as pump islands, piping runs and tank basins, the application of field screening

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and groundwater well placement may be limited to the known source.

f. Soil sampling procedure. The objective of soil sampling is to identify the maximum concentrations of soil contamination in the vadose and saturated zones and to identify sources of releases. The same principles stated above apply

to soil sampling. Soil samples must be taken from borings with the greatest field screening levels even if the boring will not be converted to a monitoring well. At a minimum, soil and groundwater samples must be collected for analysis from all borings which are converted to monitoring wells.

Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2
			Benzene	Toluene	Ethylbenzene	Xylene	TEH
Groundwater (ug/L)	Groundwater Ingestion	actual	5	1,000	700	10,000	1,200
		potential	290	7,300	3,700	73,000	75,000
	Groundwater Vapor to Enclosed Space	all	1,540	20,190	46,000	NA	2,200,000
	Groundwater to Plastic Water Line	all	290	7,300	3,700	73,000	75,000
Soil (mg/kg)	Surface Water	all	290	1,000	3,700	73,000	75,000
	Soil Leaching to Groundwater	all	0.54	42	15	NA	3,800
	Soil Vapor to Enclosed Space	all	1.24	51	84	NA	50,500
	Soil to Plastic Water Line	all	1.8	120	43	NA	10,500

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

135.9(2) Conditions requiring Tier 1 site assessment. Unless owners and operators choose to conduct a Tier 2 assessment, the presence of bedrock requires a Tier 2 assessment as provided in 135.8(5), or these rules otherwise require preparation of a Tier 2 site assessment, a Tier 1 site assessment must be completed in response to release confirmation as provided in rule 135.6(455B), or tank closure investigation under 135.15(455B), or other reliable laboratory analysis which confirms the presence of contamination above the action levels in 135.14(455B).

135.9(3) Tier 1 assessment report. Unless directed to do otherwise by the department or the owners or operators choose to prepare a Tier 2 site cleanup report, owners and operators must assemble information about the site and the nature of the release in accordance with the department Tier 1 guidance, including information gained while confirming the release under 135.6(455B), tank closure under 135.15(455B) or completing the initial abatement measures in 135.7(1) and 135.7(2). This information must include, but is not necessarily limited to, the following:

- Data on the nature and estimated quantity of release.
- Results of any release investigation and confirmation actions required by subrule 135.6(3).
- Results of the free product investigations required under 135.7(3)"a"(6), to be used by owners and operators to determine whether free product must be recovered under 135.7(5).

d. Chronology of site and underground storage tank ownership and tank operational history, including but not limited to known subsurface or aboveground releases, past remediation or other corrective action, type of petroleum product stored, recent tank and piping tightness test results, and confirmation that all tank and piping leak detection systems have been reviewed and do not indicate a release rate.

e. Appropriate diagrams of the site and the underground storage tank system and surrounding land use, identifying site boundaries and existing structures and uses such as residential properties, schools, hospitals, child care facilities and a general description of relevant land use restrictions and known future land use.

f. Current proof of financial responsibility as required by 136.19(455B) and 136.20(455B) and the status of coverage for corrective action under any applicable financial assurance mechanism or other financial assistance program.

g. A receptor survey including but not limited to the following: existing buildings, enclosed spaces (basements, crawl spaces, utility vaults, etc.), conduits (gravity drain lines, sanitary and storm sewer mains and service lines), plastic water lines and other utilities within 500 feet of the site. For conduits and enclosed spaces there must be a description of construction material, conduit backfill material, slope of conduit and trenches (include flow direction of sewers), burial depth of utilities or subsurface enclosed spaces, and the relationship to groundwater elevations.

h. An explosive vapor survey of enclosed spaces where there may be the potential for buildup of explosive vapors. The groundwater professional must provide a specific justification for not conducting an explosive vapor survey.

i. A survey of all surface water bodies within 200 feet of the site.

j. A survey of all active, abandoned and plugged groundwater wells within 1,000 feet of the site with a description of construction and present or future use.

k. Accurate and legible diagrams of all soil and groundwater sampling, monitoring well and soil boring logs, and laboratory analytical reports.

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1. A Tier 1 site assessment in accordance with the department's Tier 1 guidance. The Tier 1 report shall be submitted on forms and in a format prescribed by this guidance. The Tier 1 data analysis shall be performed by using computer software developed by the department or by using the computer software's hard-copy version.

135.9(4) Groundwater ingestion pathway assessment. The groundwater ingestion pathway addresses the potential for human ingestion of petroleum-regulated substances from existing groundwater wells or potential drinking water wells.

a. Pathway completeness. This pathway is considered complete if: (1) there is a drinking or non-drinking water well within 1,000 feet of the source area(s) exhibiting the maximum concentrations of the chemicals of concern; or (2) the first encountered groundwater is a protected groundwater source.

b. Receptor evaluation. A drinking or non-drinking water well within 1,000 feet of the source area is an actual receptor. The Tier 1 levels for actual receptors apply to drinking water wells and the Tier 1 levels for potential receptors apply to non-drinking water wells. Potential receptor points of exposure exist if the first encountered groundwater is a protected groundwater source but no actual receptors presently exist within 1,000 feet of the source.

c. Pathway clearance. If the pathway is incomplete, no further action is required for this pathway. If the Tier 1 level for actual or potential receptors is not exceeded, no further action is required for this pathway. Groundwater wells that are actual or potential receptors may be plugged in accordance with 567—Chapter 39 and 567—Chapter 49 and may result in no further action clearance if the groundwater is not a protected groundwater source and the pathway is thereby incomplete.

d. Corrective action response. If maximum concentrations exceed the applicable Tier 1 levels for either actual or potential receptors, a Tier 2 assessment must be conducted unless effective institutional controls are implemented as provided below. If the receptor type is potential, the groundwater is a protected groundwater source and the maximum concentrations are below the Tier 1 levels for this type, but exceed the Tier 1 levels for actual receptors, the owner or operator must: (1) implement an institutional control at the site or conduct a Tier 2 assessment; and (2) provide notification of site conditions on a department form to the department water supply section, or if a county has delegated authority, then the designated county authority responsible for issuing public water supply construction permits or regulating private water well construction as provided in 567—Chapters 38 and 49. Technological controls are not acceptable at Tier 1 for this pathway.

e. Use of institutional controls. The use of institutional controls is acceptable at Tier 1 for this pathway. If the pathway is complete and the concentrations exceed the applicable Tier 1 level(s) for actual receptors, the impacted drinking or non-drinking water well must be properly plugged and the institutional control must prohibit the use of a protected groundwater source (if one exists) within 1,000 feet of the source area. If the Tier 1 level is exceeded for potential receptors, the institutional control must prohibit the use of a protected groundwater source within 1,000 feet of the source area. If an effective institutional control is not feasible, a Tier 2 assessment must be performed for this pathway in accordance with rule 135.10(455B).

135.9(5) Soil leaching to groundwater pathway assessment. This pathway addresses the potential for soil contami-

nation to leach to groundwater creating a risk of human exposure through the groundwater ingestion pathway.

a. Pathway completeness. If the groundwater ingestion pathway is complete, the soil leaching to groundwater pathway is considered complete.

b. Receptor evaluation. There is a single receptor type for this pathway and one applicable Tier 1 level.

c. Pathway clearance. If the pathway is incomplete or the pathway is complete and the maximum concentrations of chemicals of concern do not exceed the Tier 1 levels, no further action is required for assessment of this pathway.

d. Corrective action response. If the Tier 1 levels are exceeded for this pathway, a Tier 2 assessment must be conducted or alternatively, institutional controls or soil excavation may be undertaken in accordance with 135.9(7)“h.”

e. Use of institutional controls. Institutional controls must satisfy the conditions applicable to the groundwater ingestion pathway as provided in 135.9(4)“e.”

135.9(6) Groundwater vapor to enclosed space pathway assessment. This pathway addresses the potential for vapors from contaminated groundwater to migrate to enclosed spaces where humans could inhale chemicals of concern at unacceptable levels. This pathway assessment assumes the health-based Tier 1 levels will adequately protect against any associated short- and long-term explosive risks.

a. Pathway completeness. This pathway is always considered complete for purposes of Tier 1 and must be evaluated.

b. Explosive vapor survey. An explosive vapor survey must be conducted in accordance with procedures outlined in the department Tier 1 guidance. If potentially explosive levels are detected, the groundwater professional must notify the owner or operator with instructions to report the condition in accordance with 567—Chapter 131. The owner or operator must begin immediate response and abatement procedures in accordance with 135.7(455B) and 567—Chapter 133.

c. Receptor evaluation. For purposes of Tier 1, there is one receptor type for this pathway and the Tier 1 level applies regardless of the existence of actual or potential receptors.

d. Pathway clearance. No further action is required for this pathway, if the maximum groundwater concentrations do not exceed the Tier 1 levels for this pathway.

e. Corrective action response. If the maximum concentrations exceed the Tier 1 levels for this pathway, a Tier 2 assessment of this pathway must be conducted unless institutional controls are implemented. Technological controls are not acceptable at Tier 1 for this pathway.

f. Use of institutional controls. An institutional control must be effective to prohibit the placement of enclosed space receptors within 500 feet of the source area.

135.9(7) Soil vapor to enclosed space pathway assessment. This pathway addresses the potential for vapors from contaminated soils to migrate to enclosed spaces where humans could inhale chemicals of concern at unacceptable levels. This pathway assessment assumes health-based screening levels at Tier 1 will adequately protect against short- and long-term explosive risks.

a. Pathway completeness. This pathway is always considered complete for purposes of Tier 1 and must be evaluated.

b. Explosive vapor survey. An explosive vapor survey must be conducted in accordance with procedures outlined in the department Tier 1 guidance. If potentially explosive levels are detected, the groundwater professional must notify the owner or operator with instructions to report the condi-

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tion in accordance with 567—Chapter 131. The owner or operator must begin immediate response and abatement procedures in accordance with 135.7(455B) and 567—Chapter 133.

c. Receptor evaluation. For purposes of Tier 1, there is one receptor type for this pathway, and the Tier 1 level applies regardless of existing or potential receptors.

d. Pathway clearance. No further action is required for this pathway, if the maximum soil concentrations do not exceed the Tier 1 levels for this pathway. If the Tier 1 levels are exceeded, soil gas measurements may be taken in accordance with the Tier 2 guidance at the area(s) of maximum concentration. Subject to confirmation sampling, if the soil gas measurements do not exceed the target levels in 135.10(7)“f,” no further action is required for this pathway. If the Tier 1 level is not exceeded but the soil gas measurement exceeds the target level, further action is required for the pathway.

e. Soil gas samples. To establish that the soil gas measurement is representative of the highest expected levels, a groundwater professional must obtain two soil gas samples taken at least two weeks apart, and one of the samples must be taken during a seasonal period of lowest groundwater elevation below the frostline.

f. Corrective action response. If the maximum concentrations exceed the Tier 1 levels and the soil gas measurements exceed target levels for this pathway, or if no soil gas measurement was taken, a Tier 2 assessment of this pathway must be conducted unless institutional controls are implemented or soil excavation is conducted as provided below. Technological controls are not acceptable at Tier 1 for this pathway.

g. Use of institutional controls. An institutional control must be effective to eliminate the placement of enclosed space receptors within 500 feet of the source area.

h. Soil excavation. Excavation of contaminated soils for the purpose of removing soils contaminated above the Tier 1 levels is permissible as an alternative to conducting a Tier 2 assessment. Adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum, one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm that remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base.

135.9(8) Groundwater to plastic water line pathway assessment. This pathway addresses the potential for creating a drinking water ingestion risk due to contact with plastic water lines and causing infusion to the drinking water.

a. Pathway completeness and receptor evaluation.

(1) Actual receptors. This pathway is considered complete for an actual receptor if there is an existing plastic water line within 200 feet of the source and the first encountered groundwater is less than 15 feet below the bottom of the trench containing the water line.

(2) Potential receptors. This pathway is considered complete for a potential receptor if the first encountered groundwater is less than 20 feet below ground surface.

b. Pathway clearance. If the pathway is not complete, no further action is required for this pathway. If the pathway is complete and the maximum concentrations of all chemicals of concern do not exceed the Tier 1 levels for this pathway, no further action is required for this pathway.

c. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential plastic water line impacts. Notification of potential plastic water line impacts may be postponed until completion of Tier 2 if a Tier 2 assessment is required.

d. Corrective action response.

(1) For actual receptors, if the Tier 1 levels are exceeded, all plastic water lines within 200 feet must be replaced with nonplastic lines or the plastic lines must be relocated beyond the 200-foot distance. A Tier 2 assessment must be conducted for this pathway if lines are not replaced or relocated.

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway.

135.9(9) Soil to plastic water line pathway assessment. This pathway addresses the potential for creating a drinking water ingestion risk due to contact with plastic water lines and infusion into the drinking water.

a. Pathway completeness.

(1) Actual receptors. This pathway is considered complete for an actual receptor if a plastic water line exists within 200 feet of the source.

(2) Potential receptors. This pathway is always considered complete for potential receptors.

b. Pathway clearance. If the pathway is not complete for actual receptors, no further action is required for this pathway. If the pathway is complete for actual receptors and the maximum concentrations of all chemicals of concern do not exceed Tier 1 levels for this pathway, no further action is required. For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

c. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential plastic water line impacts. Notification of potential plastic water line impacts may be postponed until completion of Tier 2 if a Tier 2 assessment is required.

d. Corrective action response. For actual receptors, if the Tier 1 levels are exceeded for this pathway, the plastic water lines or utility lines may be replaced with nonplastic lines or the plastic lines may be relocated to a distance beyond 200 feet of the source. Excavation of soils to below Tier 1 levels may be undertaken in accordance with 135.9(7)“h.” If none of these options is implemented, a Tier 2 assessment must be conducted for this pathway.

135.9(10) Surface water pathway assessment. This pathway addresses the potential for contaminated groundwater to impact surface water bodies creating risks to human health and aquatic life.

a. Pathway completeness. This pathway is considered complete if a surface water body is present within 200 feet of the source. For purposes of Tier 1, surface water bodies include both general use segments and designated use segments as provided in 567—subrule 61.3(1).

b. Receptor evaluation. The Tier 1 levels for this pathway only apply to designated use segments of surface water bodies as provided in 567—subrules 61.3(1) and 61.3(5). The point of compliance is the source area with the highest concentrations of chemicals of concern. General use segments of surface water bodies as provided in 567—paragraph 61.3(1)“a” are only subject to the visual inspection criteria.

c. Visual inspection requirements. A visual inspection of all surface water bodies within 200 feet of the source must be conducted to determine if there is evidence of a sheen on the water or there is evidence of petroleum residue along the bank. If a sheen or residue is evident or has been reported to be present, the groundwater professional must make a suffi-

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cient investigation to reasonably determine its source. If in the opinion of the groundwater professional, the sheen is not associated with the underground storage tank site, the professional must report and reasonably justify this opinion. If in the opinion of the groundwater professional the sheen is not a petroleum-regulated substance, a sample must be laboratory tested in accordance with 135.16(455B) to confirm it is not a petroleum-regulated substance.

d. Pathway clearance. If the pathway is not complete or it is complete and the maximum concentrations of all chemicals of concern at the point of compliance do not exceed the Tier 1 levels and there is no petroleum sheen or residue attributable to the site, no further action is required for assessment of this pathway.

e. Corrective action response. If any Tier 1 level is exceeded for any chemical of concern or the groundwater professional determines the presence of a petroleum-regulated substance sheen or residue, a Tier 2 assessment of this pathway must be conducted.

135.9(11) Tier 1 submission and review procedures.

a. Within 90 calendar days of release confirmation or another reasonable period of time determined by the department, owners and operators must submit to the department a Tier 1 report in a format prescribed by the department and in accordance with these rules and the department Tier 1 guidance.

b. If the owner or operator elects to prepare a Tier 2 site cleanup report instead of a Tier 1 assessment, the department must be notified in writing prior to the expiration of the Tier 1 submission deadline. The Tier 2 site cleanup report must be submitted to the department in accordance with rule 135.10(455B) within 180 calendar days of release confirmation or another reasonable period of time determined by the department.

c. Tier 1 report completeness and accuracy. A Tier 1 report is considered to be complete if it contains all the information and data required by this rule and the department Tier 1 guidance. The report is accurate if the information and data is reasonably reliable based first on application of the standards in these rules and department guidance and second, generally accepted industry standards.

d. The certified groundwater professional shall include the following certification with the Tier 1 site assessment report:

I, _____, Groundwater Professional Certification No. _____, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, 567—Chapter 135 and the Department of Natural Resources Tier 1 guidance. Based on my knowledge of those documents and information I have prepared and reviewed regarding this site, UST Registration No. _____, LUST No. _____ I certify that this document is complete and accurate as provided in 567 IAC 135.9(11)“c” and meets the applicable requirements of the Tier 1 site assessment.

Signature:

Date:

e. Upon receipt of the Tier 1 report, the department may review it by reliance on the groundwater professional's certification and a summary review for completeness and accuracy or may undertake a more complete review to determine completeness and accuracy and compliance with department rules and guidance. If the Tier 1 report proposes to classify the site “no action required,” the department may review the report as provided in 135.9(11)“g.”

f. If a “no action required” site classification is not proposed, the department must within 60 days approve the Tier 1 report for purposes of completeness or disapprove of the report upon a finding of incompleteness, inaccuracy or non-compliance with these rules. If no decision is made within this time period, the report is deemed to be accepted for purposes of completeness. The department retains the authority to review the report at the time a no action required site classification is proposed.

g. No action required site classification review. The department will review each Tier 1 report which proposes to classify a site as “no action required” to determine whether the data and information are complete and accurate, the data and information comply with department rules and guidance and the site classification proposal is reasonably supported by the data and information.

135.9(12) Tier 1 site classification and corrective action response.

a. No action required site classification. At Tier 1, a site is only eligible for a “no action required” classification. To be classified as no action required, each pathway must meet the requirements for pathway clearance as specified in this rule. If the department determines a no action required site classification is appropriate, a no further action certificate may be issued as provided in 135.12(10).

b. Where an individual pathway or a chemical group meets the requirements for clearance but the site is not entitled to a no action required classification, only those pathways and chemical groups which do not meet the no further action requirements must be evaluated as part of a Tier 2 assessment as provided in rule 135.10(455B).

c. Compliance monitoring and confirmation sampling. Compliance monitoring is not an acceptable corrective action at Tier 1. Except for soil gas sampling under 135.9(7), confirmation sampling to verify a sample does not exceed a Tier 1 level is not required. However, the department retains the authority to require confirmation sampling from existing groundwater monitoring wells if a no action required classification is being proposed at Tier 1 and the department has a reasonable basis to question the representative validity of the samples based on, for example, the seasonal bias of the sampling, evidence of multiple sources of releases, marginal groundwater monitoring well locations and analytical variability.

d. Expedited corrective action. Expedited corrective action is permissible in accordance with 135.12(11).

567—135.10(455B) Tier 2 site assessment policy and procedure.

135.10(1) General conditions. A Tier 2 site assessment must be conducted and a site cleanup report submitted for all sites which have not obtained a no action required site classification and for all pathways and chemicals of concern groups that have not obtained no further action clearance as provided in 135.9(455B). If in the course of conducting a Tier 2 assessment, data indicates the conditions for pathway clearance under Tier 1 no longer exist, the pathway shall be further assessed under this rule. The Tier 2 assessment and report must be completed whenever free product is discovered as provided in 135.7(455B). If the owner or operator elects to complete the Tier 2 site assessment without doing a Tier 1 assessment, all the Tier 1 requirements as provided in 135.9(455B) must be met in addition to requirements under this rule.

a. Guidance. The Tier 2 site assessment shall be conducted in accordance with the department's “Tier 2 Site Assessment Guidance” and these rules. The site cleanup report

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shall be submitted on forms and in a format prescribed by this guidance. The Tier 2 data analysis shall be performed by using computer software developed by the department or by using the computer software's hard copy version.

b. Classification. At Tier 2, individual pathways may be classified as high risk or low risk or no action required and separate classification criteria may apply to actual and potential receptors for any pathway. A single pathway may have multiple classifications based on actual or potential receptor evaluations. A pathway must meet both the criteria for actual and potential receptors for the pathway to obtain a classification of no action required. Sites may have multiple pathway classifications. For a site to obtain a no action required classification, all pathways must meet the individual pathway criteria for no action required classification.

135.10(2) General Tier 2 assessment procedures.

a. Objectives. The objective of a Tier 2 assessment is to collect site-specific data and with the use of Tier 2 modeling determine what actual or potential receptors could be impacted by chemicals of concern and what concentrations at the source are predicted to achieve protection of these receptors. Both Tier 1 and Tier 2 are based on achieving similar levels of protection of human health, safety and the environment.

b. Groundwater modeling. Tier 2 uses fate and transport models to predict the maximum distance groundwater contamination is expected to move and the distribution of concentrations of chemicals of concern within this area. The model is used for two basic purposes. One, it is used to predict at what levels of concentration contamination would be expected to impact actual and potential receptors. Two, it is used to determine a concentration at the source which if achieved, and after dispersion and degradation, would protect actual and potential receptors at the point of exposure. In predicting the transport of contaminants, the models assume the contaminant plume is at "steady state" such that concentrations throughout the plume have reached a maximum level and are steady or decreasing. The Tier 2 models are only designed to predict transport in a direct line between the source and downgradient to a receptor. In order to more reasonably define a modeled plume in all directions, paragraph "i" defines a method of decreasing modeled concentrations as a percentage of their distance in degrees from the down-gradient direction.

c. Soil vapor models. The soil vapor models are vertical transport models and do not use modeling to predict soil contaminant transport horizontally to receptors.

d. Soil leaching to groundwater modeling. The soil leaching to groundwater model is a model that predicts the maximum concentrations of chemicals of concern that would be expected in groundwater due to vertical leaching from the area of maximum soil concentrations and then incorporates the groundwater transport models to predict contaminant transport through groundwater pathways.

e. Modeling default parameters. The Tier 2 model formulas and applicable parameters are designated in Appendix B and must be followed unless otherwise specified in these rules.

f. Source width. The source width and source length are variables used in modeling and must be determined by the following criteria and as specified in the department's Tier 2 guidance. The following are not to be used as criteria for defining the extent of the contaminant plumes.

(1) Source width (equals S_w in models) for groundwater transport modeling. The sum of group one chemical (benzene, toluene, ethylbenzene, xylene or "BTEX") concentra-

tions for each groundwater sample is determined and the location of the sample with the maximum total BTEX is identified. Linear interpolation is used to estimate the area where groundwater concentrations would be expected to exceed 50 percent of the maximum BTEX value, and this area is considered for the source width measurement. The same procedure is used to determine source width for group two chemicals, using TEH in groundwater. The width of the groundwater contamination perpendicular to estimated groundwater flow direction (S_w) is determined, and the larger of either group one or group two chemicals is used in the groundwater transport model.

(2) Source width (S_w) and source length (equals W in models) for soil leaching to groundwater transport modeling. Both the source width perpendicular to the estimated groundwater flow direction (S_w) and the source length parallel to the estimated groundwater flow direction (W) are used in the soil leaching to groundwater model. The sum of BTEX concentrations for each soil sample is determined and the location of the sample with the maximum total BTEX is identified. Concentrations from both the vadose zone and the saturated zone must be considered when determining the maximum. Linear interpolation is used to estimate the area where soil concentrations would be expected to exceed 50 percent of the maximum BTEX value, and this area is considered for the source width and source length measurements. The same procedure is used to determine source width for group 2 chemicals, using TEH in soil. Source width and source length measurements for BTEX in groundwater are also taken following the same linear interpolation criteria in "f"(1) above. The source width value used in the model is the greatest of either the soil source width measurements or the groundwater source width measurement. The source length value used in the model is the greatest of either of the soil source length measurements or the groundwater length measurement.

(3) Estimating source width when free product is present. Groundwater from wells with free product must be analyzed for BTEX and the source width and source length are estimated using the criteria in 135.10"i"(1) and 135.10"i"(2) above. For those sites with approved site cleanup reports and free product is present in wells but inadequate data to determine source width and source length as above is available, source width and source length measurements are taken from the area representing half the distance between wells with free product and wells without free product.

g. Modeled simulation line. The simulation line represents the predicted maximum extent of groundwater contamination and distribution of contaminant concentrations between the source(s) and actual or potential receptor locations. The model calculates the simulation line using maximum concentrations at the source(s) and predicting the amount of dispersion and degradation. Modeled data in the simulation line are compared with actual field data to verify the predictive validity of the model and to make risk classification decisions.

h. Modeled site-specific target level (SSTL) line. The modeled SSTL line represents acceptable levels of contaminant concentrations at points between and including the source(s) and an applicable point(s) of exposure or other point(s) of compliance (ex. a potential receptor point of exposure). The SSTL line is calculated by assuming an applicable target level concentration at the point(s) of exposure or point(s) of compliance and modeling back to the source to determine the maximum concentrations at the source (SSTL) that must be achieved to meet the target level at the point of

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exposure or compliance. Comparison of field data to this SSTL line is used to determine a risk classification and determine appropriate corrective action response.

i. Crossgradient and upgradient modeling considerations. A percentage of modeled contaminant concentrations will be used to determine the SSTL line and simulation line in directions other than downgradient as specified in the "Tier 2 Site Assessment Guidance." In general, an angle of 30° to either side of the range of downgradient directions will designate 100 percent of model results, 20 percent of modeled results will be used in the upgradient direction, and a relative proportion will be used for points between these two guidelines. If the groundwater gradient is less than 0.005 or the groundwater contaminant plume shows no definitive direction or shows directional reversals, values will be assumed to be 100 percent of the modeled values in all directions from the source.

j. Plume definition. The purpose of plume definition at Tier 2 is to obtain sufficient data to determine the impact on actual and potential receptors, to determine and confirm the highest levels of contamination, to verify the validity of the models, and to determine groundwater flow direction. The number and location of borings and monitoring wells and the specificity of plume definition will depend on the pathway or pathways being assessed and the actual or potential receptors of concern. Unless otherwise specified, groundwater and soil contamination shall be defined to Tier 1 levels for the applicable pathways. Linear interpolation between two known concentrations must be used to delineate plume extent. Samples with no concentrations detected shall be considered one-half the detection limit for interpolation purposes.

k. Pathway completeness. Unless a pathway has obtained clearance under Tier 1, each pathway must be evaluated at Tier 2. Pathways are generally considered complete (unless otherwise specified) and receptors affected if actual receptors or potential receptor points of exposure exist within the modeled contaminant plume using the modeled simulation line calculated to the applicable target level at a point of exposure. If the actual contaminant plume exceeds the modeled plume, the pathway is complete and must be evaluated if actual or potential points of exposure exist within a distance extending 10 percent beyond the edge of the defined plume.

l. Points of exposure and compliance. For actual receptors, the point(s) of exposure is the receptor. For potential receptors, the potential receptor point(s) of exposure is determined by using actual plume definition or the modeled simulation line to determine all points which exceed the target level(s) for potential receptors. The potential receptor point(s) of exposure is the location(s) closest to the source where a receptor could reasonably exist and which is not subject to an institutional control; for example, the source is the potential receptor point of exposure if not subject to an institutional control or an adjoining property boundary line if that property is not subject to an institutional control. At Tier 2, the point(s) of exposure or potential receptor point(s) of exposure is a point of compliance unless otherwise specified. Other points of compliance are specified by rules and will generally include all points along the SSTL line for purposes of pathway and site classification and corrective action response.

m. Group two chemicals. At Tier 2, chemical-specific values for the four chemicals may be used or the largest of the four TEH default values. (Refer to Appendix B and department Tier 2 guidance for using the TEH conversion method for modeling.) If chemical-specific values are used, the ana-

lytical method must be approved by the department prior to its use.

135.10(3) Bedrock assessment.

a. General. As provided in 135.8(5) if a groundwater professional determines the site is located in an area of vulnerable bedrock and bedrock is encountered before groundwater, special assessment procedures under this subrule apply. The objective of these special procedures is to avoid creating a preferential pathway to a bedrock aquifer. The owner or operator may choose to conduct a Tier 3 assessment under 135.11(455B) as an alternative to proceeding under this subrule. For sites located in vulnerable bedrock, there are three general categories of site conditions which determine the assessment procedures that apply:

(1) Exempt granular bedrock. Bedrock which is determined to act as a granular aquifer as provided in paragraph "e" and for which monitoring wells exist at the source as of August 15, 1996;

(2) Granular bedrock. Bedrock which is determined to act as a granular aquifer as provided in paragraph "e" and for which monitoring wells do not exist at the source as of August 15, 1996; and

(3) Nongranular bedrock. Bedrock which is determined to not act as a granular aquifer.

b. Exemptions.

(1) Exempt granular bedrock. If bedrock is determined to act as a granular aquifer and monitoring wells exist at the source as of August 15, 1996, the site shall be evaluated using the normal Tier 2 procedures in this rule.

(2) Soil pathways. The soil vapor to enclosed space pathway and the soil to plastic water lines pathway shall be assessed under the normal Tier 2 procedures in subrules 135.10(7) and 135.10(9) respectively. In all cases, the normal assessment must comply with the policy of avoiding a preferential pathway to groundwater consistent with 135.8(5) and this subrule.

c. Soil and groundwater assessment. The vertical and horizontal extent of soil contamination shall first be defined to Tier 1 levels for the soil leaching to groundwater pathway without drilling into bedrock. A minimum of three groundwater monitoring wells shall be located and installed between 50 to 100 feet beyond the soil contamination Tier 1 levels to avoid creating a preferential pathway. Assessment data as normally required by these rules and guidance must be obtained and analyzed.

d. Soil contamination remediation. For all sites where soil contamination exceeds the soil leaching to groundwater Tier 1 levels, soil excavation or other active soil remediation technology must be conducted in accordance with department guidance to reduce concentrations to below this Tier 1 level. Soil remediation monitoring must be conducted in accordance with 135.12(455B).

e. Granular bedrock determination. The groundwater professional must determine whether the groundwater in bedrock acts in a manner consistent with a granular aquifer in accordance with Tier 2 guidance. Factors that may be considered include, but are not limited to, extraordinary variations in groundwater elevations, unusual groundwater flow, unusually high or variable hydraulic conductivities, and inconsistency in total dissolved solids. If it is determined the groundwater acts in a manner consistent with a granular aquifer but does not meet the criteria for exemption under subparagraph "a"(1), the plume must be defined. The policy of avoiding the creation of a preferential pathway to the bedrock aquifer in accordance with 135.8(5) must be followed. Groundwater transport models cannot be used because they

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require groundwater monitoring wells at the source. Therefore, this subrule provides special procedures for pathway and receptor evaluation applicable to granular bedrock and nongranular bedrock. The provisions of this rule apply to the extent they are not inconsistent with these special procedures.

f. Soil leaching to groundwater ingestion pathway. Under this subrule, the soil leaching to groundwater pathway only need be evaluated in combination with the groundwater ingestion pathway. Because of the policies requiring soil remediation to the soil leaching to groundwater Tier 1 levels under paragraphs "d" and "k," the soil leaching pathway target levels applicable to other groundwater transport pathways and other soil pathways would not be exceeded. If a soil leaching to groundwater Tier 1 level is exceeded, the pathway is high risk.

g. Special procedures for the groundwater ingestion pathway.

(1) A protected groundwater source is assumed without measurements of hydraulic conductivity for all sites located in vulnerable bedrock.

(2) Groundwater well receptor evaluation for granular and nongranular bedrock. All drinking and non-drinking water wells within 1,000 feet of the source must be identified and tested for chemicals of concern. All public water supply systems within one mile of the source must be identified and raw water tested for chemicals of concern. If no drinking water wells are located within 1,000 feet of the source, all the area within 1,000 feet is considered a potential receptor point of exposure.

(3) Target levels. The following target levels apply regardless of granular aquifer designation. If drinking water wells are within 1,000 feet of the source, the applicable target level is the groundwater ingestion pathway Tier 1 level for actual receptors. If non-drinking water wells are within 1,000 feet of the source, the applicable target level is the groundwater ingestion pathway Tier 1 level for potential receptors. For potential receptors, the applicable target level is the groundwater ingestion pathway Tier 1 level for potential receptors.

(4) Sentry well. If the Tier 1 level for actual receptors is exceeded at sites in granular bedrock and the receptor has not yet been impacted, a monitoring well shall be placed between the source and an actual receptor, outside the defined plume and approximately 200 feet from the actual receptor. For alternative well placement, the certified groundwater professional must provide justification and obtain department approval. This monitoring well is to be used for monitoring potential groundwater contamination of the receptor.

(5) High risk classification. A site located in vulnerable bedrock shall be classified high risk for this pathway if any of the following conditions exist regardless of granular aquifer determination: The target level at any actual receptor is exceeded; drinking water well receptors are present within 1,000 feet and groundwater concentrations in any monitoring well exceed the groundwater ingestion Tier 1 level for actual receptors; non-drinking water wells are within 1,000 feet and groundwater concentrations in any monitoring well exceed the groundwater ingestion pathway Tier 1 level for potential receptors; or for nongranular bedrock, if groundwater concentrations for chemicals of concern from any public water system well within one mile of the source exceed 40 percent of the Tier 1 level for actual receptors, and groundwater concentrations in any monitoring well exceed the groundwater ingestion Tier 1 level for actual receptors. Corrective action shall be undertaken as provided in paragraph "k."

(6) Low risk classification. Sites without an actual receptor within 1,000 feet shall be classified as low risk for this pathway if no high risk conditions exist, and the Tier 1 level for potential receptors is exceeded. The site is subject to monitoring as provided in paragraph "l." If an actual receptor exists within 1,000 feet, a site located in granular or nongranular bedrock shall be classified low risk for this pathway when soil contamination has been removed or remediated to below the soil leaching to groundwater Tier 1 levels, and all groundwater monitoring wells are non-detect or below the applicable target level for actual and potential receptors. A site may be reclassified to no action required for this pathway after all monitoring wells meet the exit monitoring criteria as specified in paragraph "l." (NOTE: Exit monitoring is required because groundwater monitoring wells are not located at the source or if they are, the data is highly unreliable given the nature of bedrock.)

h. Special procedures for the groundwater vapor to enclosed space pathway.

(1) Soil gas plume. Soil gas measurements must be taken regardless of granular aquifer determination and in accordance with Tier 2 guidance to determine a soil gas plume. Soil gas where practical should be measured at the soil-bedrock interface. At a minimum, soil gas must be measured at the suspected area of maximum contamination and near the three monitoring wells with the highest concentrations that exceed the Tier 1 level for the groundwater to enclosed space pathway. In a granular bedrock where the plume has been defined, soil gas measurements should be taken near wells exceeding the Tier 1 level. Other soil gas measurements must be taken as needed to define the extent of contamination where soil gas measurements exceed the soil gas vapor target levels.

(2) The soil gas target levels are those defined in 135.10(7)"f."

(3) High risk classification. A site located in granular or nongranular bedrock shall be classified high risk for this pathway if an actual confined space receptor exists within 50 feet of the soil gas plume based on the soil gas target level as defined in 135.10(6).

(4) Low risk classification. A site located in granular or nongranular bedrock shall be classified as low risk for this pathway if the soil gas exceeds the vapor target level at any point and no actual confined space receptors exist within 50 feet of the soil gas contaminant plume.

i. Special procedure for the groundwater to plastic water line pathway.

(1) Target level. The applicable target level is the Tier 1 level for plastic water lines.

(2) High risk classification. A site located in granular or nongranular bedrock shall be classified high risk for this pathway if the highest groundwater elevation is higher than three feet below the bottom of a plastic water line as provided in 135.10(8)"a"(1), risk classification cannot be determined as provided in 135.12(455B) due to limitations on placement of monitoring wells, and plastic water lines exist within 200 feet of a monitoring well which exceeds the Tier 1 level.

j. Special procedures for the surface water pathway. Any surface water body within 200 feet of the source must be evaluated under the following for sites located in granular or nongranular bedrock.

(1) Point of compliance. The monitoring well closest to the surface water body must be used as the point of compliance to evaluate impacts to designated use segments as described in 135.10(10). If the surface water criteria is exceeded

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ed, an allowable discharge concentration must be calculated and met at the point of compliance.

(2) High risk classification. A site located in granular or nongranular bedrock shall be classified high risk for this pathway if the surface water pathway is within 200 feet of the source, risk classification cannot be determined as per 135.12(455B) due to limitations on placement of monitoring wells, and the monitoring well closest to the designated use segment exceeds the allowable discharge concentration.

(3) Low risk classification. If the allowable discharge concentration is not exceeded at the point of compliance, the site shall be classified as low risk for this pathway and subject to monitoring under paragraph "l."

k. High risk corrective action response. Owners and operators have the option to conduct a Tier 3 assessment in accordance with 135.11(455B).

(1) Groundwater ingestion pathway. For high risk sites, where soil exceeds the soil leaching to groundwater Tier 1 level for actual receptors, soil excavation or other active remediation of soils must be conducted in accordance with department guidance to reduce soil concentrations below the soil leaching Tier 1 level. Active remediation of groundwater is required in nongranular bedrock if the actual receptor has been or is likely to be impacted. Active remediation of groundwater is required in granular bedrock if the actual receptor has been impacted or the sentry well required by 135.10(3)"g"(4) has been impacted above Tier 1 levels. Acceptable corrective action for impacted or vulnerable groundwater wells may include technological controls, institutional controls, well plugging, relocation, and well reinstallation with construction measures sufficient to prevent contaminant infiltration to the well and to prevent formation of a preferential pathway.

(2) Soil leaching/groundwater ingestion pathway high risk monitoring. For high risk sites in nongranular or granular bedrock, if the soil concentrations do not exceed the soil leaching to groundwater Tier 1 levels or have been reduced to this level by corrective action, and active remediation of groundwater is not required as in subparagraph (1), these sites shall be subject to groundwater monitoring as provided in paragraph "l." Active remediation is required if groundwater concentrations exceed the applicable target level less than 200 feet from an actual receptor and if monitoring inside the plume increases more than 20 percent of the previous samples.

(3) Other pathways. For high risk sites other than groundwater ingestion, active remediation must be conducted to reduce concentrations below the applicable target levels including the use of institutional and technological controls.

l. Monitoring. For high and low risk sites, annual monitoring at a minimum is required as specified below, and potential receptor status for low risk sites must be confirmed. Annual monitoring may be used to meet the exit requirements for no action required classification in accordance with paragraph "m."

(1) Groundwater in nongranular bedrock. All groundwater monitoring wells must be monitored at least annually.

(2) Granular aquifer. The following monitoring wells must be monitored at least annually: a well with detected levels of contamination closest to the leading edge of the groundwater plume between the source and the receptor, and a sentry well with concentrations below the applicable target level consistent with subparagraph "g"(4).

(3) Soil gas. For sites where the soil gas target level is exceeded, annual monitoring of soil gas is required at the suspected area of maximum contamination and between the soil

gas plume and any actual receptors within 100 feet of the soil gas plume

m. No action required classification. A site may be given a no action required classification after conducting a Tier 2 assessment as provided in this subrule if maximum soil concentrations do not exceed the Tier 1 levels for the soil leaching pathway, and if groundwater exit monitoring criteria and soil gas confirmation sampling are met as specified below.

(1) Groundwater in nongranular bedrock. Exit monitoring requires that samples from all groundwater monitoring wells must not exceed the applicable target levels for annual sampling for three consecutive years.

(2) Granular aquifer. Exit monitoring must be met in two ways:

1. A monitoring well between the source and the receptor must not exceed applicable target levels for three sampling events, and samples must be separated by at least six months; and

2. The three most recent consecutive groundwater samples from a monitoring well between the source and the receptor with detected levels of contamination must show a steady or declining trend and meet the following criteria: the first of the three samples must be more than detection limits, concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

(3) Soil gas. Confirmation sampling for soil gas must be conducted as specified in 135.12(6)"c."

n. After receiving a no action required classification, all monitoring wells must be properly plugged.

135.10(4) Groundwater ingestion pathway assessment.

a. Pathway completeness. Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)"j" and 135.10(2)"k."

b. Receptor evaluation. All existing drinking water wells and non-drinking water wells within the modeled plume or the actual plume as provided in paragraph "a" must be evaluated as actual receptors. Potential receptors only exist if the groundwater is a protected groundwater source. Potential receptor points of exposure are those points within the modeled plume or actual plume that exceed the potential point of exposure target level. The point(s) of compliance for actual receptor(s) is the receptor. The point(s) of compliance for potential receptor(s) is the potential receptor point of exposure as provided in 135.10(2)"j" and 135.10(2)"k."

c. Target levels. For drinking water wells, the target level at the point(s) of exposure is the Tier 1 level for actual receptors. For non-drinking water wells, the target level at the point(s) of exposure are the Tier 1 levels for potential receptors. For potential receptors, the target level at the potential receptor point(s) of exposure is the Tier 1 level for potential receptors.

d. The soil leaching to groundwater pathway must be evaluated in accordance with 135.9(5) if this pathway is complete.

e. Modeling. At Tier 2, the groundwater well is assumed to be drawing from the contaminated aquifer, and the groundwater transport model is designed to predict horizontal movement to the well. If the groundwater professional determines that assessment of the vertical movement of contami-

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nation is advisable to determine the potential or actual impact to the well source, a Tier 3 assessment of this vertical pathway may be conducted. The groundwater professional shall submit a work plan to the department specifying the assessment methods and objectives for approval in accordance with 135.11(455B). Factors which should be addressed include, but are not limited to, well depth and construction, radius of influence, hydrogeologic separation of aquifer, preferential pathways, and differing water quality characteristics.

f. Plume definition. The groundwater plume shall be defined to the applicable Tier 1 level for actual receptors except, where there are no actual receptors and the groundwater is a protected groundwater source, the plume shall be defined to the Tier 1 level for potential receptors.

g. Pathway classification. This pathway shall be classified as high risk, low risk or no action required in accordance with 135.12(455B).

h. Corrective action response. Corrective action must be conducted in accordance with 135.12(455B).

i. Use of institutional controls. The use of institutional controls may be used to obtain no action required pathway classification. If the pathway is complete and the concentrations exceed the applicable Tier 1 level(s) for actual receptors, the impacted drinking or non-drinking water well must be properly plugged and the institutional control must prohibit the use of a protected groundwater source (if one exists) within the actual or modeled plume as provided in 135.10(2)"j" and 135.10(2)"k." If the Tier 1 level is exceeded for potential receptors, the institutional control must prohibit the use of a protected groundwater source within the actual or modeled plume, whichever is greater.

135.10(5) Soil leaching to groundwater pathway assessment.

a. General. The soil leaching to groundwater pathway is evaluated using a one-dimensional model which predicts vertical movement of contamination through soil to groundwater and transported by the groundwater to a receptor. The model is used to predict the maximum concentrations of chemicals of concern that would be present in groundwater beneath a source area which is representative of residual soil contamination and maximum soil concentrations. The predicted groundwater concentrations then must be used as a groundwater source concentration to evaluate its impact on other groundwater transport pathways, including the groundwater ingestion pathway, the groundwater vapor pathway, the groundwater plastic line pathway and the surface water pathway.

b. Pathway completeness. This pathway is complete whenever a groundwater transport pathway is complete as provided in this rule.

c. Plume definition. The soil plume shall be defined to the Tier 1 levels for the soil leaching to groundwater pathway.

d. Receptor evaluation. Receptors for this pathway are the same as the receptors for each complete groundwater transport pathway.

e. Modeling and target levels. The soil and groundwater parameters shall be measured as provided in 135.10(2).

The soil leaching to groundwater model shall be used to calculate the predicted groundwater source concentration. Each applicable groundwater transport pathway model shall then be used in accordance with the rules for that pathway to predict potential impact to actual receptors, the location of potential receptor points of exposure and the site-specific target level (SSTL) in groundwater at the source. This SSTL then is used to calculate a SSTL for soil at the source. If the

soil concentrations exceed the SSTL for soil, corrective action response shall be evaluated.

f. Corrective action response. If the maximum soil concentration at the source exceeds the SSTL for soil for actual or potential receptors, corrective action must be taken in accordance with 135.12(455B).

135.10(6) Groundwater vapor to enclosed space pathway assessment.

a. Pathway completeness. Unless cleared at Tier 1, this pathway is always considered complete for purposes of Tier 2.

b. Explosive vapor survey. If an explosive vapor survey has not been conducted as part of a Tier 1 assessment, an explosive vapor survey of enclosed spaces must be conducted during the Tier 2 assessment in accordance with 135.9(6)"b" and procedures outlined in the department's Tier 1 guidance.

c. Confined space receptor evaluation. Actual and potential receptors are evaluated at Tier 2 for this pathway.

(1) Actual receptors. An existing confined space within the modeled groundwater plume or the actual groundwater plume as provided in 135.10(2)"j" and 135.10(2)"k" is an actual receptor. For the purpose of Tier 2, a confined space is a basement in a building occupied by humans. Buildings constructed with a concrete slab on grade or buildings constructed without a concrete slab, but with a crawl space are not considered confined spaces. Sanitary sewers are considered confined space receptors and preferential pathways if an occupied building exists within 200 feet of where the sewer line crosses over or through actual or modeled groundwater contamination which exceeds the target levels calculated for sewers. The sanitary sewer includes its utility envelope. The point of exposure is the receptor and points of compliance include the locations where target level measurements may be taken as provided in paragraphs "f" and "g."

(2) Potential receptors. Potential receptors are confined spaces that do not presently exist but could exist in the future. Areas within the actual groundwater plume perimeter and modeled groundwater plume perimeter are considered potential receptor points of exposure. Potential receptors are evaluated and target levels established based on the current zoning as provided in paragraph "f." The potential receptor point of exposure is a point of compliance.

d. Owners and operators may be required to address vapor inhalation hazards in occupied spaces other than confined spaces as defined in these rules when evidence arises which would give the department a reasonable basis to believe vapor hazards are present or may occur.

e. Plume definition.

(1) The soil plume must be defined in accordance with 135.10(2)"f" for the purposes of estimating source width and source length used in soil leaching to groundwater and groundwater transport models.

(2) The groundwater plume must be defined to the target levels derived from site-specific data as provided in paragraph 135.10(2)"f."

f. Target levels. Target levels can be based on groundwater concentrations, soil gas measurements, and indoor vapor measurements as provided below.

(1) For actual receptors and potential receptors, groundwater modeling as provided in 135.10(2) is used to calculate the groundwater concentration target level at the point of exposure. Default residential exposure factors, default residential building parameters, and a target risk of 10^{-4} are used to determine target levels for potential receptor points of exposure in residential areas and areas with no zoning. Default nonresidential exposure factors, default nonresidential build-

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ing parameters, and a target risk of 10^{-4} are used to determine target levels for potential receptor points of exposure in non-residential areas. Default values are provided in Appendix B.

(2) For actual receptors, the indoor vapor target levels are designated in 135.10(7)"f." For actual and potential receptors, the soil gas target levels are designated in 135.10(7)"f."

(3) Sanitary sewers are treated as human health receptors, and groundwater concentration target levels at the point of exposure are based on the application of a target risk of 2×10^{-4} for carcinogens and a hazard quotient of 2 for noncarcinogens.

g. Pathway evaluation and classification. Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 135.12(455B).

(1) Actual receptors. If it can be demonstrated that the groundwater plume has reached steady state concentrations under a confined space, indoor vapor measurements at the point(s) of exposure and soil gas measurements at an alternative point(s) of compliance may be used for the pathway evaluation. When assessing sanitary sewers for pathway clearance, soil gas measurements may be evaluated against the soil gas target levels; however, indoor vapor cannot be used as criteria for pathway clearance. Soil gas measurements shall be taken and analyzed in accordance with 135.16(5) and the department's Tier 2 guidance, and at locations in the plume where measured groundwater concentrations exceed the levels which are projected by modeling to exist beneath the actual receptor. If measured groundwater concentrations beneath the actual receptor exceed the levels projected from modeling, then the soil gas measurements may be taken either adjacent to the actual receptor in areas expected to exhibit the greatest soil gas measurements or at an alternative point of compliance between the source and receptor where the actual groundwater concentrations exceed the groundwater concentrations which exist beneath the confined space. If the soil gas measurements and confirmation samples taken in accordance with 135.12(6)"c" do not exceed the soil gas target levels, the pathway as to actual receptors shall be classified no action required. If the soil gas target levels are exceeded, either the pathway shall be classified high risk, or indoor vapor measurements may be taken in accordance with the department's Tier 2 guidance. If indoor vapor measurements and confirmation samples do not exceed the indoor vapor target levels, the pathway as to actual confined space receptors shall be classified no action required. If the Tier 1 indoor vapor target levels are exceeded, the pathway shall be classified high risk.

(2) Potential receptors. If the potential receptor groundwater concentration target level(s) is exceeded at any potential receptor point of exposure based on actual data or modeling, the pathway shall be classified low risk. However, if soil gas measurements taken at the potential receptor point(s) of exposure and alternate point(s) of compliance and confirmation samples do not exceed the target levels in 135.10(7)"f," the pathway, as to potential receptors, shall be classified no action required.

h. Corrective action response. Unless the pathway is classified as no action required, corrective action for this pathway must be conducted as provided in 135.12(455B). Actual receptors are subject to corrective actions which: (1) reduce groundwater concentrations beneath the enclosed space to below the target level; (2) reduce the measured soil gas levels to below the soil gas target levels; (3) reduce the indoor vapor concentrations to below the indoor vapor target level; or (4) reduce the LEL to below 10 percent, if applica-

ble. Potential receptors are subject to the monitoring requirements in 135.12(5). Soil vapor monitoring may be conducted in lieu of groundwater monitoring for this pathway. Institutional or technological controls as provided in 135.12(455B) may be used.

135.10(7) Soil vapor to enclosed space pathway assessment.

a. Pathway completeness. Unless cleared at Tier 1, this pathway is always considered complete for purposes of Tier 2.

b. Explosive vapor survey. If an explosive vapor survey has not been conducted as part of a Tier 1 assessment, an explosive vapor survey of enclosed spaces must be conducted during the Tier 2 assessment in accordance with 135.9(6)"b" and procedures outlined in the department's Tier 1 guidance.

c. Confined space receptor evaluation. Actual and potential receptors are evaluated at Tier 2 for this pathway.

(1) Actual receptors. An existing confined space within 50 feet of the edge of the plume is an actual receptor. For the purpose of Tier 2, a confined space is a basement in a building occupied by humans. Buildings constructed with a concrete slab on grade or buildings constructed without a concrete slab, but with a crawl space are not considered receptors. Sanitary sewers are considered confined space receptors and preferential pathways if an occupied building exists within 200 feet of where the sewer line crosses over or through soil contamination which exceeds the target levels calculated for sewers. The sanitary sewer includes its utility envelope. The point of exposure is the receptor and points of compliance include the locations where target level measurements may be taken as provided in paragraphs "f" and "g."

(2) Potential receptors. Potential receptors are confined spaces that do not presently exist but could exist in the future. Areas where soil concentrations are greater than the Tier 1 level applicable to residential areas or alternative target levels for nonresidential areas as specified in paragraph "f" are considered potential receptor points of exposure. Potential receptors are evaluated and target levels established based on the current zoning. An area with no zoning is considered residential. The potential receptor point of exposure is a point of compliance.

d. Owners and operators may be required to address vapor inhalation hazards in occupied spaces other than confined spaces as defined in these rules when evidence arises which would give the department a reasonable basis to believe vapor hazards are present or may occur.

e. Plume definition. The soil plume must be defined to the Tier 1 level for this pathway unless vapor measurements taken at the area(s) with the maximum levels of soil contamination do not exceed the soil gas target level in 135.10(7)"f." If soil gas measurements taken from the area(s) of maximum soil concentration do not exceed target levels, confirmation sampling must be conducted in accordance with 135.12(6)"c" prior to proposing a no action pathway classification.

f. Target levels. Target levels can be based on soil concentrations, soil gas measurements, and indoor vapor measurements as provided below:

(1) For actual receptors, the soil concentration target level is the Tier 1 level. For potential receptors, the soil concentration target level for residential areas and areas with no zoning is the Tier 1 level. For areas zoned nonresidential, the target level is calculated using the default nonresidential exposure factors and building parameters from Appendix B and a target risk of 10^{-4} .

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(2) The following indoor vapor target levels apply to actual receptors other than sanitary sewers and the soil gas target levels to potential receptors. These levels were derived from the ASTM indoor air inhalation and the soil vapor to enclosed space models designated in Appendix B.

	Indoor Vapor ($\mu\text{g}/\text{m}^3$ air)	Soil Gas ($\mu\text{g}/\text{m}^3$)
Benzene	39.2	600,000
Toluene	555	9,250,000

(3) Sanitary sewers are treated as human health receptors, and soil concentration target levels at the point of exposure are based on application of a target risk of 2×10^{-4} for carcinogens and hazard quotient of 2 for noncarcinogens.

g. Pathway evaluation and classification.

(1) Actual receptors. Confined space receptors may be evaluated using soil gas measurements and indoor vapor measurements. When assessing sanitary sewers for pathway clearance, soil gas measurements may be evaluated against the soil gas target levels, however, indoor vapor cannot be used as criteria for pathway clearance. Soil gas measurements shall be taken adjacent to the actual receptor or at an alternative point of compliance between the source and receptor such as the property boundary, and in accordance with 135.16(5) and the department's Tier 2 guidance. If the soil gas measurements and confirmation samples taken in accordance with 135.12(6)"c" do not exceed the soil gas target levels, the pathway as to actual receptors shall be classified no action required. If the soil gas target levels are exceeded, either the pathway shall be classified high risk, or indoor vapor measurements may be taken in accordance with the department's Tier 2 guidance. If indoor vapor measurements and confirmation samples do not exceed the indoor vapor target levels, the pathway as to actual receptors shall be classified no action required. If the indoor vapor target levels are exceeded, the pathway shall be classified high risk.

(2) Potential receptors. If the potential receptor target level(s) based on soil concentrations is exceeded at any potential receptor point of exposure, the pathway shall be classified low risk. However, if soil gas measurements taken at the potential receptor point(s) of exposure and alternate point(s) of compliance and confirmation samples do not exceed the target levels in paragraph "f," the pathway shall be classified no action required as to potential receptors.

h. Corrective action response. Unless the pathway is classified as no action required, corrective action for this pathway must be conducted as provided in 135.12(455B) and in accordance with department Tier 2 guidance. Actual receptors are subject to corrective actions which: (1) reduce the indoor vapor concentrations to below the target level; (2) reduce measured soil gas levels to below the soil gas target levels; and (3) if applicable, reduce the LEL to below 10 percent. Potential receptors are subject to monitoring requirements as provided in 135.12(5). Soil vapor monitoring may be conducted in lieu of soil monitoring for this pathway. Institutional or technological controls as provided in 135.12(455B) may be used.

135.10(8) Groundwater to plastic water line pathway assessment.

a. Pathway completeness and receptor evaluation.

(1) Actual receptors include all plastic water lines where the highest groundwater elevation is higher than three feet below the bottom of the plastic line at the measured or predicted points of exposure. The highest groundwater elevation is the estimated average of the highest measured groundwater elevations for each year. All plastic water lines must be evaluated for this pathway regardless of distance from the

source and regardless of the Tier 1 evaluation, if the lines are in areas with modeled data above the SSTL line. If actual data exceeds modeled data, then all plastic water lines are considered actual receptors if they are within a distance extending 10 percent beyond the edge of the contaminant plume defined by the actual data.

(2) Potential receptors include all areas where the first encountered groundwater is less than 20 feet deep and where actual data or modeled data are above Tier 1 levels.

(3) The point(s) of exposure is the plastic water line, and the points of compliance are monitoring wells between the source and the plastic water line which would be effective in monitoring whether the line has been or may be impacted by chemicals of concern.

b. Plume definition. If this pathway is complete for an actual receptor, the groundwater plume must be defined to the Tier 1 levels, with an emphasis between the source and any actual plastic water lines. The water inside the plastic water lines shall be analyzed for all chemicals of concern.

c. Target levels. Groundwater modeling as provided in 135.10(2) must be used to calculate the projected concentrations of chemicals of concern and site-specific target levels. The soil leaching to groundwater pathway must be evaluated to ensure contaminated soil will not cause future groundwater concentrations to exceed site-specific target levels.

d. Pathway classification. Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 135.12(455B). The water quality inside the plastic water lines is not a criteria for clearance of this pathway.

e. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential plastic water line impacts. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

f. Corrective action response.

(1) For actual receptors, unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 135.12(455B). If the concentrations of chemicals of concern in a water line exceed the Tier 1 levels for actual receptors for the groundwater ingestion pathway, immediate corrective action must be conducted to eliminate exposure to the water, including but not limited to replacement of the line with an approved nonplastic material.

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

135.10(9) Soil to plastic water line pathway assessment.

a. Pathway completeness and receptor evaluation.

(1) Actual receptors include all areas within ten feet of a plastic water line. All plastic water lines must be evaluated for this pathway regardless of distance from the source, if the lines are in areas where Tier 1 levels are exceeded.

(2) Potential receptors include all areas where Tier 1 levels are exceeded.

b. Plume definition. The extent of soil contamination must be defined to Tier 1 levels for the chemicals of concern.

c. Pathway classification. Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 135.12(455B). Measurements of water quality inside the plastic water lines may be required, but are not allowed as criteria to clear this pathway.

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d. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential plastic water line impacts. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

e. Corrective action response.

(1) For actual receptors, unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 135.12(455B).

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

135.10(10) Surface water pathway assessment.

a. Pathway completeness. Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) there is a designated use surface water within the modeled groundwater plume or the actual plume as provided in 135.10(2)"f" and 135.10(2)"g"; or (2) any surface water body which failed the Tier 1 visual inspection as provided in 135.9(10).

b. Visual inspection. A visual inspection must be conducted according to 135.9(10)"c." If a sheen or residue from a petroleum-regulated substance is present, soil and groundwater sampling must be conducted to identify the source of the release and to identify the extent of the contaminant plume based on levels acutely toxic to aquatic life as provided in 567—subrule 61.3(2).

c. Receptor evaluation.

(1) Surface water criteria apply only to designated use segments of surface water bodies as provided in 567—subrules 61.3(1) and 61.3(5). If the surface water body within 200 feet of the source is a designated use segment and if maximum groundwater concentrations exceed applicable surface water criteria, the extent of contamination must be defined as provided in paragraph "d." The point of compliance for measuring chemicals of concern is the groundwater adjacent to the surface water body because surface water must be protected for low flow conditions. In-stream measurements of concentrations are not allowed as a basis for no further action.

(2) General use segments of surface water bodies as defined in 567—paragraph 61.3(1)"a" are only subject to the visual inspection criteria.

d. Plume definition.

(1) Soil plume definition. The soil leaching to groundwater pathway must also be evaluated if it was not cleared at Tier 1.

(2) Groundwater plume definition. The groundwater plume must be defined to the surface water criteria levels, with an emphasis between the source and the surface water body.

e. Target levels. Determining target levels for this pathway involves a two-step process.

(1) Groundwater modeling as provided in 135.10(2) must be used to calculate the projected concentrations of chemicals of concern at the point of compliance. If the modeled concentrations or field data at the point of compliance exceed surface water criteria, an allowable discharge concentration must be calculated. If the projected concentrations and field data at the point of compliance do not exceed surface water criteria, no further action is required to assess this pathway.

(2) The department water quality section will calculate the allowable discharge concentration using information provided by the certified groundwater professional on a depart-

ment form. Required information includes, at a minimum, the site location and a discharge flow rate calculated according to the department's Tier 2 guidance. The allowable discharge concentration is the target level which must be met adjacent to the surface water body which is the point of compliance.

f. Pathway classification. Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 135.12(455B).

(1) For general use segments, as defined in 567—subrule 61.3(1), if the groundwater professional determines there is no sheen or residue present or if the site is not the source of the sheen or residue or if the sheen does not consist of petroleum-regulated substances, no further action is required for assessment of this pathway.

(2) For designated use segments, as provided in 567—subrules 61.3(1) and 61.3(5), if projected concentrations of chemicals of concern and field data at the point of compliance do not exceed the target level adjacent to the surface water, and the groundwater professional determines there is no sheen or residue present, no further action is required for assessment of this pathway.

g. Corrective action response. Unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 135.12(455B).

135.10(11) Tier 2 submission and review procedures.

a. Owners and operators must submit a Tier 2 site cleanup report within 180 days of the date the department approves or is deemed to approve a Tier 1 assessment report under 135.9(12). If the owner or operator has elected to conduct a Tier 2 assessment instead of a Tier 1, or a Tier 2 assessment is required due to the presence of free product under 135.7(5), the Tier 2 site cleanup report must be submitted within 180 days of the date the release was confirmed. The department may establish an alternative schedule for submittal.

b. Site cleanup report completeness and accuracy. A Tier 2 site cleanup report is considered to be complete if it contains all the information and data required by this rule and the department's Tier 2 guidance. The report is considered accurate if the information and data are reasonably reliable based first on the standards in these rules and department guidance, and second, on generally accepted industry standards.

c. The certified groundwater professional responsible for completion of the Tier 2 site assessment and preparation of the report must accompany each Tier 2 site cleanup report with a certification as set out below:

I, _____, groundwater professional certification number _____, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, the Department of Natural Resources' Tier 2 guidance. Based on my knowledge of those documents and the information I have prepared and reviewed regarding this site, UST registration number _____, LUST No. _____, I certify that this document is complete and accurate as provided in 135.10(11) and meets the applicable requirements of the Tier 2 site cleanup report.

Signature

Date

d. Review. Unless the report proposes to classify the site as no action required, the department must approve the report within 60 days for purposes of completeness or disapprove

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the report upon a finding of incompleteness, inaccuracy or noncompliance with these rules. If no decision is made within this 60-day period, the report is deemed to be approved for purposes of completeness. The department retains the authority to review the report at any time a no action required site classification is proposed.

e. No action required site classification review. The department will review each Tier 2 site cleanup report which proposes to classify a site as no action required to determine the data and information are complete and accurate, the data and information comply with department rules and guidance and the site classification proposal is reasonably supported by the data and information.

f. Upon approval of the Tier 2 site cleanup report or as directed by the department, owners and operators must either implement the corrective action recommendations, including any modifications required by the department, or prepare a Tier 3 site analysis. Owners and operators must monitor, evaluate, and report the results of corrective action activities in accordance with the schedule and on a form or in a format required by the department.

g. The department may, in the interest of minimizing environmental or public health risks and promoting a more effective cleanup, require owners and operators to begin cleanup of soil and groundwater before the Tier 2 site cleanup report is approved.

567—135.11(455B) Tier 3 site assessment policy and procedure.

135.11(1) General. Tier 3 site assessment. Unless specifically limited by rule or an imminent hazard exists, an owner or operator may choose to prepare a Tier 3 site assessment as an alternative to completion of a Tier 2 assessment under 135.10(455B) or as an alternative to completion of a corrective action design report under 135.12(455B). Prior to conducting a Tier 3 site assessment, a groundwater professional must submit a work plan to the department for approval. The work plan must contain an evaluation of the specific site conditions which justify the use of a Tier 3 assessment, an outline of the proposed Tier 3 assessment procedures and reporting format and a method for determining a risk classification consistent with the policies underlying the risk classification system in 135.12(455B). Upon approval, the groundwater professional may implement the assessment plan and submit a report within a reasonable time designated by the department.

135.11(2) Tier 3 site assessment. A Tier 3 assessment may include but is not limited to the use of more site-specific or multidimensional models and assessment data, methods for calibrating Tier 2 models to make them more predictive of actual site conditions, and more extensive assessment of receptor construction and vulnerability to contaminant impacts. If use of Tier 2 models is proposed with substitution of other site-specific data (as opposed to the Tier 2 default parameters), the groundwater professional must adequately justify how site-specific data is to be measured and why it is necessary. The groundwater professional must demonstrate that the proposal has a proven applicability to underground storage tank sites or similar conditions or has a strong theoretical basis for applicability and is not biased toward underestimating assessment results. The Tier 3 assessment report shall make a recommendation for site classification as high risk, low risk or no action required, at least two corrective action response technologies and provide justification consistent with the standards and policies underlying risk classification and corrective action response under

135.12(455B) and Iowa Code chapter 455B, Division 4, Part 8.

135.11(3) Review and submittal. The department will review the Tier 3 assessment for compliance with the terms of the approved work plan and based on principles consistent with these rules and Iowa Code chapter 455B, Division IV, Part 8. Upon approval of the Tier 3 assessment, the department may require corrective action in accordance with 135.12(455B).

567—135.12(455B) Tier 2 and 3 site classification and corrective action response.

135.12(1) General. 1995 Iowa Code section 455B.474(1)“d”(2) provides that sites shall be classified as high risk, low risk and no action required. Risk classification is accomplished by comparing actual field data to the concentrations that are predicted by the use of models. Field data must be compared to the simulation model which uses the maximum concentrations at a source and predicts at what levels actual or potential receptors could be impacted in the future. Field data must also be compared to the site-specific target level line which assumes a target level concentration at the point of exposure and is used to predict the reduction in concentration that must be achieved at the source in order to meet the applicable target level at the point of exposure. These models not only predict concentrations at points of exposure or a point of compliance at a source but also predict a distribution of concentrations between the source and the point of exposure which may also be points of compliance. The comparison of field data with these distribution curves primarily is considered for purposes of judging whether the modeled data is reasonably predictive and what measures such as monitoring are prudent to determine the reliability of modeled data and actual field data.

For the soil vapor to enclosed pathway and soil to plastic water line pathways, there are no horizontal transport models to use predicting future impacts. Therefore, for these pathways, sites are classified as high risk, low risk or no action based on specified criteria below and in 135.10(455B).

135.12(2) High risk classification. Except as provided below, sites shall be classified as high risk if, for any pathway, any actual field data exceeds the site-specific target level line at any point for an actual receptor.

a. For the soil vapor to enclosed space and soil to plastic water line pathways, sites shall be classified as high risk if the target levels for actual receptors are exceeded as provided in 135.10(7) and 135.10(9).

b. For the soil vapor or groundwater vapor to enclosed space pathways, sites shall be classified as high risk if the explosivity levels at applicable points of compliance are exceeded as provided in 135.10(6) and 135.10(7).

c. Generally, sites are classified as low risk if only potential receptor points of compliance are exceeded. The following is an exception. For the soil leaching to groundwater ingestion pathway for potential receptor conditions, the site shall be classified as high risk if the groundwater concentration(s) exceeds the groundwater Tier 1 level for potential receptor and the soil concentration exceeds the soil leaching site-specific target level at the source.

135.12(3) High risk corrective action response.

a. Objectives. The primary objectives of corrective action in response to a high risk classification are both short-term and long-term. The short-term goal is to eliminate or reduce the risk of exposure at actual receptors which have been or are imminently threatened with exposure above target levels. The longer term goal is to prevent exposure to actual receptors which are not currently impacted or are not im-

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minently threatened with exposure. To achieve these objectives, it is the intent of these rules that concentrations of applicable chemicals of concern be reduced by active remediation to levels below the site-specific target level line at all points between the source(s) and the point(s) of exposure as well as to undertake such interim corrective action as necessary to eliminate or prevent exposure until concentrations below the SSTL line are achieved. If it is shown that concentrations at all applicable points have been reduced to below the SSTL line, the secondary objective is to establish that the field data can be reasonably relied upon to predict future conditions at points of exposure rather than reliance on the modeled data. Reliance on field data is achieved by establishing through monitoring that concentrations within the contaminant plume are steady or declining. Use of institutional control and technological controls may be used to sever pathways or control the risk of receptor impacts.

b. For the soil vapor and soil to plastic water line, these objectives are achieved by active remediation of soil contamination below the target level at the point(s) of exposure or other designated point(s) of compliance using the same measurement methods for receptor evaluation under 135.10(7) and 135.10(9).

c. For a site classified as high risk or reclassified as high risk for the soil leaching to groundwater ingestion pathway, these objectives are achieved by active remediation of soil contamination to reduce the soil concentration to below the site-specific target level at the source.

d. A corrective action design report (CADR) must be submitted by a certified groundwater professional for all high risk sites. The CADR must be submitted on a form provided by the department and in accordance with department CADR guidance within 120 days of site classification approval as provided in 135.10(11). The CADR must identify at least two principally applicable corrective action options designed to meet the objectives in 135.12(3), an outline of the projected timetable and critical performance benchmarks, a specific monitoring proposal designed to verify its effectiveness and provide sufficient supporting documentation consistent with industry standards that the technology is effective to accomplish site-specific objectives. The CADR must contain an analysis of its cost effectiveness in relation to other options. The department will review the CADR in accordance with 135.12(9).

e. Interim monitoring. From the time a Tier 2 site clean-up report is submitted and until the department determines a site is classified as no action required, interim monitoring is required at least annually for all sites classified as high risk. Groundwater samples must be taken: (1) from a monitoring well at the maximum source concentration; (2) at a monitoring well with detected levels of contamination closest to the leading edge of the groundwater plume between the source(s) and the point(s) of exposure; and (3) at a downgradient monitoring well between the source(s) and the point(s) of exposure with concentrations below the SSTL line. If concentrations at the point of exposure already exceed the SSTL, the point of exposure must be monitored. Monitoring conducted as part of remediation or as a condition of establishing a no action required classification may be used to the extent it meets this criteria. Soil monitoring is required at least annually for all applicable pathways in accordance with 135.12(5)"d."

f. Remediation monitoring. Remediation monitoring during operation of a remediation system is required at least four times each year to evaluate effectiveness of the system. A remediation monitoring schedule and plan must be speci-

fied in the corrective action design report and approved by the department.

g. Technological controls. The purpose of a technological control is to effectively sever a pathway by use of technologies such that an applicable receptor could not be exposed to chemicals of concern above an applicable target risk level. Technological controls are an acceptable corrective action response either alone or in combination with other remediation systems. The purpose of technological controls may be to control plume migration through use of containment technologies, barriers, etc., both as an interim or permanent corrective action response or to permanently sever a pathway to a receptor. Controls may also be appropriate to treat or control contamination at the point of exposure. Any technological control proposed as a permanent corrective action option without meeting the reduction in contaminant concentrations objectives must establish that the pathway to a receptor will be permanently severed or controlled. The effectiveness of a technological control must be monitored under a department approved plan until concentrations fall below the site-specific target level line or its effectiveness as a permanent response is established, and no adverse effects are created.

h. Following completion of corrective action, the site must meet exit monitoring criteria to be reclassified as no action required as specified in 135.12(6)"b." At any point where an institutional or technological control is implemented and approved by the department, the site may be reclassified as no action required consistent with 135.12(6).

135.12(4) Low risk classification. A site shall be classified as low risk if none of the pathways are high risk and if any of the pathways are low risk or no action required. A pathway shall be classified low risk if it meets one of the following conditions:

a. For actual and potential receptors, if the modeled data and the actual field data are less than the site-specific target level line, and any of the field data is greater than the simulation line.

b. For potential receptors, if any actual field data line exceeds the site-specific target level line at any point.

c. For the soil leaching to groundwater ingestion pathway where modeling predicts that the Tier 1 levels for potential receptors would be exceeded in groundwater at applicable potential receptor points of compliance and the soil concentration exceeds the soil leaching to groundwater site-specific target level but groundwater concentrations are currently below the Tier 1 level for potential receptors, the site shall be initially classified as low risk and subject to monitoring under 135.12(5)"c." If at any time during the three-year monitoring period, groundwater concentrations exceed the Tier 1 level for potential receptors, the site shall be classified as high risk requiring soil remediation in accordance with 135.12(3)"c."

135.12(5) Low risk corrective action response.

a. Purpose. For sites or pathways classified as low risk, the purpose of monitoring is to determine if concentrations are decreasing such that reclassification to no action required may be appropriate or if concentrations are increasing above the site-specific target level line such that reclassification to high risk is appropriate. Monitoring is necessary to evaluate impacts to actual receptors and assess the continued status of potential receptor conditions. Low risk monitoring shall be conducted and reported by a certified groundwater professional.

b. For sites or pathways classified as low risk, provide a best management practices plan. The plan must include maintenance procedures, schedule of activities, prohibition

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of practices, and other management practices, or a combination thereof, which, after problem assessment, are determined to be the most effective means of monitoring and preventing additional contamination of the groundwater and soil. The plan will also contain a contamination monitoring proposal containing sufficient sampling points to ensure the detection of any significant movement of or increase in contaminant concentration.

c. Groundwater monitoring. For groundwater pathways, samples must be taken at a minimum of once per year: (1) from a monitoring well at the maximum source concentration; (2) at a well with detected levels of contamination closest to the leading edge of the groundwater plume between the source and the receptor; and (3) at a downgradient monitoring well between the source and the point of exposure with concentrations below the SSTL line. (NOTE: Monitoring under this provision may be used to satisfy exit monitoring if it otherwise meets the criteria in 135.12(6).)

d. Soil monitoring.

(1) For the soil vapor to enclosed space pathway potential receptors, soil gas samples must be taken at a minimum of once per year in the area(s) of expected maximum vapor concentrations where an institutional control is not in place.

(2) For the soil leaching to groundwater pathway potential receptors, annual groundwater monitoring is required for a minimum of three years as provided in "b" above. If groundwater concentrations are below the applicable SSTL line for all three years and a final soil sample taken from the source area shows no significant movement, no further action is required. If groundwater concentrations exceed the applicable SSTL line in any of the three years, corrective action is required to reduce soil concentrations to below the Tier 1 levels for soil leaching to groundwater. Therefore, annual monitoring of soil is not applicable.

(3) For the soil to plastic water line pathway potential receptors, notification of the utility company is required. Notification will result in reclassification to no action required. Therefore, annual monitoring of soil is not applicable.

e. Receptors must be evaluated at least annually to ensure no actual or modeled data are above the site-specific target level line for any actual receptors. Potential receptor areas of concern must be evaluated at least annually and the presence of no actual receptors confirmed. If actual receptors are present or reasonably expected to be brought into existence, the owner or operator must report this fact to the department as soon as practicable. Annual monitoring which also meets the exit criteria under 135.12(6) may be used for that purpose.

f. The site or pathway must meet exit monitoring criteria to be reclassified as no action required as specified in 135.12(6)"b." If concentrations for actual receptors increase above the site-specific target level line or potential receptor status changes to actual receptor status, the site must be reclassified as high risk and further corrective action required in accordance with 135.12(3).

135.12(6) No action required classification. A site shall be classified as no action required if all of the pathways are classified as no action required as provided below:

a. For initial classification, a site or pathway shall be classified as no action required if the field data is below the site-specific target level line and all field data is at or less than the simulation line, and confirmation monitoring has been completed successfully. Confirmation sampling for groundwater is a second sample which confirms the no action required criteria.

b. For reclassification from high or low risk, a pathway shall be classified as no action required if all field data is below the site-specific target level line and if exit monitoring criteria have been met. Exit monitoring criteria means the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples are below the site-specific target level line. Other criteria include the following: The first of the three samples must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

c. Confirmation sampling for soil gas. For the enclosed space pathways, confirmation sampling is required to reasonably establish that the soil gas samples represent the highest expected levels. A groundwater professional must obtain two soil gas samples taken at least two weeks apart, and one of the samples must be taken during a seasonal period of lowest groundwater elevation below the frost line.

d. Upon site classification as no action required, all groundwater monitoring wells must be properly plugged unless the department requires selected wells to be maintained or written approval to maintain the well is obtained by the department.

135.12(7) Reclassification. Any site or pathway which is classified as high risk may be reclassified to low risk if in the course of corrective action the criteria for low risk classification are established. Any site or pathway which is classified as low risk may be reclassified to high risk if in the course of monitoring the conditions for high risk classification are established. Sites subject to department-approved institutional or technological controls are classified as no action required if all other criteria for no action required classification are satisfied.

135.12(8) Use of institutional and technological controls.

a. Purpose. The purpose of an institutional control is to restrict access to or use of property such that an applicable receptor could not be exposed to chemicals of concern for as long as the target level is exceeded at applicable points of exposure and compliance. Institutional controls include:

1. A law of the United States or the state;
2. A regulation issued pursuant to federal or state laws;
3. An ordinance or regulation of a political subdivision in which real estate subject to the institutional control is located;
4. A restriction on the use of or activities occurring at real estate which is embodied in a covenant running with the land which contains a legal description of the real estate in a manner which satisfies Iowa Code section 558.1 et seq., is properly executed, in a manner which satisfies Iowa Code section 558.1 et seq., is recorded in the appropriate office of the county in which the real estate is located, adequately and accurately describes the institutional control; and is in the form of a covenant as set out in Appendix B or in such a manner reasonably acceptable to the department;
5. Any other institutional control the owner or operator can reasonably demonstrate to the department will reduce the risk from a release throughout the period necessary to assure that no applicable target risk is likely to be exceeded.

b. Modification or termination of institutional and technological controls. At a point when the department determines that an institutional or technological control has been removed or is no longer effective for the purpose intended, regardless of the issuance of a no further action certification or previous site classification, it may require owners and op-

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erators to undertake such reevaluation of the site conditions as necessary to determine an appropriate site classification and corrective action response. If the owner or operator is in control of the affected property, the department may require reimplementation of the institutional or technological control or may require a Tier 2 assessment of the affected pathway(s) be conducted to reevaluate the site conditions and determine alternative corrective action response. An owner or operator subject to an institutional or technological control may request modification or termination of the control by conducting a Tier 2 assessment of the affected pathway or conduct such other assessment as required by the department to establish that the control is no longer required given current site conditions.

c. If the owner or operator is not in control of the affected property or cannot obtain control and the party in control refuses to continue implementation of an institutional control, the department may require the owner or operator to take such legal action as available to enforce institution of the control or may require the owner or operator to undertake a Tier 2 assessment to determine site classification and an alternative corrective action response. If a person in control of the affected property appears to be contractually obligated to maintain an institutional or technological control, the department may, but is not required to, attempt enforcement of the contractual obligation as an alternative to requiring corrective action by the owner or operator.

d. If a site is classified no action required, subject to the existence of an institutional control or technological control, the holder of the fee interest in the real estate subject to the institutional control or technological control may request, at any time, that the department terminate the institutional control or technological control requirement. The department shall terminate the requirement for an institutional control if the holder demonstrates by completion of a Tier 2 assessment of the applicable pathway or other assessment as required by the department that the site conditions warranting the control no longer exist and that the site or pathway has met exit criteria for no action required classification under 135.12(6).

135.12(9) Corrective action design report submission and review procedures.

a. Owners and operators must submit a corrective action design report (CADR) within 60 days of the date the department approves or is deemed to approve a Tier 2 assessment report under 135.10(11) or a Tier 3 assessment is to be conducted. The department may establish an alternative schedule for submittal.

b. Corrective action design report completeness and accuracy. A CADR is considered to be complete if it contains all the information and data required by this rule and the department's guidance. The report is considered accurate if the information and data are reasonably reliable based first on the standards in these rules and department guidance, and second, on generally accepted industry standards.

c. The certified groundwater professional responsible for completion of the CADR must provide the following certification with the CADR:

I, _____, groundwater professional certification number _____, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, the Department of Natural Resources' guidance and specifications for corrective action design reports. Based on my knowledge of those documents and the information I have prepared and reviewed regarding this site, UST registration number _____, LUST

No. _____, I certify that this document is complete and accurate as provided in 135.12(9) and meets the applicable requirements of the corrective action design report, and that the recommended corrective action can reasonably be expected to meet its stated objectives.

Signature

Date

d. Review. Unless the report proposes to classify the site as no action required, the department must approve the report within 60 days for purposes of completeness or disapprove the report upon a finding of incompleteness, inaccuracy or noncompliance with these rules. If no decision is made within this 60-day period, the report is deemed to be approved for purposes of completeness. The department retains the authority to review the report at any time a no action required site classification is proposed.

e. No action required site classification review. The department will review each CADR which proposes to classify a site as no action required to determine the data and information are complete and accurate, the data and information comply with department rules and guidance and the site classification proposal is reasonably supported by the data and information.

135.12(10) Monitoring certificates and no further action certificates.

a. Monitoring certificate. The department of natural resources will issue a monitoring certificate to the owner or operator of an underground storage tank from which a release has occurred, the current property owner or other responsible party who has undertaken corrective action warranting issuance of the certificate for sites classified as low risk or sites classified as high risk/monitoring. The monitoring certificate will be valid until the site is reclassified to a high risk requiring active remediation or no action required site. A site which has been issued a monitoring certificate shall not be eligible to receive a certificate evidencing completion of remediation until the site is reclassified as no action required. The monitoring certificate will be invalidated and the site reclassified to high risk if it is determined by the department that the owner of the site is not in compliance with the requirements specified in the monitoring certificate.

b. No further action certificate. The department will issue a no further action certificate to an owner or operator of an underground storage tank from which a release has occurred, the current property owner or other responsible party who has undertaken the corrective action warranting classification of the site as no action required. The following conditions apply:

(1) The site has been determined by a certified groundwater professional to not present an unreasonable risk to the public health and safety or the environment;

(2) A person issued the certificate or a subsequent purchaser of the site cannot be required to perform further corrective action solely because action standards are changed at a later date. Action standards refer to applicable site-specific standards under this rule;

(3) The certificate shall not prevent the department from ordering remediation of a new release or a release of a regulated substance from an unregulated tank;

(4) The certificate will not constitute a warranty of any kind to any person as to the condition, marketability or value of the described property;

(5) The certificate shall reflect any institutional control utilized to ensure compliance with any applicable Tier 2 level; and may include a notation that the classification is based

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on the fact that designated potential receptors are not in existence;

(6) The certificate shall be in a form which is recordable in accordance with Iowa Code section 558.1 et seq. and substantially in the form as provided in Appendix C.

c. The department shall modify any issued no further action certificates containing institutional controls once the owner, operator or their successor or assign has demonstrated that the institutional control is no longer necessary to meet the applicable Tier 2 level as provided in 135.12(10).

135.12(11) Expedited corrective action. An owner, operator or responsible party of a site at which a release of regulated substance is suspected to have occurred may carry out corrective actions at the site so long as the department receives notice of the expedited cleanup activities within 30 calendar days of their commencement; the owner, operator, or responsible party complies with the provisions of these rules; and the corrective action does not include active treatment of groundwater other than:

- a. As previously approved by the department; or
- b. Free product recovery pursuant to subrule 135.7(5).

c. Soil excavation. When undertaking excavation of contaminated soils, adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base. The owner or operator must maintain adequate records of the excavation area to document compliance with this procedure unless submitted to the department and must provide it to the department upon request.

567—135.13(455B) Public participation.

135.13(1) For each confirmed release that is classified as high or low risk, the department must provide notice to the public by means designated to reach those members of the public directly affected by the release and the recommended corrective action response. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by the staff.

135.13(2) The department must ensure site release information and decisions concerning the Tier 1 assessment report, Tier 2 and Tier 3 site cleanup reports are made available to the public for inspection upon request.

135.13(3) Before approving the Tier 2 or Tier 3 site cleanup report, the department may hold a public meeting to consider comments on the proposed corrective action response if there is sufficient public interest, or for any other reason.

135.13(4) The department must give a public notice that complies with subrule 135.13(1) above if the implementation of the approved Tier 2 or Tier 3 site cleanup report does not achieve the established cleanup levels in the report and the termination of that report is under consideration by the department.

567—135.14(455B) Action levels. The following corrective action levels apply to petroleum regulated substances as regulated by this chapter. These action levels shall be used to determine if further corrective action under 135.6(455B) through 135.12(455B) or 135.15(455B) is required as the result of tank closure sampling under 135.15(2) or other analyt-

ical results submitted to the department. The contaminant concentrations must be determined by laboratory analysis as stated in 135.16(455B). Final cleanup determination is not limited to these contaminants. The contamination corrective action levels are:

	Soil (mg/kg)	Groundwater (ug/L)
Benzene	0.54	5
Toluene	42	1,000
Ethylbenzene	15	700
Xylene	No limit	10,000
Total Extractable Hydrocarbons	3,800	1,200

ITEM 9. Renumber existing rule **567—135.9(455B)** as **567—135.15(455B)** and amend renumbered subrule 135.15(5) as follows:

135.15(5) Applicability to previously closed UST systems. When directed by the department, the owner and operator of an UST system permanently closed before *October 24, 1988*, ~~the effective date of these rules~~ must assess the excavation zone and close the UST system in accordance with this rule if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

ITEM 10. Renumber existing rule **567—135.10(455B)** as **567—135.16(455B)** and amend as follows:

567—135.16(455B) Laboratory analytical methods for petroleum contamination of soil and water.

135.16(1) to 135.16(3) No change.

135.16(4) Analysis of soil and water for low volatile petroleum hydrocarbon contamination (i.e., all grades of diesel fuel, fuel oil, kerosene, oil, and mineral spirits). Sample preparation and analysis shall be by Method OA-2, "Determination of Extractable Petroleum Products (and Related Low Volatility Organic Compounds)," revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA methods 3500, 3510, 3520, 3540, 3550, 8000, and 8100, SW-846, "Test Methods for Evaluating Solid Waste," 3rd Edition. Copies of Method OA-2 are available from the department.

135.16(5) Analysis of soil gas for volatile petroleum hydrocarbons shall be conducted in accordance with the National Institute for Occupational Safety and Health (NIOSH) Method 1501, or a department-approved equivalent method.

ITEM 11. Renumber existing rule **567—135.11(455B)** as **567—135.17(455B)**.

ITEM 12. Add the following new rule.

567—135.18(455B) Transitional rules.

135.18(1) Transitional rules. Guidance for implementing these transitional rules is contained in the department's guidance entitled "Transition Policy Statement" dated June 6, 1996.

135.18(2) Site cleanup reports and corrective action design reports accepted before August 15, 1996. Any owner or operator who had a site cleanup report or corrective action design report approved by the department before August 15, 1996, may elect to submit a Tier 1 Site Assessment or Tier 2 Site Cleanup Report to the department. If the owner, opera-

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tor, or responsible party so elects, the site shall be assessed, classified, and, if necessary, remediated, in accordance with the rules of the department as of August 15, 1996. To the extent that data collected for the site cleanup report does not include all information necessary for the Tier 1 Site Assessment or Tier 2 Site Cleanup Report, the owner or operator shall utilize the default parameters set out in sub-rule 135.14(3) or provide site-specific parameters.

135.18(3) Site cleanup reports in the process of preparation or review prior to August 15, 1996. The department will complete a Tier 1 or a Tier 2 risk analysis for any site cleanup report received but not approved by the department by November 15, 1996. To the extent that data collected for the site cleanup report does not include all information necessary for the Tier 2 site cleanup report and the owner or operator elects to not complete a Tier 2 site cleanup report the department shall utilize the default parameters set out in sub-rule 135.18(4). If the owner or operator wishes that site-specific data, rather than any default parameter, be used, the owner or operator shall notify the department by October 15, 1996, or in accordance with a schedule specified by the department. Following notification, the owner or operator shall be responsible for preparation of the Tier 1 site assessment or Tier 2 site cleanup report.

135.18(4) Default parameters for use in converting a site cleanup report to a Tier 2 site cleanup report.

a. As to sites for which the owner or operator has collected and submitted only TPH ("total petroleum hydrocarbons") data regarding soil contamination, TPH levels shall be converted to a risk associated factor by using: (1) previously acquired data regarding benzene, toluene, ethyl benzene, and xylene data for the samples; (2) newly collected benzene, toluene, ethylbenzene, and xylene data for the site; or (3) the assumptions that 1 percent of the total petroleum hydrocarbon (TPH) is benzene, 7 percent of the TPH is toluene, 2 percent of the TPH is ethylbenzene, and 8 percent of the TPH is xylene.

b. As to sites for which the owner or operator has, to date, submitted only TEH ("total extractable hydrocarbons") data regarding soil contamination, TEH levels should be converted to a risk-associated factor by using: (1) previously acquired benzene, toluene, ethylbenzene and xylene data for the samples; (2) newly collected benzene, toluene, ethylbenzene and xylene data for the site; or (3) the assumption that 0.004 percent of the TEH is benzene, 0.05 percent of the TEH is toluene, 0.03 percent of the TEH is ethylbenzene and 0.3 percent of the TEH is xylene. In addition, TEH levels should be compared to the TEH default levels in the Tier 1 Table. If, as of August 15, 1996, only TEH data for soil is available, and it does not exceed Tier 1 levels, additional sampling for TEH in groundwater is not required. Otherwise, groundwater samples must be collected and analyzed for TEH in accordance with 135.8(3).

c. Data required for preparing a Tier 2 site cleanup report shall be taken from the site cleanup report. If the site cleanup report lacks any of the data, site-specific data subsequently obtained may be used. The following assumptions shall be used if no site cleanup report or site-specific data is provided:

(1) If the site cleanup report is unclear as to neighboring land use, assume the land residential land use;

(2) Use the larger resulting default if both TPH and TEH data are available.

(3) For sites with free product gasoline range constituents, the default values in groundwater are 17,500 ug/l for benzene, 3,040 ug/l for ethylbenzene, 37,450 ug/l for toluene and 15,840 ug/l for xylene. For sites with free product consisting of diesel range constituents, the default values are 370 ug/l benzene, 640 ug/l toluene, 140 ug/l ethylbenzene, 580 xylenes, and 260 ug/l naphthalene or 130,000 ug/l TEH.

Appendix A - Tier 1 Table, Assumptions, Equations and Parameter Values

Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2
			Benzene	Toluene	Ethylbenzene	Xylenes	TEH
Groundwater (ug/L)	Groundwater Ingestion	actual	5	1,000	700	10,000	1,200
		potential	290	7,300	3,700	73,000	75,000
	Groundwater Vapor to Enclosed Space	all	1,540	20,190	46,000	NA	2,200,000
	Groundwater to Plastic Water Line	all	290	7,300	3,700	73,000	75,000
	Surface Water	all	290	1,000	3,700	73,000	75,000
Soil (mg/kg)	Soil Leaching to Groundwater	all	0.54	42	15	NA	3,800
	Soil Vapor to Enclosed Space	all	1.24	51	84	NA	50,500
	Soil to Plastic Water Line	all	1.8	120	43	NA	10,500

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

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Assumptions Used for Iowa Tier 1 Look-Up Table Generation

1. Groundwater ingestion pathway. The maximum contaminant levels (MCLs) were used for Group 1 chemicals. The target risk for carcinogens for actual receptors is 10^{-6} and for potential receptors is 10^{-4} . A hazard quotient of one, and residential exposure and building parameters are assumed.
2. Groundwater vapor to enclosed space pathway. Residential exposure and residential building parameters are assumed; no inhalation reference dose is used for benzene; the capillary fringe is assumed to be the source of groundwater vapor; and the hazard quotient is 1 and target risk for carcinogens is 1×10^{-4} .
3. Groundwater to plastic water line. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of 10^{-4} .
4. Surface water. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of 10^{-4} , except for toluene which has a chronic level for aquatic life of 1,000 as in the definition for surface water criteria in 567-135.2.
5. Soil leaching to groundwater. This pathway assumes the groundwater will be protected to the same levels as the groundwater ingestion pathway for potential receptors, using residential exposure and a target risk for carcinogens of 10^{-4} .
6. Soil vapor to enclosed space pathway. The target risk for carcinogens is 1×10^{-4} ; the hazard quotient is 1; no inhalation reference dose is used for benzene; residential exposure factors are assumed; and the average of the residential and nonresidential building parameters are assumed.
7. Soil to plastic water line pathway. This pathway uses the soil leaching to groundwater model with nonresidential exposure and a target risk for carcinogens of 10^{-4} .

In addition to these assumptions, the equations and parameter values used to generate the Iowa Tier 1 Look-Up Table are described below.

Groundwater Ingestion Equations

Carcinogens:

$$RBSL_w \left[\frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right] = \frac{TR \times BW \times AT_c \times \frac{365 \text{ days}}{\text{year}}}{SF_o \times IR_w \times EF \times ED}$$

Noncarcinogens:

$$RBSL_w \left[\frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right] = \frac{THQ \times RfD_o \times BW \times AT_n \times \frac{365 \text{ days}}{\text{year}}}{IR_w \times EF \times ED}$$

Soil Leaching to Groundwater Equations

$$RBSL_{sl} \left[\frac{\text{mg}}{\text{kg} - \text{soil}} \right] = \frac{RBSL_w \left[\frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right]}{LF}$$

$$LF \left[\frac{\text{mg} / \text{L} - \text{H}_2\text{O}}{\text{mg} / \text{kg} - \text{soil}} \right] = \frac{\rho_s}{(\theta_{ws} + k_s \rho_s + H \theta_{as}) \left(1 + \frac{U \delta}{IW} \right)}$$

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Soil Vapor to Enclosed Space Equations

$$RBSL_{sv} \left[\frac{\text{mg}}{\text{kg} - \text{soil}} \right] = \frac{RBSL_{air} \left[\frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right]}{VF_{sv}} \left(\frac{\text{mg}}{1000 \mu\text{g}} \right)$$

$$VF_{sv} \left[\frac{(\text{mg} / \text{m}^3 - \text{air})}{(\text{mg} / \text{kg} - \text{soil})} \right] = \frac{\frac{H\rho_s}{(\theta_{ws} + k_s\rho_s + H\theta_{as})} \left[\frac{D_s^{\text{eff}} / L_s}{ER L_B} \right]}{1 + \left[\frac{D_s^{\text{eff}} / L_s}{ER L_B} \right] + \left[\frac{D_s^{\text{eff}} / L_s}{(D_{\text{crack}}^{\text{eff}} / L_{\text{crack}}) \eta} \right]} \left(10^3 \frac{\text{cm}^3 - \text{kg}}{\text{m}^3 - \text{g}} \right)$$

$$D_{\text{crack}}^{\text{eff}} \left[\frac{\text{cm}^2}{\text{s}} \right] = D_{\text{air}} \frac{\theta_{\text{acrack}}^{3.33}}{\theta_T^2} + D_{\text{wat}} \frac{1}{H} \frac{\theta_{\text{wcrack}}^{3.33}}{\theta_T^2}$$

$$D_s^{\text{eff}} \left[\frac{\text{cm}^2}{\text{s}} \right] = D_{\text{air}} \frac{\theta_{\text{as}}^{3.33}}{\theta_T^2} + D_{\text{wat}} \frac{1}{H} \frac{\theta_{\text{ws}}^{3.33}}{\theta_T^2}$$

Indoor Air Inhalation Equations

Carcinogens:

$$RBSL_{air} \left[\frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right] = \frac{TR \times BW \times AT_c \times \frac{365 \text{ days}}{\text{year}} \times \frac{1000 \mu\text{g}}{\text{mg}}}{SF_i \times IR_{air} \times EF \times ED}$$

Noncarcinogens:

$$RBSL_{air} \left[\frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right] = \frac{THQ \times RfD_i \times BW \times AT_n \times \frac{365 \text{ days}}{\text{year}} \times \frac{1000 \mu\text{g}}{\text{mg}}}{IR_{air} \times EF \times ED}$$

Groundwater Vapor to Enclosed Space Equations

$$RBSL_{gw} \left[\frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right] = \frac{RBSL_{air} \left[\frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right]}{VF_{gw}} \left(\frac{\text{mg}}{1000 \mu\text{g}} \right)$$

$$VF_{gw} \left[\frac{(\text{mg} / \text{m}^3 - \text{air})}{(\text{mg} / \text{L} - \text{H}_2\text{O})} \right] = \frac{H \left[\frac{D_s^{\text{eff}} / L_{gw}}{ER L_B} \right]}{1 + \left[\frac{D_s^{\text{eff}} / L_{gw}}{ER L_B} \right] + \left[\frac{D_s^{\text{eff}} / L_{gw}}{(D_{\text{crack}}^{\text{eff}} / L_{\text{crack}}) \eta} \right]} \left(\frac{10^3 \text{L}}{\text{m}^3} \right)$$

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Variable Definitions

δ	ground water mixing zone thickness (cm)
η	areal fraction of cracks in foundation/wall ($\text{cm}^2\text{-cracks}/\text{cm}^2\text{-area}$)
ρ_s	soil bulk density (g/cm^3)
θ_{crack}	volumetric air content in foundation/wall cracks ($\text{cm}^3\text{-air}/\text{cm}^3\text{-soil}$)
θ_{as}	volumetric air content in vadose zone ($\text{cm}^3\text{-air}/\text{cm}^3\text{-soil}$)
θ_T	total soil porosity ($\text{cm}^3\text{-voids}/\text{cm}^3\text{-soil}$)
θ_{wcrack}	volumetric water content in foundation/wall cracks ($\text{cm}^3\text{-H}_2\text{O}/\text{cm}^3\text{-soil}$)
θ_{ws}	volumetric water content in vadose zone ($\text{cm}^3\text{-H}_2\text{O}/\text{cm}^3\text{-soil}$)
AT_c	averaging time for carcinogens (years)
AT_n	averaging time for noncarcinogens (years)
BW	body weight (kg)
D^{air}	chemical diffusion coefficient in air (cm^2/s)
D^{wat}	chemical diffusion coefficient in water (cm^2/s)
$D_{\text{crack}}^{\text{eff}}$	effective diffusion coefficient through foundation cracks (cm^2/s)
D_s^{eff}	effective diffusion coefficient in soil based on vapor-phase concentration (cm^2/s)
ED	exposure duration (years)
EF	exposure frequency (days/year)
ER	enclosed space air exchange rate (s^{-1})
f_{oc}	fraction organic carbon in the soil ($\text{kg-C}/\text{kg-soil}$)
H	henry's law constant ($\text{L-H}_2\text{O}/\text{L-air}$)
i	ground water head gradient (cm/cm)
I	infiltration rate of water through soil (cm/year)
IR_{air}	daily indoor inhalation rate (m^3/day)
IR_w	daily water ingestion rate (L/day)
K	hydraulic conductivity (cm/year)
K_{oc}	carbon-water sorption coefficient ($\text{L-H}_2\text{O}/\text{kg-C}$)
k_s	soil-water sorption coefficient ($\text{L-H}_2\text{O}/\text{kg-soil}$), $f_{\text{oc}} \times K_{\text{oc}}$
L_B	enclosed space volume/infiltration area ratio (cm)
L_{crack}	enclosed space foundation or wall thickness (cm)
LF	leaching factor from soil to groundwater ($(\text{mg}/\text{L-H}_2\text{O})/(\text{mg}/\text{kg-soil})$)
L_{gw}	depth to groundwater from the enclosed space foundation (cm)
L_s	depth to subsurface soil sources from the enclosed space foundation (cm)
RBSL_{air}	Risk-Based Screening Level for indoor air ($\mu\text{g}/\text{m}^3\text{-air}$)
RBSL_{gw}	Risk-Based Screening Level for vapor from groundwater to enclosed space air inhalation ($\text{mg}/\text{L-H}_2\text{O}$)
RBSL_{sl}	Risk-Based Screening Level for soil leaching to groundwater ($\text{mg}/\text{kg-soil}$)
RBSL_{sv}	Risk-Based Screening Level for vapors from soil to enclosed space air inhalation ($\text{mg}/\text{kg-soil}$)
RBSL_w	Risk-Based Screening Level for ground water ingestion ($\text{mg}/\text{L-H}_2\text{O}$)
RfD_i	inhalation chronic reference dose ($(\text{mg}/(\text{kg}\text{-day}))$)
RfD_o	oral chronic reference dose ($(\text{mg}/(\text{kg}\text{-day}))$)
SF_i	inhalation cancer slope factor ($(\text{kg}\text{-day})/\text{mg}$)
SF_o	oral cancer slope factor ($(\text{kg}\text{-day})/\text{mg}$)
THQ	target hazard quotient for individual constituents (unitless)
TR	target excess individual lifetime cancer risk (unitless)
U	groundwater Darcy velocity (cm/year), $U=Ki$
VF_{gw}	volatilization factor for vapors from ground water to enclosed space ($(\text{mg}/\text{m}^3\text{-air})/(\text{mg}/\text{L-H}_2\text{O})$)
VF_{sv}	volatilization factor for vapors from soil to enclosed space ($(\text{mg}/\text{m}^3\text{-air})/(\text{mg}/\text{kg-soil})$)
W	width of soil source area parallel to groundwater flow direction (cm)

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Soil and Groundwater Parameter Values Used for Iowa Tier 1 Table Generation

Parameter		Iowa Tier 1 Table Value
K	hydraulic conductivity	16060 cm/year
i	ground water head gradient	0.01 cm/cm
W	width of soil source area parallel to groundwater flow direction	1500 cm
I	infiltration rate of water through soil	7 cm/year
δ	ground water mixing zone thickness	200 cm
ρ_s	soil bulk density	1.86 g/cm ³
θ_{as}	volumetric air content in vadose zone	0.2 cm ³ -air/cm ³ -soil
θ_{ws}	volumetric water content in vadose zone	0.1 cm ³ -H ₂ O/cm ³ -soil
θ_{acrack}	volumetric air content in foundation/wall cracks	0.2 cm ³ -air/cm ³ -soil
θ_{wcrack}	volumetric water content in foundation/wall cracks	0.1 cm ³ -H ₂ O/cm ³ -soil
θ_T	total soil porosity	0.3 cm ³ -voids/cm ³ -soil
f_{oc}	fraction organic carbon in the soil	0.01 kg-C/kg-soil
L_s	depth to subsurface soil sources from the enclosed space foundation	100 cm
L_{gw}	depth to groundwater from the enclosed space foundation	1 cm

Exposure Factors Used in Iowa Tier 1 Table Generation

Parameter		Residential	Nonresidential
AT _c (years)	averaging time for carcinogens	70	70
AT _n (years)	averaging time for noncarcinogens	30	25
BW (kg)	body weight	70	70
ED (years)	exposure duration	30	25
EF (days/year)	exposure frequency	350	250
IR _{air} (m ³ /day)	daily indoor inhalation rate	15	20
IR _w (L/day)	daily water ingestion rate	2	1
THQ (unitless)	target hazard quotient for individual constituents	1.0	1.0

Building Parameters Used in Iowa Tier 1 Table Generation

Parameter		Residential	Nonresidential
ER (s ⁻¹)	enclosed space air exchange rate	0.00014	0.00023
L _B (cm)	enclosed space volume/infiltration area ratio	200	300
L _{crack} (cm)	enclosed space foundation or wall thickness	15	15
η	areal fraction of cracks in foundation/wall	0.01	0.01

Chemical-Specific Parameter Values Used for Iowa Tier 1 Table Generation

Chemical	D ^{air} (cm ² /s)	D ^{wat} (cm ² /s)	H (L-air/L-water)	log(K _{oc}), L/kg
Benzene	0.093	1.1e-5	0.22	1.58
Toluene	0.085	9.4e-6	0.26	2.13
Ethylbenzene	0.076	8.5e-6	0.32	1.98
Xylenes	0.072	8.5e-6	0.29	2.38
Naphthalene	0.072	9.4e-6	0.049	3.11
Benzo(a)pyrene	0.050	5.8e-6	5.8e-8	5.59
Benz(a)anthracene	0.05	9.0e-6	5.74e-7	6.14
Chrysene	0.025	6.2e-6	4.9e-7	5.30

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Saturation Values Used to Determine "NA" for the Iowa Tier 1 Table

Chemical	Solubility in Water (mg/L) S	Saturation in Soil (mg/kg) C_s^{sat}
Benzene	1,750	801
Toluene	535	765
Ethylbenzene	152	159
Xylenes	198	492
Naphthalene	31	401
Benzo(a)pyrene	0.0012	4.69
Benz(a)anthracene	0.014	193.3
Chrysene	0.0028	5.59

The maximum solubility of the pure chemical in water is listed in the table above. The equation below is used to calculate the soil concentration (C_s^{sat}) at which dissolved pore-water and vapor phases become saturated. Tier 1 default values are used in the equation. "NA" (for not applicable) is used in the Tier 1 table when the risk-based value exceeds maximum solubility for water (S) or maximum saturation for soil (C_s^{sat}).

$$C_s^{sat} (\text{mg/kg-soil}) = S/\rho_s \times (H\theta_{as} + \theta_{ws} + k_s \rho_s)$$

Slope Factors and Reference Doses Used for Iowa Tier 1 Table Generation

Chemical	SF _i ((kg-day)/mg)	SF _o ((kg-day)/mg)	RfD _i (mg/(kg-day))	RfD _o (mg/(kg-day))
Benzene	0.029	0.029	----	----
Toluene	----	----	0.114	0.2
Ethylbenzene	----	----	0.286	0.1
Xylenes	----	----	2.0	2.0
Naphthalene	----	----	0.004	0.004
Benzo(a)pyrene	6.1	7.3	----	----
Benz(a)anthracene	0.61	0.73	----	----
Chrysene	0.061	0.073	----	----

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Appendix B - Tier 2 Equations and Parameter Values

All Tier 1 equations and parameters apply at Tier 2 except as specified below.

Equation for Tier 2 Groundwater Contaminant Transport Model

$$C(x) = C_s \exp\left(\frac{x}{2\alpha_x} \left[1 - \sqrt{1 + \frac{4\lambda\alpha_x}{u}}\right]\right) \operatorname{erf}\left(\frac{S_w}{4\sqrt{\alpha_y x}}\right) \operatorname{erf}\left(\frac{S_d}{4\sqrt{\alpha_z x}}\right)$$

Variable definitions

x: distance in the x direction downgradient from the source

erf(): the error function

C(x): chemical concentration in groundwater at x

Cs: Source concentration in groundwater (groundwater concentration at x=0)

Sw: width of the source (perpendicular to x)

Sd: vertical thickness of the source

u: groundwater velocity (pore water velocity); $u=Ki/\theta e$

K: hydraulic conductivity

i: groundwater head gradient

θe : effective porosity

λ : first order decay coefficient, chemical specific

$\alpha_x, \alpha_y, \alpha_z$: dispersivities in the x, y and z directions, respectively

For the following lists of parameters, one of three is required: site-specific measurements, defaults or the option of either (which means the default may be used or replaced with a site-specific measurement).

Soil parameters

Parameter	Default Value	Required	
ρ_s	soil bulk density	1.86 g/cm ³	option
f_{oc}	fraction organic carbon in the soil	0.01 kg-C/kg-soil	option
θ_T	total soil porosity	0.3 cm ³ -voids/cm ³ -soil	option
θ_{as}	volumetric air content in vadose zone	0.2 cm ³ -air/cm ³ -soil	default
θ_{ws}	volumetric water content in vadose zone	0.1 cm ³ -H ₂ O/cm ³ -soil	default
θ_{acrack}	volumetric air content in foundation/wall cracks	0.2 cm ³ -air/cm ³ -soil	default
θ_{wcrack}	volumetric water content in foundation/wall cracks	0.1 cm ³ -H ₂ O/cm ³ -soil	default
l	infiltration rate of water through soil	7 cm/year	default

If the total porosity is measured, assume 1/3 is air filled and 2/3 is water filled for determining the water and air fraction in the vadose zone soil and floor cracks.

Groundwater Transport Modeling Parameters

Parameter	Default Value	Required	
K	hydraulic conductivity	16060 cm/year	site-specific
i	groundwater head gradient	0.01 cm/cm	site-specific
Sw	width of the source	use procedure specified in 135.10(2)	site-specific
Sd	vertical thickness of the source	3 m	default
α_x	dispersivity in the x direction	0.1x	default
α_y	dispersivity in the y direction	0.33 α_x	default
α_z	dispersivity in the z direction	0.05 α_x	default
θe	effective porosity	0.1	default

where $u=Ki/\theta e$

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Groundwater Transport Modeling Parameters (continued)
First-order Decay Coefficients

Chemical	Default Value λ (d-1)	Required
Benzene	0.0005	default
Toluene	0.0007	default
Ethylbenzene	0.00013	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
Benzo(a)pyrene	0	default
Benz(a)anthracene	0	default
Chrysene	0	default

Other Parameters for Groundwater Vapor to Enclosed Space

Parameter		Default Value	Required
L _{gw}	depth to groundwater from the enclosed space foundation	1 cm	option
L _B	enclosed space volume/infiltration area ratio	200 cm	option
ER (s-1)	enclosed space air exchange rate	0.00014	default
L _{crack}	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

Other Parameters for Soil Vapor to Enclosed Space:

Parameter		Default Value	Required
L _s	depth to subsurface soil sources from the enclosed space foundation	100 cm	option
L _B	enclosed space volume/infiltration area ratio	250 cm *	option
ER (s-1)	enclosed space air exchange rate	0.000185 *	default
L _{crack}	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

*These values are an average of residential and nonresidential factors.

Soil Leaching to Groundwater

Parameter		Default Value	Required
δ	groundwater mixing zone	2 m	default

Building Parameters for Iowa Tier 2

Parameter		Residential	Nonresidential
ER (s-1)	enclosed space air exchange rate	0.00014	0.00023
L _B	enclosed space volume/infiltration area ratio	200 cm	300 cm

Other Parameters

For Tier 2, the following are the same as Tier 1 values (refer to Appendix A): chemical specific parameters, slope factors and reference doses, and exposure factors (except for those listed below).

Exposure Factors for Tier 2 Groundwater Vapor to Enclosed Space Modeling:

Potential Residential: use residential exposure and residential building parameters.

Potential Non-residential: use non-residential exposure and non-residential building parameters.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Diesel and Waste Oil

			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a)pyrene	Benz(a)anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	150	0.012	0.12	1.2
		potential	150	1.2	12.0	NA
	Groundwater Vapor to Enclosed Space	all	4,440	NA	NA	NA
	Groundwater to Plastic Water Line	all	150	1.2	12.0	NA
	Surface Water	all	150	1.2	12.0	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	7.6	NA	NA	NA
	Soil Vapor to Enclosed Space	all	101	NA	NA	NA
	Soil to Plastic Water Line	all	21	NA	NA	NA

Due to difficulties with analytical methods for the four individual chemicals listed in the above table, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that diesel contains 0.2% naphthalene, 0.001% benzo(a)pyrene, 0.001% benz(a)anthracene, and 0.001% chrysene. Resulting TEH Default Values are shown in the following table.

			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a)pyrene	Benz(a)anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	75,000	1,200	12,000	120,000
		potential	75,000	120,000	1,200,000	NA
	Groundwater Vapor to Enclosed Space	all	2,200,000	NA	NA	NA
	Groundwater to Plastic Water Line	all	75,000	120,000	1,200,000	NA
	Surface Water	all	75,000	120,000	1,200,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	3,800	NA	NA	NA
	Soil Vapor to Enclosed Space	all	50,500	NA	NA	NA
	Soil to Plastic Water Line	all	10,500	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

APPENDIX C

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION, made this ____ day of _____, 199__.

WHEREAS, _____ ("Declarant"), owns certain real property, ("Property") located in _____, County, Iowa, more fully described on Exhibit "A", attached hereto, and incorporated herein by this reference;

WHEREAS, Declarant desires to obtain a "no further action" certificate ("Certificate") from the Iowa Department of Natural Resources ("DNR"); and

WHEREAS, the DNR will not issue the Certificate unless Declarant executes and files this Declaration;

NOW, THEREFORE, Declarant hereby publishes and declares that the Property shall be held, sold and conveyed subject to the following covenants, all of which are for the purpose of protecting the value and desirability of the Property and all of which shall run with the land and shall be a burden and a benefit to, and shall be binding upon, Declarant, Declarant's successors and assigns, and all parties acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

I. (Insert appropriate restrictions on use, etc.)

II. Enforcement

If any person shall violate or attempt to violate any of the covenants contained herein, it shall be lawful for the DNR or any person holding any lien or other interest in the Property to prosecute a proceeding in equity to enjoin the person from such violation.

III. Term of Covenants

The covenants contained herein shall be deemed covenants running with the land, and shall remain in full force and effect until the earlier of the termination of these covenants by the Declarant, or by Declarant's successors and assigns, or twenty-one (21) years after the date these covenants are recorded in the Office of the County Recorder of the county where the Property is located. These covenants may be extended for successive twenty-one (21) year periods by the filing of a verified claim in accordance with Iowa Code § 614.24, which verified claim may be filed by the DNR or any party holding any lien or other interest in the Property.

IV. Severability

Invalidation of any portion of these covenants by judgment of any court shall in no way affect any of the other covenants contained herein, which shall remain in full force and effect.

V. Termination of Covenants

The covenants contained herein shall terminate twenty-one years after the date these covenants were recorded in the Office of the County Recorder, unless extended in accordance with Iowa Code § 614.24; provided, however, that the Declarant, or the Declarant's successors and assigns, may execute and file a notice of termination in the Office of the County Recorder of the county where the Property is located.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

APPENDIX C

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand as of the day and year first above written.

(Name of Declarant)

By: _____
Its: (Title)

By: _____
Its: (Title)

STATE OF _____)
)SS.
COUNTY OF _____)

On this ____ day of _____, 199__, before me personally appeared _____ and _____, to me known to be the person(s) named in and who executed the foregoing instrument, and acknowledge that _____ and _____ executed the same as his/her/their voluntary act and deed.

Notary Public, in and for said county and state

STATE OF _____)
)SS.
COUNTY OF _____)

On this ____ day of _____, 199__, before me personally appeared _____ and _____, who being duly sworn, did say that they are the _____ and _____ (insert titles of executing officers) of said corporation, that (the seal affixed to said instrument is the seal of said corporation or no seal has been procured by said corporation) and that the instrument was signed and sealed on behalf of said corporation by authority of its board of directors and that the said officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by them voluntarily executed.

Notary Public, in and for said county and state

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

APPENDIX D

IOWA DEPARTMENT OF NATURAL RESOURCES

NO FURTHER ACTION CERTIFICATE

This document certifies that the referenced underground storage tank site has been classified by the Iowa Department of Natural Resources (IDNR) as "no action required" as provided in the 1995 Iowa Code Supplement 455B.474(1)"h"(1). This certificate may be recorded as provided by law.

ISSUED TO: OWNERS/OPERATORS OF TANKS
DATE OF ISSUANCE:
IDNR FILE REFERENCES: LUST # REGISTRATION #
LEGAL DESCRIPTION OF UNDERGROUND STORAGE TANK SITE:

Issuance of this certificate does not preclude the IDNR from requiring further corrective action due to new releases and is based on the information available to date. The department is precluded from requiring additional corrective action solely because governmental action standards are changed. See 1995 Iowa Code Supplement 455B.474(1)"h"(1).

This certificate does not constitute a warranty or a representation of any kind to any person as to the environmental condition, marketability or value of the above referenced property other than that certification required by 1995 Iowa Code Supplement 455B.474(1)"h".

[Filed Emergency 6/25/96, effective 8/15/96]
[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6562A**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 162, "Gamblers Assistance Program," appearing in the Iowa Administrative Code.

The Seventy-sixth General Assembly in 1996 Iowa Acts, Senate File 2448, section 11, transferred administration of the Gamblers Assistance Program to the Department of Public Health effective July 1, 1996. These amendments authorize the transfer of the chapter governing the program from the Department of Human Services to the Department of Public Health and adopt minor necessary changes to reflect the departmental and chapter name and reference the correct administrative chapter for any appeals.

The Department of Public Health finds that notice and public participation are impracticable because there is not time to allow for notice and public comment and still meet the legislatively mandated transfer date of July 1, 1996. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by eliminating confusion as to which agency is responsible for the Gamblers Assistance Program. Therefore, this amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Iowa State Board of Health adopted the transfer and amendments June 27, 1996.

These amendments are intended to implement Iowa Code Supplement section 99D.7, subsection 21, as amended by 1996 Iowa Acts, Senate File 2448, section 11.

These amendments became effective July 1, 1996.

The following amendments are adopted.

ITEM 1. Amend **641—Chapter 162**, transferred from the Department of Human Services, as follows:

Strike "human services" and insert "public health";

Strike "mental health, mental retardation, and developmental disabilities" and insert "substance abuse and health promotion"; and

Strike "gamblers assistance program" and insert "gaming treatment program".

ITEM 2. Amend **162.4(6)"a"** as follows:

a. Individual and group therapeutic services. One unit is equal to one hour of face-to-face contact for individual and group therapeutic services or one hour of telephone contact for crisis counseling and follow-up within individual therapeutic counseling services. The unit rate includes all direct and indirect costs associated with providing the one hour of contact, including costs of preparing, conducting, and documenting the contact. The total of the contact time is billed at an established hourly rate for each type of service. The rate for each service shall be the result of negotiations between the agency and the department. ~~If an agency requesting a service rate already has a rate for a similar service for the same year through the department of public health, substance abuse commission, the department shall accept the rate calculated by the department of public health. If an agency has a similar service but also does not have the fee established or negotiated by the department of public health, the department shall accept the agency's fee for a like service up to the~~

~~maximum for outpatient fees as established by the department of public health, substance abuse commission.~~

ITEM 3. Amend 162.8(2) as follows:

162.8(2) Client appeals. Adverse decisions made by the agency affecting clients shall first be appealed to the agency for reconsideration. An adverse reconsideration decision by the agency shall then be appealed to the department pursuant to ~~441—Chapter 7 641—Chapter 173.~~

[Filed Emergency 6/27/96, effective 7/1/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6561A**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Department of Public Health hereby adopts Chapter 193, "Impaired Practitioner Review Committee," Iowa Administrative Code.

This new chapter provides for the establishment of the Impaired Practitioner Review Committee as mandated in Iowa Code Supplement section 272C.3(1)"k."

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 10, 1996, as **ARC 6351A**.

A public hearing was held April 30, 1996, with no public attendance. No comments were received.

The only change made from the Notice of Intended Action is the addition of a chapter number under the definition "practitioner."

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), the Director finds that the normal effective date of these rules should be waived and these rules should be made effective upon filing on June 27, 1996, to comply with Iowa Code Supplement chapter 272C.

The Board of Health adopted these rules on June 27, 1996.

This chapter is intended to implement Iowa Code Supplement chapter 272C.

These rules will become effective June 27, 1996.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 193] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 6351A**, IAB 4/10/96.

[Filed Emergency After Notice 6/27/96, effective 6/27/96]

[Published 7/17/96]

[For replacement pages for IAC, see IAC Supplement 7/17/96.]

ARC 6546A**STATUS OF WOMEN DIVISION[435]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 216A.54, the Commission on the Status of Women hereby transfers 435—Chapter 6, “Mentor Advisory Board,” to the Workforce Development Department created by 1996 Iowa Acts, Senate File 2409, to appear as 345—Chapter 15, Iowa Administrative Code.

Pursuant to 1996 Iowa Acts, Senate File 2409, sections 16 and 26, the Mentoring Program administered by the Commission on the Status of Women is transferred on July 1, 1996, to the Workforce Development Department. To ensure an orderly transition of programs and services, the Workforce Development Department is providing for the transfer of program rules, 435—Chapter 6, “Mentor Advisory Board” to the new department effective July 1, 1996.

In compliance with Iowa Code section 17A.4(2), the Commission on the Status of Women finds that notice and public participation are impracticable and contrary to the public interest because 1996 Iowa Acts, Senate File 2409, transfers the Mentoring Program from the Commission on the Status of Women to the Workforce Development Department.

The Commission on the Status of Women finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on July 1, 1996. These amendments confer a benefit on the public by transferring program rules to the agency statutorily responsible for administration of the program. The transfer of rules will allow the public to locate the correct agency to contact for program services.

The Commission on the Status of Women and the Workforce Development Department are taking the following steps to notify potentially affected parties of the effective date of the rule: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These amendments are intended to implement 1996 Iowa Acts, Senate File 2409, sections 16 and 26.

These amendments became effective on July 1, 1996.

The following amendments are adopted.

ITEM 1. Transfer **435—Chapter 6** to **345—Chapter 15** and strike the parenthetical implementation “601K” and insert “76GA,SF2409”.

ITEM 2. Amend rule 345—15.1(76GA,SF2409) as follows:

345—15.1(76GA,SF2409) Purpose. The purpose of the mentor advisory board is to serve in an advisory capacity to the volunteer mentor coordinator and the volunteer mentor program administered by the ~~Iowa Commission on the Status of Women~~ *workforce development department*.

ITEM 3. Amend the implementation sentence at the end of **345—Chapter 15** as follows:

These rules are intended to implement ~~Iowa Code sections 601K.51 to 601K.60~~ 1996 Iowa Acts, Senate File 2409, section 16.

[Filed Emergency 6/19/96, effective 7/1/96]

[Published 7/17/96]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6582A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.485 and 455B.412, the Environmental Protection Commission hereby adopts Chapter 214, "Household Hazardous Materials Program," Iowa Administrative Code.

These rules are intended to regulate the collection and disposal of small amounts of household hazardous wastes that are stored in residences and on farms, as well as to provide a basis to educate Iowans regarding the use of safer alternatives and the proper management and disposal of household hazardous waste.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 13, 1996, as ARC 6323A. Several changes have been made to the rules since published under Notice, primarily to make grammatical changes and to clarify the rules' intent. Changes of particular interest are discussed below.

The next to the last paragraph of subrule 214.9(1) was changed to clarify under what circumstances the Department would grant a partial or complete variance from applicant cost-share requirements. Applicants seeking a partial or complete variance from the cost-share requirements must request this variance as part of the application rather than by separate letter that was to be submitted within 30 days from receipt of the TCD proposal package. The other change in this subrule clarifies that the Department may also grant a variance from the cost-share requirements if the applicant county's median income is below the state median income.

In rule 214.11(455F), numbered items 4, 5 and 6 were added to the first unnumbered paragraph, requiring RCCs report to the Department data relating to the volume of hazardous materials being handled from conditionally exempt small quantity generators. It will not require a significant effort to include this information in the annual report as RCCs routinely track this information. It is important that the Department have knowledge of the amounts and types of hazardous materials received at the RCCs from conditionally exempt small quantity generators as well as urban and rural households.

These rules are intended to implement Iowa Code sections 455F.8, 455F.8B and 455F.9.

These rules will become effective August 21, 1996.

The following new chapter is adopted.

CHAPTER 214

HOUSEHOLD HAZARDOUS MATERIALS PROGRAM

567—214.1(455F) Scope. This chapter is intended to implement Iowa Code sections 455F.8, 455F.8B and 455F.9. The following will be accomplished in this chapter:

1. Establish an education connection to the household hazardous materials programs;
2. Establish a household hazardous materials education grant;
3. Establish criteria for selection of toxic cleanup day event hosts;
4. Establish toxic cleanup day event requirements;
5. Establish criteria for selection of hazardous waste contractors; and

6. Establish disbursement system for regional collection center disposal funds.

567—214.2(455F) Goal. The goal of this program is to reduce the amount of household hazardous waste being generated, landfilled and disposed of improperly in Iowa. This will be achieved by educating the public through the retailer's consumer education program, household hazardous materials educational awareness programs, toxic cleanup days and regional collection centers. Through these programs the awareness of Iowans will be raised regarding household hazardous materials, resulting in the preservation of the state's groundwater resources while protecting our health and safety and the environment as a whole.

567—214.3(455F) Definitions. As used in this chapter:

"Applicant" means any unit of local government, public or private organizations, regional collection centers and businesses with an interest in or responsibility for the management of household hazardous materials.

"Cost share" means the percent of applicant funds contributed to the project for those expenses or services that are directly related to the project.

"Department" means the Iowa department of natural resources.

"Groundwater protection Act" means Iowa Code chapter 455E, which sets forth laws pertaining to the protection of Iowa's groundwater resources through reduced disposal of solid wastes at landfills and encourages better management of Iowa's groundwater resources.

"HHM" means "Household hazardous materials" as defined in Iowa Code subsection 455F.1.

"Household hazardous waste" means the unused or left-over portions of household hazardous materials.

"RCC" means "Regional collection center" as defined in 567 IAC 211.3(455F).

"Retailer" means a person offering for sale or selling a household hazardous material to the ultimate consumer within this state.

"Retailer's consumer education program" means the program implemented in 567 IAC 144.

"Sanitary landfill" means a sanitary disposal project where solid waste is buried between layers of earth.

"Source reduction" means "waste reduction" as defined in 567 IAC 209.

"Toxic cleanup days (TCD)" means free one-day collection events for the safe management of household hazardous waste from urban and rural households and an opportunity to educate the public about household hazardous materials.

"Waste management assistance division" means the waste management assistance division of the department of natural resources established by Iowa Code section 455B.483.

567—214.4(455F) Role of the department of natural resources. The department is responsible for the administration of the funds for the HHM program under these rules. The department will ensure that funds disbursed will meet guidelines established by the groundwater protection Act.

Any proposals described by this chapter may be submitted by an applicant for grant consideration. The waste management assistance division shall have sole responsibility for determining which proposals will receive funding.

567—214.5(455F) Funding sources. The department will use funds authorized by Iowa Code section 455F.7 and Iowa Code Supplement sections 455E.11(2)"c" and 455E.11(2)"a"(2)(e) and (f), for the purpose of achieving the

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goals outlined in these rules. The department will ensure that use of these funds meets federal and state guidelines.

567—214.6(455F) Household hazardous materials education. Education of the public shall be the foundation of the HHM program. HHM education involves the concept of source reduction.

214.6(1) Source reduction. Source reduction as applied to HHM consists of the following points:

1. Purchase a safer alternative when possible;
2. Purchase only the quantity of product needed;
3. Use up the product, according to manufacturer's instructions;
4. If the product cannot be used up by the consumer who purchased it, the product should be given to someone who can use it;
5. Some products that cannot be used up may be safely managed at home;
6. If a product cannot be used up, given away or safely managed at home, the product should be saved for proper disposal at a TCD or an RCC.

214.6(2) Educational programs. The above concepts shall be communicated through every aspect of the HHM program. The HHM program includes the following subprograms:

1. The retailer's consumer education program which provides information to consumers while shopping in retail establishments. See 567 IAC 144 (implemented by retailers).
2. Public education through distribution of HHM educational materials, presentations and communications media (as implemented by the applicant and the department).
3. The TCD program which educates Iowa residents and provides a means of proper disposal of household hazardous wastes (implemented by the applicant).
4. The RCC grant program which educates Iowa residents and provides ongoing collection of hazardous waste from household and conditionally exempt small quantity generators. See 567 IAC 211 (implemented by the applicant).

All applicants will be required to meet these objectives. These subprograms are designed to implement education regarding HHMs.

567—214.7(455F) HHM education grants. The department will solicit requests for proposals (RFPs) from applicants twice a year, in conjunction with the Toxic Cleanup Day RFP, for education projects.

214.7(1) Eligible education programs. Eligible education projects include, but are not limited to:

- a. Retailer's consumer education program.
 1. Inform retailers of requirements of the HHM retailer's consumer education program;
 2. Assist retailers in obtaining the household hazardous materials permit; and
 3. Assist retailers with the posting of education materials.
- b. Household hazardous materials educational awareness program.
 1. Identify HHM products;
 2. Promote awareness of safer alternatives;
 3. Promote the awareness of proper management and proper disposal options;
 4. Promote awareness of TCD events and RCCs.

214.7(2) Department selection. The criteria and instructions for submitting a proposal are included in the TCD request for proposal (RFP) package. The department will re-

view all proposals returned by the deadline and select HHM education grantees based on the information requested in the RFP package. Upon selection, the department will provide financial and technical assistance. Instructions for submitting proposals and the process by which proposal selections are determined will be detailed in the RFP available from the waste management assistance division.

567—214.8(455F) Selection of TCD event host. The department will solicit requests for proposals twice a year from applicants to sponsor TCD events. The following is a list of general requirements for hosting a TCD. The proposals will be evaluated on how well the applicant meets these general criteria:

1. Establishment of a local task force;
2. Publicity;
3. Education;
4. Retailer consumer education program;
5. Local oil and battery collection sources;
6. Telephone appointment assistance;
7. Usable paint exchange;
8. Volunteer network;
9. Permanent program;
10. Selection of site, including:
 - Accessibility
 - Storage capabilities
 - Availability;
11. Pledges of support by local law enforcement and fire protection;
12. Local cost share.

The detailed criteria for the proposal are included in the TCD request for proposal package. Applications will be due the first Friday in January and the first Friday in July of each year at 5 p.m., unless otherwise designated by the waste management assistance division. All proposals shall be completed as specified in the Toxic Cleanup Day RFP. Instruction for submitting proposals and the process by which the selection is determined are detailed in the TCD request for proposal package. Upon selection of the TCD host, the department will provide the selected applicants with services of a hazardous waste contractor and financial assistance for disposal cost. The department will also provide technical assistance through a workshop and guidance in the areas of education, publicity, telephone assistance, site selection, and setting up the toxic cleanup day. Copies of the TCD request for proposals are available from the waste management assistance division.

567—214.9(455F) TCD events. The TCD events will provide for proper disposal of household hazardous waste from urban and rural households. All hazardous wastes accepted at the event shall be removed from the site within 24 hours after the end of the collection event, unless otherwise authorized by the department or applicant representative. Brochures and videos on how to establish and set up a TCD are available at the waste management assistance division.

214.9(1) Minimum applicant cost share. A minimum cost share shall be required of each event host. The cost share will be:

1. 50-cent minimum per household for first or second time event host;
2. 75-cent minimum per household for third time or more event host if the event host is not serviced by a regional collection center; and
3. 50-cent minimum cost share per household for regional collection centers or event host serviced by an RCC.

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The applicant shall incur all in-kind cost. In-kind cost will include, but is not limited to, the following:

1. Promotional materials, including brochures, posters, newspaper ads, public service announcements, telephone service;

2. Educational materials, including books.

The department may grant a partial or complete variance from the cost-share requirement of these rules. Applicants must submit as part of the TCD application, a request for a variance from the cost-share requirement. The department may grant a variance from the cost-share requirements of these rules if the applicant county's median income is below the state median income.

The department shall review the variance request and notify the applicant within 30 days of receipt that the application is approved, denied or requires modification.

214.9(2) Reserved.

567—214.10(455F) Selection of hazardous waste contractor. The department will solicit requests for proposals at a minimum of once every two years from a current listing of hazardous waste companies in the United States. General criteria used to select the hazardous waste contractor include the following:

1. General operating procedures.
2. Safety/contingency plan.
3. Experience and personnel.
4. Waste disposal hierarchy.
5. Nonhazardous and nonlicensed waste.
6. Pricing/hypothetical event.

The detailed evaluation criteria and the instructions for submitting a proposal are included in the contractor request for proposal package. The department will review the proposals returned by the deadline specified in the request for proposal and select a contractor based on the evaluation criteria presented. The department will have sole responsibility in the selection of a contractor. Copies of the contractor request for proposal are available from the waste management assistance division.

567—214.11(455F) Regional collection center household hazardous material disposal funding. All RCCs are eligible to receive funding from the department to offset the cost associated with proper disposal of household hazardous waste by a hazardous waste contractor. The additional 3 percent described in Iowa Code Supplement section 455E.11(2)"a"(2)(e) is the source for this funding.

RCCs will receive a percentage of the total funds accumulated in this account in an amount equal to the percentage each RCC collected compared to the total amount collected by all RCCs in each fiscal year based on the weight of materials collected from urban and rural households. To receive disposal funding assistance, an RCC must report the following to the department by July 1 of each year for the fiscal year ending the previous June 30:

1. Number of households bringing waste to the facility.
2. Poundage of household hazardous waste received.
3. Categories of household hazardous waste received.
4. Number of conditionally exempt small quantity generators bringing waste to the facility.
5. Poundage of hazardous waste received from conditionally exempt small quantity generators.
6. Categories of hazardous waste received from conditionally exempt small quantity generators.

A fiscal year will be from July 1 of the previous year to June 30 of the current year. Water-based paint, waste oil and

lead acid battery weights are not considered eligible poundages.

These rules are intended to implement Iowa Code sections 455F.8, 455F.8B and 455F.9.

[Filed 6/28/96, effective 8/21/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6583A

PERSONNEL DEPARTMENT[581]

Adopted and Filed

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Department of Personnel hereby amends Chapter 11, "Separations, Disciplinary Actions and Reduction in Force," Iowa Administrative Code.

These amendments describe the procedural details by which noncontract employees will be selected for layoff in the event of a reduction in force and how they will be recalled to work.

These amendments were approved during the June 26, 1996, meeting of the Iowa Personnel Commission.

Notice of Intended Action was published in the May 22, 1996, Iowa Administrative Bulletin as **ARC 6430A**. A public hearing was held on June 13, 1996, and no comment was received.

The adopted amendments were changed from those published under Notice only to the extent that redundancies were removed and clarifying language was added.

These amendments will become effective on August 21, 1996.

These amendments are intended to implement Iowa Code section 19A.9.

The following amendments are adopted.

Amend rule 581—11.3(19A) as follows:

581—11.3(19A) Reduction in force. A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered employees in a class or the number of hours worked by permanent merit system covered employees in a class, except as provided in subrule 11.3(1).

11.3(1) The following agency actions shall not constitute a reduction in force nor require the application of these reduction in force rules:

a. An interruption of employment for no more than 20 consecutive calendar days, with the prior approval of the director.

b. Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the director.

c. The promotion or reclassification of an employee to a class in *the same* or a higher pay grade.

d. The reclassification of an employee's position to a class in a lower pay grade that results from the correction of a classification error, a class or series revision, ~~or the gradual change~~ *changes* in the duties of the position, or a reorganiza-

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tion that does not result in fewer total positions in the unit that is reorganized.

e. When a change in the classification of an employee's position or the appointment of an employee to a vacant position in a class in a lower pay grade is the result of a disciplinary or voluntary demotion.

f. The *transfer* or reassignment of an employee to another position in the same class or to a class in the same pay grade.

g. A reduction in the number of, positions or hours worked by, permanent employees not covered by merit system provisions.

11.3(2) The agency's reduction in force shall conform to the following provisions:

a. Reduction in force shall be by class.

b. The reduction in force unit may be by agency organizational unit or agencywide. If the agency organizational unit is smaller than a *division bureau*, it must first be approved reviewed by the director.

c. An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit, as well as those who have probationary status in the same class.

d. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the *effective* date of the reduction in force, the reduction in force unit(s), the reason *reason(s)* for choosing the unit(s) if smaller than a *division bureau*, including specific information as to why employees in the unit are not interchangeable with other units, the number of *permanent merit system covered* employees by class to be eliminated or reduced in hours by class, the cutoff date for the *crediting of retention points, establishment of performance records, the selection criteria to be used, the weighted percentages to be assigned to performance records and to length of service*, and any other information requested by the director. ~~If determined by the appointing authority to be applicable, the plan shall also include exemptions from the reduction in force or the effects of bumping resulting from the reduction in force where special skills or abilities are required.~~ *The appointing authority shall post each approved reduction in force plan for 60 calendar days, unless budgetary limitations require a lesser period of time, in conspicuous places throughout the reduction in force unit. The posting shall include the names of all permanent merit system covered employees in each affected job class in the reduction in force unit.*

e. ~~The appointing authority shall post each approved reduction in force plan for 60 calendar days in conspicuous places throughout the reduction in force unit. The posting shall include the total retention points of all permanent employees in each affected job class in the reduction in force unit. The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee's rights under these rules. A copy of the employee's retention point computation worksheet shall also be furnished to the employee. These~~ *The official notifications to affected employees shall be made at least 20 working work days prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency's reduction in force plan has been approved by the director, unless otherwise authorized by the director, following*

the application of the selection criteria called for in 581—subrules 11.3(2), 11.3(3) and 11.3(4).

f. The appointing authority shall notify the affected employee ~~employee(s)~~, in writing, of the *any* options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days from the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

11.3(3) Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance computed to the nearest hundredth (.01) decimal place record, giving primary consideration to the performance record. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. ~~The cutoff date shall be no less than 60 nor more than 90 days prior to the effective date of the reduction in force. Length of service and performance evaluation record points shall be calculated as follows: based on guidelines provided by the director.~~

a. Credit for length of service shall be given at the rate of one point for each month of employment (including employment credited toward the probationary period). ~~More than 15 calendar days shall be considered one month. When computing length of service points, the appointing authority shall include all continuous state service in the executive branch from the most recent date of hire to the cutoff date, except that employees who separate and returned to employment prior to November 10, 1970, shall be allowed to count prior service if credit was granted when reemployed. Length of service credit shall not include the following periods:~~

(1) Emergency, internship, intermittent, trainee, seasonal or other temporary types of appointments if not credited toward the probationary period;

(2) ~~Suspensions without pay~~ *Disciplinary suspensions.* The number of days of *disciplinary* suspension without pay shall be totaled and subtracted from the total credit for length of service. More than 15 days shall be considered one month;

(3) Documented leaves of absence without pay in excess of 30 calendar days except for military leave, *family and medical leave Act leave*, workers' compensation leave and employer-directed educational leave with or without pay;

(4) Board of regents, nonexecutive branch or nonstate service unless Acts of the general assembly require otherwise;

(5) Layoffs in excess of 30 calendar days; and

(6) Long-term disability periods in excess of 30 calendar days.

A former employee who was laid off, or who applied for or received long-term disability payments, and subsequently returned to state employment more than two years following the date of separation, shall be given a new date of hire. A former employee who was laid off and who subsequently lost recall rights due to recall declination, or who was reemployed but subsequently terminated, shall be given a new date of hire if later reemployed other than by recall.

Length of service credit for all periods of part-time service shall be calculated pro rata on the basis of the number of hours worked per pay period. Eighty hours per pay period is considered full time.

~~b.—Performance evaluation credit commencing on July 1, 1969, until a date five years prior to the reduction in force cutoff date shall be calculated for periods of time corresponding to the periods credited for length of service and shall be at the rate of two points for each month of a performance evalu-~~

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ation period rated as competent or above using the performance evaluation system adopted in accordance with Chapter 13 of these rules. No points shall be given for any month where performance was evaluated as less than competent.

For the five-year period prior to the reduction in force cutoff date an employee shall receive five points for each month rated one or more levels above competent, two points for each month rated as competent and no points for any months rated as less than competent.

b. When calculating performance evaluation points *If performance evaluations are used in calculating the performance record*, the following shall apply:

(1) A performance evaluation period rated as competent shall be an "overall sum of ratings" of at least 3.00 but less than 4.00;

(2) A performance evaluation period which is rated one or more levels above competent shall be an "overall sum of ratings" equal to or greater than 4.00; and

(3)(1) A performance evaluation period rated as "less than competent" or "does not meet job expectations" or shall be an "overall sum of ratings" less than 3.00 shall receive no credit.

All employees shall be evaluated for performance in accordance with subrule 13.2(2). If not evaluated, or if not evaluated in accordance with subrule 13.2(2), that period shall be calculated as though competent. A performance evaluation shall be valid for use in calculating retention points only if it is completed, signed, and dated by the supervisor within 60 days following the end of the evaluation period. If the period covered on the evaluation exceeds 12 months, the rating shall only apply to the most recent 12 months of the period. Time spent on approved military leave, workers' compensation leave, or educational leave with or without pay required by the appointing authority shall be counted as competent performance.

(2) Performance evaluation credit for all periods of part-time service shall be calculated pro rata on the basis of the number of hours worked per pay period. Eighty hours per pay period shall be considered full-time. Periods of state employment excluded from length of service credit shall also be excluded from performance evaluation credit. More than 15 calendar days in a performance evaluation period shall be considered one month.

During the period between the cutoff date and the effective date of the reduction in force,

(3) ~~only~~ Only performance evaluations that were due during that period shall prior to the cutoff date may be used for crediting retention points prior to the cutoff date, unless special performance evaluations after the cutoff date are done on all employees affected by the layoff. Otherwise, the rating received on the last valid performance evaluation for the previous rating period shall be brought forward for the current period not evaluated. If no valid performance evaluation exists for the previous rating period, both periods shall be counted as competent performance. In no instance shall performance evaluation points be credited beyond the cutoff date.

c. The total reduction in force retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance evaluation record points.

11.3(4) Order of reduction in force. Employees *Permanent merit system covered employees* in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the unit. Reduction in force

selections shall be made from the list in inverse order regardless of full-time or part-time status. If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

a. The employee with the highest total performance evaluation record points; and then, if still tied,

b. The employee with the lower last four digits of the social security number.

An agency may request exemption from the reduction in force for employees in positions that require special skills or abilities. Exemptions will be limited to situations where it is essential for the employees to possess those required special skills or abilities in order to competently perform the duties of the position, and where there is no other employee possessing those required special skills or abilities who has more retention points than the employee who is being exempted and who would otherwise be displaced. Selection for exemption shall be in retention point order.

11.3(5) Bumping (class change in lieu of layoff). Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights.

a. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be only to positions covered by merit system provisions. The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required.

b. When bumping as set forth in paragraph "a" of this subrule, the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points. If bumping occurs, the employee with the least total retention points in the class shall then be subject to reduction in force.

Bumping to another class in lieu of layoff from a class covered by a collective bargaining agreement to a class not covered by a collective bargaining agreement, or vice versa, shall only occur if the move can be accomplished in accordance with the reduction in force order (retention points or seniority date) governing the class into which the employee moves.

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Pay upon bumping shall be in accordance with 581—subrule 4.5(1), paragraph “i.”

11.3(6) Recall. Eligibility for recall shall be for one year following the date of the reduction in force or the medical release to return to work, ~~and shall be based on the employee's total retention points. If two or more employees have the same number of retention points, preference shall be in accordance with subrule 11.3(4), paragraphs “a” and “b.”~~

a. The following employees or former employees are eligible to be recalled:

- (1) Former employees who have been laid off.
- (2) Employees who have bumped in lieu of layoff.
- (3) Employees whose hours have been reduced.
- (4) Former employees currently on long-term disability who have a medical release to return to work in a capacity other than the job previously held.
- (5) Former employees whose long-term disability benefits have been terminated and who have a medical release to return to work.
- (6) Former employees who were terminated for medically related reasons due to a job-related illness or injury and who have a medical release to return to work.
- (7) Current employees who are unable to return to their former class because of a job-related illness or injury and who have a medical release to return to work.

The medical release referred to in *subparagraphs* (4), (5), (6) and (7) above must be obtained to be on recall lists on a class-by-class basis. Another medical release addressing the employee's ability to perform the essential functions of the specific position to which recalled must be obtained prior to *the employee's* actually starting work.

b. Current employees listed in subrule 11.3(6), paragraph “a,” subparagraphs (2) and (3), shall only be on the recall list for the class and layoff unit occupied at the time of the reduction in force.

c. Former employees covered in paragraph “a,” subparagraphs (1), (4) and (5), and current employees covered in paragraph “a,” subparagraph (5), may be on the recall list for the following classes and under the following conditions:

- (1) Class (or equivalent if retitled) held at the time of the reduction in force or termination;
- (2) Any classes (or equivalent if retitled) held prior to the reduction in force or termination, except classes from which voluntarily or disciplinarily demoted; and
- (3) Other classes for which the employee qualifies that are at the same or lower pay grade in relation to the class from which laid off or terminated.

The following provisions shall govern recall:

1. The total number of classes for which the employee is eligible for recall, including the employee's layoff class and formerly held classes, shall not exceed 26.
2. Employees may not designate particular agencies to which they will or will not accept recall.
3. Nonsupervisory employees may ~~only~~ select *only* classes for which qualified that are nonsupervisory.
4. Only employees in collective bargaining exempt classes at the time of layoff shall be eligible for recall to such classes.
5. Employees listed in subrule 11.3(6), paragraph “a,” subparagraphs (4) and (5), may be required to furnish copies of their notification of termination of long-term disability benefits or their medical release to return to work.
6. Recalled employees shall be required to serve a six-month probationary period during which time, if it is found that the employee is not able to perform the assigned duties satisfactorily, the employee may be terminated without right

of appeal and the employee's original recall record restored to the recall list for the remainder of the one-year recall eligibility period.

7. Requests to change classes or conditions of recall availability must be submitted in writing to the department.

d. The following provisions shall apply to the issuance and use of recall certificates:

(1) Recall certificates shall ~~only~~ be issued for merit system covered positions *only*.

(2) When one or more names are on the recall list for a class in which a vacancy exists, the agency filling that vacancy must first offer the position to former employees on that list who were laid off by that agency. ~~Recall offers shall be in descending order according to total retention points.~~ If no such former employee is available, the agency shall next consider recalling former employees on the recall list who were laid off by other agencies. If no one from such a recall certificate is selected, the agency shall justify that decision to the director before the position may be filled by other methods.

(3) ~~Recall~~ *The recall alternatives in (2) above* must be exhausted before other eligible lists may be used to fill vacancies:

Former employees listed in subrule 11.3(6), paragraph “a,” subparagraphs (4) and (5), who have received a medical release to return to work, shall be considered and their medically related work restrictions shall be taken into account when determining the individual's ability to perform the essential functions of the position.

e. Recall shall be by class without regard to an employee's status at the time of layoff (full-time or part-time).

An employee may remain on the recall list for the same status as that held at the time of layoff after having declined recall to a position with a different status. However, the employee will be removed for the status declined.

f. One failure to accept appointment to a nontemporary position with the same status as that held prior to the reduction in force or termination for purposes of long-term disability or job-related illness or injury shall negate all further rights to recall.

g. An appointing authority may refuse to recall employees who do not possess the special skills or abilities required for a position, with the prior approval of the director.

h. Notice of recall shall be sent by certified mail, restricted delivery. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

i. Vacation accrual and accrued sick leave of recalled employees shall be in accordance with 581—subrule 14.2(2), paragraph “l,” and 581—subrule 14.3(10), respectively.

j. An employee who bumps in lieu of layoff or has a work hours reduction, and subsequently leaves employment for any reason, shall be removed from the recall list.

k. Employees on the recall list who are reemployed other than by recall, and who subsequently leave state employment for any reason, shall be removed from the recall list. Employees who are recalled shall be removed from the recall list unless otherwise provided for in these rules.

l. Pay upon recall shall be in accordance with 581—subrule 4.5(1), paragraph “e.”

11.3(7) Reduction in force shall not be used to avoid or circumvent the provisions or intent of Iowa Code chapter 19A, or these rules governing reclassification, disciplinary demo-

PERSONNEL DEPARTMENT[581](cont'd)

tion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 581—Chapter 12.

11.3(8) Employees covered by a collective bargaining agreement shall be governed by the terms of that contract for reduction in force purposes.

[Filed 6/28/96, effective 8/21/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6554A**RACING AND GAMING
COMMISSION[491]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby adopts amendments to Chapter 13, "Occupational and Vendor Licensing," and Chapter 20, "Application Process for Excursion Boats and Racetrack Enclosure Gaming Licenses," Iowa Administrative Code.

Item 1 requires the applicant to disclose to the commission or commission representative any information necessary to evaluate the application and also to cooperate with the commission or commission representative.

Item 2 is a revision of the existing rule.

Item 3 deletes a duplicate rule.

These adopted amendments are identical to those published under Notice of Intended Action in the May 8, 1996, Iowa Administrative Bulletin as **ARC 6400A**.

A public hearing was held on May 28, 1996. No written or oral comments were received.

These amendments will become effective August 21, 1996.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

ITEM 1. Amend subrule 13.2(1) by adding a new paragraph "h" as follows:

h. Duty to disclose and cooperate. It shall be the affirmative responsibility and continuing duty of each applicant to provide all information, documentation, and assurances pertaining to qualifications required or requested by the commission or commission representative and to cooperate with the commission or commission representative in the performance of their duties. Any refusal by any person to comply with a request for information from the commission or commission representative shall be a basis for fine, suspension, denial, revocation or disqualification. No license shall be granted to any applicant who fails to provide information, documentation and assurances required by or requested by the commission or commission representative or who fails to reveal any fact material to qualification.

ITEM 2. Rescind subrule 13.2(3) and insert in lieu thereof the following new subrule:

13.2(3) Multiple license restrictions.

a. A person may work outside the person's license occupation except in the following situations:

(1) Working outside this occupation conflicts with the internal controls of the association or boat operator.

(2) The person working out of occupation is not licensed and backgrounded in equal or higher class.

(3) There is a conflict of interest or duties as determined by the administrator's designee.

b. In horse racing only.

(1) A person licensed as a jockey, veterinarian, or farrier may not be licensed in another capacity.

(2) A person may not be licensed as an owner and a jockey agent.

(3) No racing official may serve or act in another capacity at a race meeting at which that person is licensed as an official except if there is no conflict of interest or duties as determined by the administrator's designee.

ITEM 3. Rescind and reserve rule **491—20.16(99F)**.

[Filed 6/21/96, effective 8/21/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6578A**SECRETARY OF STATE[721]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 47.1 and 52.5, the Secretary of State hereby adopts an amendment to Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

This amendment provides tabulation instructions and procedures for using the MicroVote Absentee Voting System, which has been approved for use in Iowa by the Board of Examiners for Voting Machines and Electronic Voting Systems. This system uses a three-part ballot and therefore requires careful instructions to the voter and the precinct election officials who will be processing the ballots.

Notice of Intended Action was published on May 22, 1996, in the Iowa Administrative Bulletin as **ARC 6423A**.

The rule has been changed in response to comments received from members of the Board of Examiners for Voting Machines and Electronic Voting Systems. All references to the name written on the ballot have been changed from "candidate" to "person" to reduce possible confusion about whether the names of all candidates must be written on the secrecy envelope. In subrule 22.60(1) instructions have been added to include an indication of the ballot rotation and code on the ballot guide. This change will help the election commissioners' staff members send the correct ballot and guide to each voter. A reminder has been added to the instructions to the voter to include the position number when casting a write-in vote.

This amendment was adopted by the Secretary of State on June 27, 1996.

This amendment will become effective August 21, 1996.

This rule is intended to implement Iowa Code section 52.5.

The following amendment is adopted.

Amend 721—Chapter 22 by adding the following new rule:

721—22.60(52) MicroVote Absentee Voting System. This system uses a three-piece ballot including a ballot card, ballot guide, and secrecy envelope with write-in ballot. The follow-

SECRETARY OF STATE[721](cont'd)

ing rules for the use of the MicroVote Absentee Voting System are prescribed.

22.60(1) The ballot card is used by the voter to indicate the voter's choices. The ballot card has numbered voting targets printed on card stock and is marked with a pencil. Also included on the ballot card is a box marked "For Official Use Only." This box is used for coding to indicate the precinct and rotation of the ballot, if any. Before being sent to the voter, any numbered stubs shall be removed from the ballot card.

22.60(2) The ballot guide is a list showing the text of public measures, office titles and candidate names and the voting target numbers to be marked on the ballot card. The order of offices, candidates, public measures and judges shall be determined by the applicable provisions of Iowa Code chapters 43 and 49 and 721—subrule 22.53(2) IAC. The ballot guide shall include the same code numbers as the appropriate ballot card. The ballot guide shall also include position numbers for write-in votes for each office. The number of write-in positions shall equal the number of persons to be elected to each office.

a. The ballot guide shall include a heading in substantially the following form:

[Election Name] Ballot Guide
[County Name]

Name and Date of Election, and a facsimile of
the commissioner's signature.

b. The ballot guide shall include instructions in substantially the following form:

Notice to Voter: On this ballot guide find the position number printed next to the name of each candidate for whom you wish to vote.

position # ♦ 1 CANDIDATE NAME

Blacken the oval next to the same number on the official ballot card. Use only a #2 pencil. To write in a vote for a person whose name is not listed in this guide, mark the appropriate oval on the ballot card, and write the office title and write-in position number and the person's name inside the secrecy envelope.

22.60(3) The secrecy envelope is used to conceal the voter's marks and to provide a space for write-in votes. The envelope shall be made of opaque paper and shall be large enough to cover all areas of the ballot card that are used by voters to indicate their choices. Space to receive write-in votes shall be printed inside the secrecy envelope so that the votes are hidden when the flap is closed. The secrecy envelope shall include brief instructions in substantially the following form:

1. On the outside of the envelope: "Secrecy envelope: After you have voted, enclose the ballot card in this envelope. To write in a vote for someone whose name is not on the ballot, see inside."

2. Inside the envelope: "Write-in vote. To vote for a person whose name is not listed in the ballot guide, mark the appropriate oval on the ballot card, and write the office title, write-in position number and the person's name in a space below. Vote for no more than the number indicated under the title of the office on the ballot, including your write-in votes."

Name

Office

Position #

[Similar spaces for at least twenty offices shall be included.]

22.60(4) Write-in votes. To vote for a person whose name is not listed in the ballot guide, the voter shall mark the appropriately numbered write-in voting target for the office on the ballot card and write the office title, position number and person's name in spaces provided inside the secrecy envelope.

22.60(5) Tabulation procedures. As the absentee and special precinct board opens the affidavit envelopes containing absentee ballots cast using the MicroVote Absentee Voting System, they shall remove the secrecy envelopes containing the ballot cards from the affidavit envelope initially taking care not to separate the ballot cards from the secrecy envelopes.

a. Each secrecy envelope shall be examined for write-in votes. When a write-in vote is discovered, a serial number shall immediately be stamped or written on both the ballot card and the secrecy envelope. Secrecy envelopes containing write-in votes cast at the primary election shall also be labeled with the party name.

b. The ballot card shall be inspected by two precinct officials, not members of the same political party, who shall determine if the number of votes cast for the office for which the voter has cast a write-in vote exceeds the number of votes allowed for the office. If the total number of votes cast on the ballot card and the number of write-in votes cast do not exceed the allowable number of votes for that office, the ballot card shall be separated from the secrecy envelope and processed. The write-in votes shall be counted as indicated by the voter.

22.60(6) Precinct election officials shall refer to the following chart to help determine how to tabulate votes cast which do not comply with all instructions.

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Tabulation Guide for MicroVote Absentee Voting System

Secrecy Envelope, Write-in Vote			Ballot Card Position		Write-in makes office over-voted?	Count write-in vote?	Comments
Office	Pos. #	Name	marked	not marked			
✓	✓	✓	✓		no	yes	1. Preferred method.
✓	✓	✓		✓	no	yes	
✓	✓	✓	✓		yes	no	
✓	✓	✓		✓	yes	no, but ✓	2. But, count other votes for that office.
✓	✓	no	✓ or	✓	no	no	3. If there is no name, there is nothing to count.
✓	blank/ wrong	✓	✓		no	yes	4. If the office is clearly identifiable.
✓	blank/ wrong	✓		✓	no	yes	4. If the office is clearly identifiable.
✓	blank/ wrong	✓	✓		yes	no	
✓	blank/ wrong	✓		✓	yes	no, but ☐	2. But, count other votes for that office.
	✓	✓	✓		no	yes	
	✓	✓		✓	no	yes	
	✓	✓	✓		yes	no	
	✓	✓		✓	yes	no, but ☐	2. But, count other votes for that office.
		✓	✓		no	yes, if ☐	6. If there is only one write-in vote.
		✓	✓		yes	no	
		✓		✓	no	yes, if ☐	7. If there is only one office on the ballot.

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22.60(7) Instructions to the voter shall be enclosed with every absentee ballot in substantially the following form:

STATE OF IOWA ABSENTEE VOTING INSTRUCTIONS

for use with the MicroVote Absentee Voting System

READ ALL INSTRUCTIONS CAREFULLY BEFORE VOTING!

WARNING: Do not mark, fold or punch your ballot except as outlined in these instructions. If your ballot is not properly marked, your vote cannot be counted.

The main points:

- | | |
|--|---|
| <p><input type="checkbox"/> Vote in secrecy; use a # 2 pencil.</p> <p><input type="checkbox"/> Complete, sign and date the affidavit.</p> <p><input type="checkbox"/> Seal the ballot inside the affidavit envelope.</p> | <p><input type="checkbox"/> Return the ballot on time:</p> <p>By mail before election day, or</p> <p>Deliver to Auditor by 9 p.m. <u> </u>/<u> </u>/<u> </u>.</p> |
|--|---|

YOUR BALLOT PACKET CONTAINS

- “Official Ballot” card (with numbered ovals).
- Printed paper ballot guide showing offices and candidates (for information only).
- Secrecy envelope to enclose “Official Ballot” card and to cast write-in votes, if desired.
- Affidavit envelope.
- Return envelope.

IF YOU SPOIL YOUR BALLOT

- Put the ballot and other materials in return envelope.
- Write “SPOILED BALLOT” on the return envelope.
- Mail or take the entire packet to the auditor. A new packet will be sent to you.

IF YOU NEED HELP TO VOTE

If you are blind, cannot read, or cannot mark your own ballot because you are disabled, you may choose someone to help you vote. However, these people cannot help you vote:

- Your employer
- An agent of your employer
- An officer or agent of your union.

MARKING YOUR BALLOT

1. **Vote in secrecy.** Mark your ballot so that no one else will know how you voted, unless you need help to vote.
2. **Study the ballot guide carefully before voting on the “Official Ballot” card.** Marks cannot be erased without spoiling the ballot.
3. **Use a #2 pencil.** Marks made by other pens or pencils might not be seen by the machine that counts the votes. Do not use a red pen or red pencil.
4. **Voting for candidates.** After you have decided who you want to vote for, find the position number printed next to the candidate’s name.

position # **▶** 1 CANDIDATE NAME

Then on the “*Official Ballot*” card fill in the oval next to that number. For some offices you may vote for more than one person. Watch for instructions under each office title that say, “Vote for no more than ___.”

5. **Write-in votes.** If you want to vote for a person whose name is not listed in the ballot guide:
 - a. Write the office, position number and the name of the person in the space provided inside the *secrecy envelope*, and

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- b. Mark the appropriately numbered oval on the "**Official Ballot**" card. Marking an oval without writing a name will not spoil the rest of the ballot.
6. **Overvoting.** If you mark more ovals for an office than the number of people that can be elected, your vote for that office will not be counted.
7. **No extra marks.** Make no marks on the ballot card except the marks you make to vote.

RETURNING YOUR BALLOT

This ballot must be returned to the county auditor even if you don't vote.

1. **Affidavit.** After marking your ballot card,
 - a. Read the affidavit on the affidavit envelope,
 - b. Fill in all of the information requested, and
 - c. Sign your name.
 - d. Be sure to include today's date.
- Your ballot will not be counted if you don't complete and sign the affidavit.
2. Use the secrecy envelope. Do not fold the ballot card; place it in the secrecy envelope. Do not return the paper ballot listing offices and candidates.
3. Put the secrecy envelope containing the ballot card in the affidavit envelope.
4. Securely seal the affidavit envelope. Your ballot will not be counted if the affidavit envelope is not sealed, or if the envelope has been opened and resealed.
5. Enclose the affidavit envelope in the envelope addressed to the county auditor.
6. Postmark before election day. If you mail your ballot, the envelope must be postmarked no later than the day before the election.
7. Return postage for this ballot is ____.
8. **Personal delivery.** You may also return your ballot in person, or send it back to the auditor with someone you trust. If the ballot is not mailed, it must be received by the auditor no later than 9 p.m. on election day. Do not return the ballot to a polling place; it will not be counted if you do.

**IF YOUR BALLOT IS REJECTED BEFORE THE BALLOT ENVELOPE IS
OPENED, YOU WILL BE NOTIFIED OF THE REASON.**

22.60(8) In addition to the instructions provided above, the following information shall be inserted in the instructions provided to voters at the general election:

a. **Voting on questions.** To vote in favor of a question, blacken the oval with the same number that appears next to the word "YES" in the question listed in the ballot guide. To vote against a question, blacken the oval with the same number as the word "NO."

b. **Voting on judges.** To vote to keep a judge in office, blacken the oval on the ballot card with the same number as the one next to the word "YES" opposite the judge's name listed in the ballot guide. To vote to remove a judge from office, blacken the oval with the same number as the word "NO."

c. **Straight party voting.** To vote for all of the candidates of a political party, blacken the oval on the ballot card with the same number as the one next to the name of that party. You can override a straight party vote by voting for a candidate of another party. If you can vote for more than one person for an office, you must mark all of your choices if you are splitting your vote between candidates of two or more parties.

[Filed 6/28/96, effective 8/21/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6545A

**TRANSPORTATION
DEPARTMENT[761]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 18, 1996, rescinded Chapter 420, "Motor Vehicle Dealers, Manufacturers and Distributors," and Chapter 422, "Travel Trailer Dealers, Manufacturers and Distributors," and adopted Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the January 17, 1996, Iowa Administrative Bulletin as **ARC 6174A**.

Provisions regarding manufacturers, distributors, wholesalers and dealers of motor vehicles and travel trailers are currently addressed in two chapters of rules. The new rules combine these provisions into one chapter. Differences between the current rules and the new rules are as follows:

A definition for "wholesaler" has been added.

In the new rules, the definition of "engage in the business" states that a person selling at retail more than six motor vehicles or six travel trailers during a 12-month period is pre-

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sumed to be engaged in the business. The current rules for travel trailer dealers set the threshold at three, not six.

In the new rules, required "regular business hours" for dealers and used vehicle wholesalers are 32 posted hours between Monday and Friday, inclusive. The current rules for motor vehicle dealers require 16 hours between 8 a.m. and 4:30 p.m. and between Monday and Friday, inclusive. The current rules for travel trailer dealers do not specify regular business hours.

The new rules clarify what must be submitted by a new vehicle dealer as evidence of a franchise.

The new rules require a corporate applicant for a dealer's or used vehicle wholesaler's license to certify compliance with state requirements for incorporation. The current rules require a corporate applicant to submit proof of registering the articles of incorporation with the state.

The new rules require an applicant for a dealer's or used vehicle wholesaler's license to certify compliance with zoning laws. The current rules require an applicant to provide evidence of compliance with zoning laws.

A new provision applicable only to motor vehicle dealers allows the Department to issue a temporary license valid until an on-site inspection of the dealership can be completed.

The current rules require an applicant for a dealer's license or used motor vehicle wholesaler's license to submit a copy of the lease agreement if the applicant's place of business/designated location is not owned by the applicant. This requirement has been dropped.

The new rules specify that a copy of an ownership document is allowable as evidence of ownership of a vehicle offered for sale if the original document is held by a lienholder.

Most time requirements for filing notice of changes with the Department have been standardized at ten days prior to the change.

There is a rule on fleet and retail auction sales in the current motor vehicle dealer rules. In the new rules, this rule applies to both types of dealers. It specifies that a dealer's license is required for fleet sales or retail auction sales of more than six vehicles in a 12-month period. An exception has been added for incidental vehicle sales at auction.

The new rules add a new provision allowing other business activities at a licensed location of a dealer or used vehicle wholesaler as long as these activities do not involve the sale of firearms, alcoholic beverages, or dangerous weapons.

The new rules contain new provisions for the salespersons of dealers and used vehicle wholesalers.

A rule on testing permits for motor trucks and truck tractors has been dropped.

The new rules define "all-weather surface" for display and repair facilities.

For a motor vehicle dealer's license, the new rules clarify that a separate license is required for each city or township in which the applicant maintains a place of business. For a travel trailer dealer's license, the new rules clarify that a separate license is required for each county in which the applicant maintains a place of business.

The new rules list the form needed to apply for an extension lot license.

The new rules are not identical to the ones published under Notice. The following changes were made:

When the proposed new rules were published under Notice, they included mobile home dealers. Except for the rule on dealer plates, the new rules as adopted do not apply to mobile home dealers. Thus, references to mobile homes and mobile home dealers were deleted. Also, the existing rule chapter regulating mobile home dealers remains "as is."

The new definition of "regular business hours" was modified. The definition under Notice required 40 posted hours between 8 a.m. and 4:30 p.m., Monday to Friday. The definition that was adopted requires 32 posted hours, Monday to Friday, without reference to time of day.

Sentences regarding extension lots were added to the definitions of "car lot" and "travel trailer lot."

The subrule explaining what must be submitted as evidence of a franchise was further clarified.

The subrule setting out the display facility requirements for motor vehicle dealers was clarified.

The definitions of "vehicle exhibition" and "vehicle show" in the rule on fairs, shows and exhibitions were modified to require that the vehicles exhibited or shown be new.

Reference to the standards seal for motor homes was deleted.

These rules are intended to implement Iowa Code chapters 321, 322 and 322C.

These rules will become effective August 21, 1996.

Rule-making actions:

ITEM 1. Rescind **761—Chapter 420**, "Motor Vehicle Dealers, Manufacturers and Distributors," and **761—Chapter 422**, "Travel Trailer Dealers, Manufacturers and Distributors."

ITEM 2. Adopt the following new chapter:

CHAPTER 425

MOTOR VEHICLE AND TRAVEL TRAILER DEALERS, MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS

761—425.1(322) Introduction.

425.1(1) This chapter applies to the licensing of motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers. Also included in this chapter are the criteria for the issuance and use of dealer plates.

425.1(2) The office of vehicle services administers this chapter.

a. The mailing address is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

b. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

761—425.2 Reserved.

761—425.3(322) Definitions. The following definitions, in addition to those found in Iowa Code sections 322.2 and 322C.2, apply to this chapter of rules:

"Car lot" means an extension lot for the sale of motor vehicles that is located within the same city or township as the motor vehicle dealer's principal place of business but is not adjacent. Parcels of property are adjacent if the parcels are separated only by an alley, street or highway that is not a controlled access facility. For the purpose of licensing motor vehicle dealers, "extension lot" has the same meaning as "car lot."

"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

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only” and “title” shall be synonymous with the term “certificate of title.”

“Consumer use” means use of a motor vehicle or travel trailer for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle under Iowa Code chapter 321.

“Dealer,” unless otherwise specified, means a person who is licensed to engage in this state in the business of selling motor vehicles or travel trailers at retail under Iowa Code chapter 322 or 322C.

“Designated location” means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a travel trailer dealer may use a mobile home as an office if taxes are current or a travel trailer as an office if registration fees are current.

“Engage in this state in the business” or similar wording means doing any of the following acts for the purpose of selling motor vehicles or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, or to act as an agent for the purpose of doing any of these acts. A person selling at retail more than six motor vehicles or six travel trailers during a 12-month period may be presumed to be engaged in the business. See rule 425.20(322) for provisions regarding fleet sales and retail auction sales.

“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. The terms “manufacturer’s statement,” “importer’s statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer’s certificate of origin.” See rule 761—400.1(321) for more information.

“Registered dealer” means a dealer licensed under Iowa Code chapter 322, 322B or 322C who possesses a current dealer certificate under Iowa Code section 321.59.

“Regular business hours” means to be consistently open to the public on a weekly basis at hours reported to the office of vehicle services. For a motor vehicle or travel trailer dealer or used vehicle wholesaler, regular business hours shall include a minimum of 32 posted hours between Monday and Friday, inclusive.

“Salesperson” means a person employed by a motor vehicle or travel trailer dealer or used vehicle wholesaler for the purpose of buying or selling vehicles.

“Travel trailer lot” means an extension lot for the sale of travel trailers that is located within the same county as the travel trailer dealer’s principal place of business but is not adjacent. Parcels of property are adjacent if the parcels are separated only by an alley, street or highway that is not a controlled access facility. For the purpose of licensing travel trailer dealers, “extension lot” has the same meaning as “travel trailer lot.”

“Vehicle,” unless otherwise specified, means a motor vehicle or travel trailer.

“Wholesaler” means a person who sells vehicles to dealers and not at retail.

This rule is intended to implement Iowa Code chapters 322 and 322C.

761—425.4 to 425.9 Reserved.

761—425.10(322) Application for dealer’s license.

425.10(1) Applications forms. To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete Form 417008, “Application for Dealer’s License,” and

Form 417009, “Fees for Dealer License Application,” and submit them to the office of vehicle services.

425.10(2) Surety bond.

a. The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle services:

(1) For a motor vehicle dealer’s license, \$50,000.

(2) For a travel trailer dealer’s license, \$25,000. However, an applicant for a travel trailer dealer’s license is not required to file a bond if the person is licensed as a motor vehicle dealer under the same name and at the same principal place of business.

b. The surety bond shall provide for notice to the office of vehicle services at least 30 days before cancellation.

c. The office of vehicle services shall notify the bonding company of any conviction of the dealer for a violation of dealer laws.

d. If the bond is canceled, the office of vehicle services shall notify the dealer by certified mail that the dealer’s license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

425.10(3) Franchise.

a. An applicant who intends to sell new motor vehicles or travel trailers shall submit to the office of vehicle services a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

b. If a signed franchise agreement is not available at the time of application, the department may accept written evidence of a franchise which includes all of the following:

(1) The name and address of the applicant and the manufacturer or distributor.

(2) The make of motor vehicle or travel trailer that the applicant is authorized to sell.

(3) The applicant’s area of responsibility as stipulated in the franchise.

(4) The signature of the manufacturer or distributor.

425.10(4) Corporate applicants. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.10(5) Place of business. The applicant shall maintain a place of business at a designated location. See rules 425.12(322) to 425.14(322) for further requirements.

425.10(6) Zoning. The applicant shall certify on the application that the applicant’s principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

425.10(7) Separate licenses required.

a. A separate license is required for each city or township in which an applicant for a motor vehicle dealer’s license maintains a place of business.

b. A separate license is required for each county in which an applicant for a travel trailer dealer’s license maintains a place of business.

425.10(8) to 425.10(10) Reserved.

425.10(11) Verification of compliance. The department shall verify the applicant’s compliance with all statutory and regulatory dealer licensing requirements.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.11 Reserved.

761—425.12(322) Motor vehicle dealer’s place of business.

425.12(1) Verification of compliance; temporary license. Before a motor vehicle dealer’s license is issued, an investigator from the department shall physically inspect an appli-

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cant's principal place of business to verify compliance with this rule. The department may issue a temporary license upon receipt of certification by the applicant that the place of business complies with this rule. The temporary license shall be in effect until an on-site inspection is completed.

425.12(2) Telephone service and office area. A motor vehicle dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all motor vehicles offered for sale. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.12(3) Facility for displaying motor vehicles. A motor vehicle dealer's principal place of business shall include a suitable space reserved for display purposes where motor vehicles may be viewed by prospective buyers.

a. For new motor vehicle dealers other than dealers selling motorcycles or motorized bicycles and dealers selling new trucks or motor homes exclusively, the display facility must be within a building and be at least 5.5 meters by 9.1 meters (18 feet by 30 feet) in area.

b. For used motor vehicle dealers other than dealers selling motorcycles or motorized bicycles and for dealers selling new trucks or motor homes exclusively, the display facility must be at least 5.5 meters by 9.1 meters (18 feet by 30 feet) in area and may be either within a building or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

c. For dealers selling motorcycles or motorized bicycles, the display facility must be within a building and be at least 3 meters by 4.6 meters (10 feet by 15 feet) in area.

425.12(4) Facility for reconditioning and repairing motor vehicles. A motor vehicle dealer's principal place of business shall include a facility for reconditioning and repairing motor vehicles. The facility shall be an area that:

a. Is equipped to repair and recondition one or more motor vehicles of a type sold by the dealer.

b. Is within a building.

c. Has adequate access.

d. Is separated from the display and office areas by solid, floor-to-ceiling walls and solid, full-length doors.

e. Is of a minimum size.

(1) The minimum size facility for motorcycles and motorized bicycles is an unobstructed rectangular area measuring 3 meters by 4.6 meters (10 feet by 15 feet).

(2) The minimum size facility for other types of motor vehicles is an unobstructed rectangular area measuring 4.3 meters by 7.3 meters (14 feet by 24 feet).

425.12(5) Motor vehicle dealer who is also a recycler. If a motor vehicle dealer also does business as a recycler, there shall be separate parking for motor vehicles being offered for sale at retail from motor vehicles that are salvage.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

761—425.13 Reserved.

761—425.14(322) Travel trailer dealer's place of business.

425.14(1) Telephone service and office area. A travel trailer dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all travel trailers offered for sale. Evidence of

ownership may include a copy of an original document if the original document is held by a lienholder.

425.14(2) Facility for displaying travel trailers. A travel trailer dealer's principal place of business shall include a space of sufficient size to permit the display of one or more travel trailers. The display facility may be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil. If an outdoor display facility is maintained, it may be used only to display, recondition or repair travel trailers or to park vehicles.

425.14(3) Facility for repairing and reconditioning travel trailers. A travel trailer dealer's principal place of business shall include a facility for reconditioning and repairing travel trailers. The facility:

a. Shall be equipped and of sufficient size to repair and recondition one or more travel trailers of a type sold by the dealer.

b. Shall have adequate access.

c. May be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

d. May occupy the same area as the display facility.

425.14(4) Travel trailer dealer also licensed as a motor vehicle dealer. If a travel trailer dealer is also licensed as a motor vehicle dealer under the same name and at the same principal place of business, separate facilities for displaying, repairing and reconditioning travel trailers are not required.

This rule is intended to implement Iowa Code sections 322C.1 to 322C.6.

761—425.15 and **425.16** Reserved.

761—425.17(322) Extension lot license. Extension lots of motor vehicle and travel trailer dealers must be licensed. Application shall be made on Form 417059, "Application for Dealer's Extension Lot License."

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.18(322) Supplemental statement of changes. A motor vehicle dealer shall file a written statement with the office of vehicle services at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the office of vehicle services.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

761—425.19 Reserved.

761—425.20(322) Fleet vehicle sales and retail auction sales.

425.20(1) Fleet sales. Any person who has acquired vehicles for consumer use in a business shall obtain the appropriate dealer's license when more than six vehicles are offered for sale at retail in a 12-month period.

425.20(2) Retail auction sales. Any person who sells at public auction more than six vehicles in a 12-month period shall obtain the appropriate dealer's license. All certificates of title for the vehicles offered for sale at public auction shall be duly assigned to the dealer.

425.20(3) Place of business. A dealer's license issued under this rule does not require a place of business.

425.20(4) Exceptions.

a. The state of Iowa, counties, cities and other governmental subdivisions are not required to obtain a dealer's license to sell their vehicles at retail.

TRANSPORTATION DEPARTMENT[761](cont'd)

b. This rule does not apply to a vehicle owner, or to an auctioneer representing the owner, selling vehicles at a retail auction if the vehicles were acquired by the owner for consumer use, the vehicles are incidental to the auction, and only one owner's vehicles are sold.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.21 to 425.23 Reserved.

761—425.24(322) Miscellaneous requirements.

425.24(1) The department shall not issue a license under Iowa Code chapter 322 or 322C to any other person at a place of business or designated location of a person currently licensed under Iowa Code chapter 322 or 322C.

425.24(2) A motor vehicle or travel trailer dealer shall not represent or advertise the dealership under any name or style other than the name which appears on the dealer's license.

425.24(3) Other business activities are allowed at a place of business of a dealer or the designated location of a used vehicle wholesaler, but those activities shall not include the sale of firearms, dangerous weapons as defined in Iowa Code section 702.7, or alcoholic beverages as defined in Iowa Code subsection 123.3(4).

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.25 Reserved.

761—425.26(322) Fairs, shows and exhibitions.

425.26(1) Definitions. As used in this rule:

"Display without permit" means the motor vehicle or travel trailer dealer may provide staff for security and for explaining or describing the design, features, performance, options and models of the vehicles being shown. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer's sticker price. "Display" does not mean offering vehicles for sale or negotiating sales of vehicles.

"Fair" means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely vehicles, and sponsored by a person other than a single dealer.

"Offer" vehicles "for sale," "negotiate sales" of vehicles, or similar wording, means doing any of the following at a fair, show or exhibition: posting prices in addition to the manufacturer's sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

"Vehicle exhibition" means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

"Vehicle show" means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

425.26(2) Permits for motor vehicle dealers. A fair, show or exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. Exception: A motor vehicle dealer who is licensed to sell motor homes may

be issued a permit to offer for sale Class "A" and Class "C" motor homes at a specified fair, show or exhibition in any Iowa county.

a. Permits will be issued to motor vehicle dealers only for county fairs, vehicle shows or vehicle exhibitions where more than one motor vehicle dealer may participate.

b. The permit period is the duration of the event, not to exceed 14 days. The permit is not valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event.

c. The permit is limited to the line makes for which the motor vehicle dealer is licensed in Iowa.

425.26(3) Reserved.

425.26(4) Permits for travel trailer dealers. A fair, show or exhibition permit allows a travel trailer dealer to display and offer new travel trailers for sale and negotiate sales of new travel trailers at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. The permit period is the duration of the event, not to exceed 14 days. The permit is valid on Sundays.

b. The permit is limited to the line makes for which the travel trailer dealer is licensed in Iowa.

425.26(5) Permit application. A motor vehicle or travel trailer dealer shall apply for a fair, show or exhibition permit on Form 411119. The application shall include the dealer's name, address and license number and the following information about the fair, show or exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

425.26(6) Display of permit. The motor vehicle or travel trailer dealer shall display the permit at the fair, show or exhibition in close proximity to the vehicles being exhibited.

425.26(7) Variance. The department may grant a variance from the requirements of these rules and grant a special limited permit for the display only of motor homes or travel trailers at a convention sponsored by an established national association, if the department determines that granting the permit would not encourage evasion of these rules and that the public interest so demands. The department may impose alternative permit requirements.

425.26(8) Display without permit. A dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

This rule is intended to implement Iowa Code section 321.124 and subsections 322.5(2) and 322C.3(9).

761—425.27 and 425.28 Reserved.

761—425.29(322) Classic car permit. A classic car permit allows a motor vehicle dealer to display and sell classic cars at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. "Classic car" is defined in Iowa Code subsection 322.5(3).

425.29(1) The permit period is the duration of the event, not to exceed five days. The permit is valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event. No more than three permits may be issued to a motor vehicle dealer in any one calendar year.

425.29(2) Application for a classic car permit shall be made on Form 411045. The application shall include dealer's name, address and license number and the following information about the county fair, vehicle show or vehicle exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

TRANSPORTATION DEPARTMENT[761](cont'd)

425.29(3) The motor vehicle dealer shall display the permit in a prominent place at the location of the county fair, vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code subsection 322.5(3).

761—425.30 to 425.39 Reserved.

761—425.40(322) Salespersons of dealers and used vehicle wholesalers.

425.40(1) Every motor vehicle and travel trailer dealer and used vehicle wholesaler shall:

a. Keep a current written record of all salespersons acting in its behalf. The record shall be open to inspection by any peace officer or any employee of the department.

b. Maintain a current record of authorized persons allowed to sign all documents required under Iowa Code chapter 321 for vehicle sales.

425.40(2) No person shall either directly or indirectly claim to represent a dealer or used vehicle wholesaler unless the person is listed as a salesperson by that dealer or wholesaler.

This rule is intended to implement Iowa Code sections 322.3, 322.13, and 322C.4.

761—425.41 to 425.49 Reserved.

761—425.50(322) Manufacturers, distributors, wholesalers, factory branches and distributor branches. This rule applies to the licensing of manufacturers, distributors, wholesalers, factory branches and distributor branches of new motor vehicles and travel trailers. The licensing of used vehicle wholesalers is addressed in rule 425.52(322).

425.50(1) Application for license. To apply for a license, the applicant shall complete Form 417029, "Manufacturer, Distributor, Wholesaler Application for License," and submit it to the office of vehicle services, accompanied by a list of the applicant's franchised dealers in Iowa and a sample copy of a completed manufacturer's certificate of origin that is issued by the firm. A distributor or wholesaler shall also provide a copy of written authorization from the manufacturer to act as its distributor or wholesaler.

425.50(2) Licensing requirements.

a. Motor vehicle zone offices shall be licensed as factory or distributor branches.

b. New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code paragraph 321.1(39)"d."

c. A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

d. A licensee shall notify the office of vehicle services in writing at least ten days prior to any:

(1) Change in name, location or method of doing business, as shown on the license.

(2) Issuance of a franchise to a dealer in this state to sell new vehicles at retail.

(3) Change in authorized representatives who are subject to licensing.

(4) Change in the trade name of a travel trailer manufacturer for delivery in this state.

e. A licensee shall notify the office of vehicle services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

761—425.51(322) Factory or distributor representatives.

A representative of a person licensed under rule 425.50(322) is required to have a factory or distributor representative's license. Application shall be made on Form 417032 to the office of vehicle services.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

761—425.52(322) Used vehicle wholesalers.

425.52(1) Application for license. To apply for a license as a used vehicle wholesaler, the applicant shall complete Form 417004, "Used Vehicle Distributor/Wholesaler Application for License," and submit it to the office of vehicle services. The applicant shall certify on the application that the applicant's designated location complies with all applicable zoning provisions or is a legal nonconforming use. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.52(2) Licensing requirements. The licensee shall:

a. Maintain regular business hours and telephone service at a designated location. The location shall include separate and adequate office space for keeping records of vehicles sold and offered for sale. Before a license is issued, an investigator from the department shall physically inspect the location to verify compliance with this rule.

b. Represent and advertise the business under the name which appears on the license.

c. Confine the sale of vehicles to licensed dealers.

d. Notify the department in writing at least ten days before any change in name, location, hours or method of doing business, as shown on the license.

425.52(3) Renewal. The license must be renewed annually.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

761—425.53 to 425.59 Reserved.

761—425.60(322) Right of inspection.

425.60(1) Peace officers have the authority to inspect vehicles or component parts of vehicles, business records, and manufacturers' certificates of origin, certificates of title and other evidence of ownership for all vehicles offered for sale.

425.60(2) The department has the right at any time to verify compliance of a person licensed under Iowa Code chapter 322 or 322C or issued a certificate under Iowa Code section 321.59 with all statutory and regulatory requirements.

This rule is intended to implement 321.62, 321.95, 322.13, and 322C.1.

761—425.61 Reserved.

761—425.62(322) Denial, suspension or revocation.

425.62(1) The department may deny an application or suspend or revoke a certificate or license if the applicant, certificate holder or licensee fails to comply with the applicable provisions of this chapter of rules, Iowa Code sections 321.57 to 321.63 or Iowa Code chapter 322 or 322C.

425.62(2) The department may deny a dealer's application for a fair, show or exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 425.26(322) or Iowa Code subsection 322.5(2) or 322C.3(9).

425.62(3) The department may deny a motor vehicle dealer's application for a demonstration permit for a period not to

TRANSPORTATION DEPARTMENT[761](cont'd)

exceed six months if the dealer fails to comply with rule 425.72(322).

425.62(4) 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 rules 761—Chapter 13.

This rule is intended to implement Iowa Code chapter 17A and sections 321.57 to 321.63, 322.6, 322.9, 322.31, and 322C.6.

761—425.63 to 425.69 Reserved.

761—425.70(321) Dealer plates.

425.70(1) Definition. The definitions of “dealer” and “vehicle” in Iowa Code section 321.1 apply to this rule.

425.70(2) Persons who may be issued dealer plates. Dealer plates as provided in Iowa Code sections 321.57 to 321.63 may be issued to:

- a. Licensed motor vehicle dealers.
- b. Licensed mobile home dealers. The plates shall display the word “trailer.”
- c. Licensed travel trailer dealers. The plates shall display the word “trailer.”
- d. A person engaged in the business of buying, selling or exchanging trailer-type vehicles subject to registration under Iowa Code chapter 321, other than travel trailers, and who has an established place of business for such purpose in this state. The plates shall display the word “trailer.”
- e. Insurers selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired as a result of a damage settlement or recovered stolen vehicles acquired as a result of a loss settlement. The plates shall display the words “limited use.”

f. Persons selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired or repossessed by them in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations, and who are not required to be licensed dealers. The plates shall display the words “limited use.”

g. Persons engaged in the business of selling special equipment body units which have been or will be installed on motor vehicle chassis not owned by them, solely for the purpose of delivering, testing or demonstrating the special equipment body and the motor vehicle. The plates shall display the words “limited use.”

h. A licensed wholesaler who is also licensed as a motor vehicle dealer as specified in paragraph 425.70(3)“e.”

425.70(3) Use of dealer plates.

a. Dealer plates shall not be displayed on vehicles that are rented, leased or loaned. However, a dealer plate may be displayed on a motor vehicle, other than a truck or truck tractor, loaned to a customer of a licensed motor vehicle dealer while the customer’s motor vehicle is being serviced or repaired by the dealer.

b. Motor vehicles used by dealers, manufacturers or distributors to transport other vehicles shall be registered, except when being transported from the place of manufacturing, assembling or distribution to a dealer’s place of business.

c. Saddle-mounted vehicles being transported shall display dealer plates.

d. Trailer dealer plates may be displayed on a trailer carrying a load, provided the truck or truck tractor towing the trailer is properly registered under Iowa Code section 321.122, except as provided in rule 425.72(321).

e. Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a

new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

761—425.71 Reserved.

761—425.72(321) Demonstration permits.

425.72(1) Demonstration permits may be issued to motor vehicle dealers to permit the use of dealer plates for the purpose of demonstrating the load capabilities of motor trucks and truck tractors. The fee for a permit is \$10.

425.72(2) The dealer shall complete the permit form. The information to be filled out includes, but is not limited to, the following:

- a. Date of issuance by the dealer, date of expiration, and the specific dates for which the permit is valid. The expiration date shall be five days or less from the date of issuance.
- b. Dealer’s name, address and license number.
- c. Name(s) of the prospective buyer(s) and all prospective drivers.
- d. Route of the demonstration trip. The points of origin and destination shall be the dealership. The permit is not valid for a route outside Iowa.
- e. The make, year and vehicle identification number of the motor vehicle being demonstrated.

425.72(3) The permit is a three-part form. The original copy of the permit shall at all times be carried in the motor vehicle to which it refers and shall be shown to any peace officer upon request. The dealer shall mail or deliver the second copy to the office of vehicle services within 48 hours after issuance. The dealer shall retain the third copy for at least one year from the date of issuance.

425.72(4) Only one demonstration permit per motor vehicle shall be issued for a prospective buyer.

425.72(5) The demonstration permit is valid only for a movement that does not exceed the legal length, width, height and weight restrictions. The permit is not valid for an overdimensional or overweight movement.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

[Filed 6/19/96, effective 8/21/96]

[Published 7/17/96]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.

ARC 6559A**UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to Iowa Code sections 476.76 and 476.77, the Utilities Board (Board) hereby gives notice that on June 21, 1996, the Board issued an order in Docket No. RMU-96-1, In Re: Foreign Acquisitions, “Order Adopting Rule,” to adopt new subrule 199 IAC 32.2(4). The new subrule exempts from Board review under the reorganization statutes and rules acquisitions outside the United States by a public utility if certain conditions are met.

On April 4, 1996, the Board issued an order in this docket to consider the adoption of this new subrule. The proposed rule was published in IAB Vol. XVIII, No. 22 (4/24/96), p.

UTILITIES DIVISION[199](cont'd)

1706, as **ARC 6378A**. The rule exempts from the Board's reorganization review certain foreign acquisitions which have minimal impact on Iowa ratepayers.

Comments on the proposed subrule were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and Peoples Natural Gas Company (Peoples), Division of UtiliCorp United Inc. An oral presentation was held May 30, 1996. While Peoples initially suggested some language changes to the proposed subrule, it withdrew these suggestions and filed a statement urging the Board to adopt the subrule as proposed. Consumer Advocate did not object to the proposed subrule.

The subrule recognizes that under certain limited circumstances Board review of foreign acquisitions, either by formal review or request for waiver, is not necessary in the public interest because of the minimal impact these acquisitions have on Iowa ratepayers. First, the amendment applies only if the utility does not receive more than 10 percent of its gross revenues from Iowa operations. For such a utility, its Iowa operations represent a small share of its total revenue. Second, the exemption does not apply if foreign acquisitions exceed \$500 million per year or if the aggregate value of foreign acquisitions exceeds 30 percent of the net book value of the public utility's assets. This ensures Board review of foreign acquisitions, either formally or by waiver application, when total foreign activity constitutes a significant portion of a public utility's business.

The amendment also sets forth the Board's policy that in a rate proceeding, upon proper showing, the utility's return on equity may be adjusted to reflect any risk associated with foreign acquisitions. This protects Iowa ratepayers from any adverse consequences of any foreign acquisitions. Finally, the amendment requires the utility to notify both the Board and the Consumer Advocate Division of the Department of Justice of any foreign acquisitions within 30 days of the closing of the transaction.

The adopted amendment is identical to the Notice of Intended Action. Therefore, no additional public comment on the adopted subrule is necessary.

This amendment is intended to implement Iowa Code sections 476.76 and 476.77.

This amendment will become effective on August 21, 1996.

The Board, after giving due consideration to the comments received, adopts the following amendment:

Adopt the following **new** subrule:

32.2(4) Notwithstanding the provisions of subrules 32.2(1) and 32.2(2), board review of acquisitions outside the United States by a public utility is not necessary in the public interest as long as the public utility does not receive more than 10 percent of its gross revenues from Iowa operations. The public utility is to notify the board and consumer advocate of any acquisitions which take place pursuant to this exemption within 30 days of the closing of the transaction. The notification shall include the dollar amount of the acquisition and a description of the acquisition. However, this exemption does not apply once the public utility expends more than \$500 million per calendar year on such acquisitions or if the aggregate value of foreign acquisitions which take place after January 1, 1996, exceeds 30 percent of the net book value of the public utility's assets. If one of these thresholds is met, future acquisitions may not take place without the filing of a proposal for reorganization or request for waiver. In a rate case proceeding, the board may, upon proper showing, adjust the return on equity to reflect any risk associated with the foreign acquisitions.

[Filed 6/27/96, effective 8/21/96]

[Published 7/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/17/96.



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

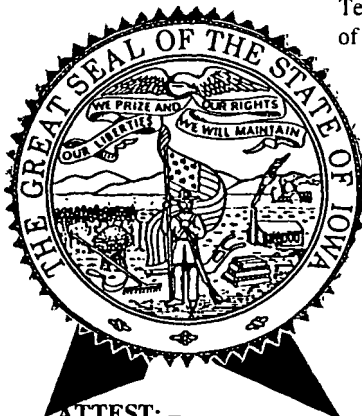
EXECUTIVE ORDER NUMBER 57

- WHEREAS,** employees of the State of Iowa are a valuable resource to the citizens they serve and the State as an employer; and
- WHEREAS,** the State of Iowa recognizes that violence at work can seriously affect employee work performance and morale; and
- WHEREAS,** employees have the right to work in an environment free from threats, intimidation, harassment, and acts of violence; and
- WHEREAS,** the State of Iowa is committed to maintaining a violence-free workplace.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the Laws and Constitution of the State of Iowa, and in support of our continuing efforts to maintain a violence-free workplace, do hereby order the following:

- I. The Iowa Department of Personnel shall develop a policy for all executive branch employees that will assist in preventing the potential for violence in the workplace, reducing the negative consequences for employees who experience or encounter violence, and maintaining a work environment of respect and positive conflict resolution.
- II. The Iowa Department of Personnel shall offer training to executive branch managers, supervisors, and employees, focusing on prevention of workplace violence, reporting threats of violence, and conflict resolution.
- III. The Iowa Department of Personnel shall establish a Threat Assessment Team to assist departments in the prevention, investigation, and resolution of threats and other acts of violence.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 28th day of June in the year of our Lord one thousand nine hundred and ninety-six.




Terry E. Branstad

 GOVERNOR

ATTEST:
Paul D. Pate

 SECRETARY OF STATE


State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

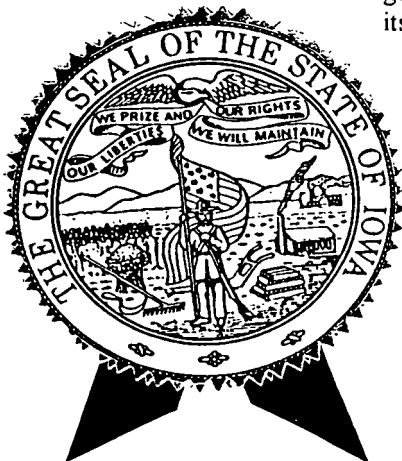
PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, On Sunday, June 16, 1996, a severe storm system moved across Iowa producing strong winds, heavy rainfall and flash flooding, causing extensive damage; and

WHEREAS, the effect of this storm system is severe flooding of roads, bridges, homes, businesses., farmland, streets, flood control facilities and other infrastructure; and

WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, clean-up activities and permanent restoration; and

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Boone, Hamilton, Hardin, and Story Counties, for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 20th day of June in the year of our Lord one thousand nine hundred and ninety-six.


 GOVERNOR

ATTEST:

 SECRETARY OF STATE



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

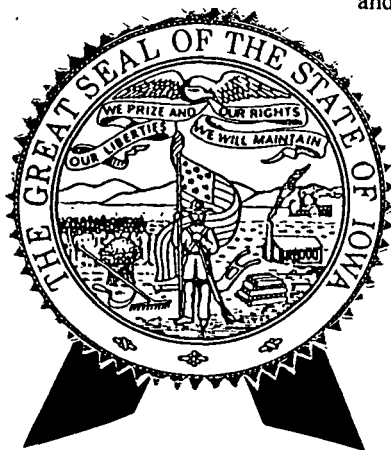
PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, On Thursday, June 20, 1996, another severe storm moved across Iowa producing strong winds, hail, heavy rainfall and flash flooding, causing extensive damage; and

WHEREAS, the effect of this storm system is severe flooding of roads, bridges, homes, businesses, farmland, streets, flood control facilities and other infrastructure, and

WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, clean-up activities and permanent restoration;


NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Woodbury County, for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 22nd day of June in the year of our Lord one thousand nine hundred and ninety-six.

Terry E. Branstad
GOVERNOR

ATTEST
Paul D. Pate
SECRETARY OF STATE



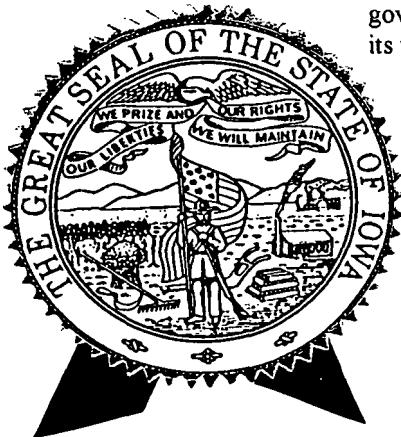
State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

- WHEREAS, On Thursday, June 20, 1996, another storm moved across Iowa producing strong winds, hail, heavy rainfall and flash flooding, causing extensive damage; and
- WHEREAS, the effect of this storm system is severe flooding of roads, bridges, homes, businesses, farmland, streets, flood control facilities and other infrastructure; and
- WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, clean-up activities and permanent restoration;
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Audubon, Carroll, Crawford, Harrison, Ida, Monona, Plymouth, Pottawattamie, Sac, and Shelby Counties, for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 24th day of June in the year of our Lord one thousand nine hundred and ninety-six.


GOVERNOR

ATTEST:


SECRETARY OF STATE

*SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED JUNE 19, 1996

Note: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 95-394. PARTNERSHIP FOR AFFORDABLE HOUSING v. BOARD OF REVIEW.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by McGiverin, C.J. (13 pages \$5.20)

In September 1984, Restore Davenport, Inc. (Restore), an Iowa nonprofit corporation, purchased an apartment complex in Davenport known as Courtland Apartments (Courtland), which consisted of thirty-seven one and two bedroom apartments. At that time, Courtland had no residents and was in need of renovation and rehabilitation. In January 1985, Restore made a claim for a property tax exemption for Courtland in accordance with Iowa Code section 427.1(9). The board of review for the city of Davenport granted the exemption. On September 15, 1992, Partnership for Affordable Housing, a limited partnership (Partnership), offered to acquire the controlling interest in Restore. Restore transferred its interest in Courtland to Partnership pursuant to a warranty deed, and Partnership assumed payment on the federal loan originally granted to Restore. Restore remained in existence as a general partner of Partnership. Partnership filed a claim for a property tax exemption for Courtland under section 427.1(9). In June 1993, the city board of review denied the claim. On Partnership's appeal, the district court affirmed, finding Courtland did not qualify as property used for charitable or benevolent objects. Partnership appeals. **OPINION HOLDS:** Partnership has identified no facts concerning the actual use of Courtland that would suggest Courtland had a solely charitable use as required by section 427.1(9). Notwithstanding the policy designating one rent-free apartment for abused women, Partnership does not have a rental policy for Courtland to accept residents for admission without regard to their ability to pay. Furthermore, Partnership makes little effort to prove that its operation of Courtland has been aided or bolstered through community support. Finally, Partnership's operation of Courtland does not provide "charitable" benefits to the community. Any charity flows from federal subsidies, not Partnership, to the Courtland lessees. After our de novo review of the record, we conclude Courtland does not qualify for property tax-exempt status. Therefore, we affirm the district court's decision to uphold the board's denial of Partnership's tax exemption claim.

No. 94-1376. ALLEN v. ALLEN WATER & WASTEWATER ENG'G.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by McGiverin, C.J. (10 pages \$4.00)

Petitioner Sandra Kay Allen (Allen) is the surviving spouse of Thomas Allen, a professional engineer and late president and an employee of Allen Water and Wastewater Engineering, Inc. (Wastewater). Thomas was killed in an automobile accident. Wastewater's workers' compensation insurer was Kemper Insurance Company. Apart from a wrongful death settlement with the negligent tortfeasors, Allen sought and was denied workers' compensation benefits from Kemper for her husband's death. The Iowa industrial commissioner, however, found his death work-related and awarded Allen benefits. Kemper asserted indemnity rights under Iowa Code section 85.22(1) (1993) from the Thomas estate settlement with the tortfeasors. The industrial commissioner believed that Kemper had no indemnity rights for benefits not yet paid and, therefore, denied the indemnification request. Both Allen and Kemper filed petitions for judicial review. The district court reversed the commissioner's indemnification ruling and remanded to the commissioner for a determination of the amount of indemnity to which Kemper was entitled. We transferred Allen's appeal to the court of appeals. That court affirmed the decision of the district court and we granted Allen's application for further review. The issue before us is whether the district court or the industrial commissioner must decide an issue involving an indemnification amount in this workers' compensation case. The district court and court of appeals concluded the amount of indemnity to which the insurer was entitled is a question of fact and, therefore, the case must be remanded to the industrial commissioner for resolution. **OPINION HOLDS:** In *Thomas v. Hansen*, 524 N.W.2d 145, 148 (Iowa 1994), we stated that "it is always for the court, not the agency, to determine matters of indemnity." Relying on this statement, Allen contends the indemnification issue must be decided by the district court. We disagree. In *Thomas*, at issue was a party's *right* to indemnity under Iowa Code section 85.22(1), not what the proper *amount* of that indemnity, if granted, should be. In cases involving *right* to and *amount* of indemnity, certainly the commissioner has the authority to resolve the section 85.22(1) issues presented. On judicial review, the district court must affirm the commissioner's findings if supported by substantial evidence. In these situations, the agency is the fact finder and the district court sits as an appellate body for judicial review purposes. Since the district court here was acting in an appellate capacity, we will not remand the case to that tribunal to determine the *amount* of Kemper's indemnity entitlement (which entitlement both parties now agree exists). We affirm the decision remanding to the industrial commissioner for further appropriate proceedings, including the receipt of any necessary evidence. After making a determination of the amount of Kemper's indemnity entitlement, the commissioner is instructed to enter an order accordingly. From this final agency action, either party has the right to seek judicial review before the district court pursuant to Iowa Code section 17A.19.

No. 95-1829. IN RE A.H.

Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, Associate Juvenile Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (8 pages \$3.20)

Fifteen-year-old A.H. was adjudicated delinquent pursuant to a negotiated agreement in which he admitted committing the crimes of theft in the fourth degree, criminal mischief in the fourth degree, and carrying a dangerous weapon. The juvenile court's adjudication order noted that the child's parent, J.H., had participated in the negotiation process. The court's disposition order placed A.H. on formal probation, continued his custody with his parents, and required that he make restitution and obtain counseling. The disposition order was later modified to require A.H.'s placement in residential treatment, and again to an even more structured setting. At another disposition review hearing counsel privately retained by J.H. sought to contest the propriety of A.H.'s continued placement. He also sought to offer proof of more appropriate alternatives. The court denied counsel the right to independently tender such evidence. This appeal addresses the question of whether the juvenile court erred when it disallowed J.H.'s participation through counsel in juvenile delinquency proceedings. **OPINION HOLDS:** We conclude that neither statutory nor constitutional law compels a court to permit a parent to be heard in such matters. We affirm the juvenile court's decision to limit the father's participation in this case.

No. 95-781. IN RE THE MARRIAGE OF CREW.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (7 pages \$2.80)

Bill and Kathryn were both California residents when they married in Las Vegas, Nevada, in 1974. They continued to reside in California where their two children were born. The parties' marriage was dissolved in 1986. The California decree awarded custody of the children to Kathryn and directed Bill to pay child support. Shortly after the divorce, Kathryn and the children moved to Iowa. Bill, meanwhile, took a job in Washington. Bill has never been to Iowa. He has nevertheless remained in contact with the children through regular correspondence and phone calls. He has also cooperated with Kathryn in arranging (and occasionally paying for) the children's visits to Washington. When the children needed orthodontic care, Bill contracted for it and paid the bill. His insurance carrier also furnished supplemental health care benefits when necessary. In January 1995, Kathryn filed an application for modification of the parties' decree of dissolution of marriage in the Iowa district court for Marshall County. Bill was personally served with original notice in Washington. Bill moved to dismiss, claiming assertion of personal jurisdiction over him would violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The district court ruled in his favor and dismissed the action. Kathryn appeals claiming that Bill's contacts with Iowa are sufficient to confer the jurisdiction of an Iowa court over him. **OPINION HOLDS:** Bill's contacts with residents of this state may be abundant, but those contacts are unrelated to this

No. 95-781. IN RE THE MARRIAGE OF CREW. (continued)

modification action. The focus, for jurisdictional purposes, rests on the defendant's connection with the *litigation* in the forum state, not the defendant's connection with *residents* in that state. The petition was properly dismissed for lack of personal jurisdiction over the respondent.

No. 95-329. TAGGART v. DRAKE UNIV.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Harris, J. (13 pages \$5.20)

Plaintiff was a probationary faculty member who reasonably expected to be, but was not, granted tenure. Plaintiff sued Drake, her department chair, Tom Worthen, and Dean Myron Marty, alleging that Drake breached her employment contract, that Dean Marty intentionally inflicted emotional distress upon her, and that Worthen defamed her before her colleagues. Defendants' motion for summary judgment was sustained and plaintiff has appealed. **OPINION HOLDS:** I. Statements contained in various documents cited by plaintiff were sufficiently definite to create an enforceable employment contract. We conclude, however, that plaintiff failed to prove the contract was breached by Drake. Summary judgment was appropriate against plaintiff's contract claim. II. Dean Marty's alleged conduct does not qualify as outrageous. The trial court correctly granted summary judgment on plaintiff's intentional infliction claim. III. The trial court was also correct in entering summary judgment against plaintiff's defamation claim. Nothing in the record would support a finding that Worthen harbored actual malice against plaintiff. Thus, even if we were to conclude the intra-university communications were published, the alleged defamatory statements were protected by qualified privilege. We affirm.

No. 94-1282. VAN BAALE v. CITY OF DES MOINES.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **COURT OF APPEALS DECISION VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Harris, J. (9 pages \$3.60)

Van Baale unsuccessfully protested his dismissal from the police force first through the administrative process and judicial review under Iowa Code chapter 400 and second through this action at law. He appealed, contending the district court erred in holding chapter 400 provided his exclusive remedy, and thus preempted his common-law claims. He also asserted the district court erred in dismissing his equal protection claim. The court of appeals held Van Baale's common-law claims were viable. We granted further review. **OPINION HOLDS:** I. Chapter 400 proceedings are the exclusive means of challenging the arbitrariness of a civil service employee's discharge because the chapter creates a new right to continued employment that did not exist at common law. Van Baale

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attempts to characterize his suit as something other than a wrongful termination claim but his common-law claims hinge on an alleged promise that he would retain his job. II. Van Baale's claim for intentional infliction of emotional distress was not preempted by chapter 400. However, it was correctly dismissed because the evidence did not support the first element of the claim; "outrageous conduct." III. The district court and court of appeals were also correct in holding that Van Baale did not assert a viable equal protection claim.

No. 95-1298. WEDEMEIER v. CAMMOUN.

Appeal from the Iowa District Court for Black Hawk County, Robert Mahan, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Andreasen, J. (7 pages \$2.80)

Howard Heine fell down steps at his residence and was seen and treated in an emergency room. Heine complained of pain in the back and upper shoulders and tenderness from the neck to the mid-thoracic spine. X-rays were taken and interpreted by Dr. Driss Cammoun, an employee of Radiological Associates, P.C. (Associates). Heine was diagnosed as having multiple contusions, secondary to the fall. Several months later Heine was involved in an automobile collision with Melva Wedemeier and sustained neck injuries as a consequence. Heine sued Wedemeier for damages and Wedemeier confessed judgment in the amount of \$100,000. Heine then filed a petition against the hospital and other health care providers who had provided services to him for injuries he received from his fall. He alleged the health care providers were negligent in their medical evaluation, diagnosis, and treatment of these injuries. Wedemeier filed a petition for contribution alleging the nature and extent of the injuries Heine sustained in the automobile collision were greatly aggravated because Cammoun and Associates did not properly identify, diagnose, and treat the neck fracture Heine sustained from the fall. In answer to Wedemeier's petition, the defendants raised as an affirmative defense that Iowa Code section 147.136 (collateral source rule in malpractice actions) limits or bars Wedemeier's claim for contribution. The court consolidated the Heine and Wedemeier cases and Wedemeier filed a motion to adjudicate law points. The district court concluded Wedemeier's contribution claim is barred by section 147.136. **OPINION HOLDS:** Although section 147.136 uses broad language, we do not interpret the statutory language to bar or limit recovery of a tortfeasor in a contribution action against an alleged joint tortfeasor. We find as a matter of law section 147.136 does not bar or limit Wedemeier's contribution claim against the defendants Cammoun and Associates. We reverse the court's ruling and remand for further proceeding.

No. 95-184. IN RE PROPERTY SEIZED FROM McINTYRE.

Appeal from the Iowa District Court for Winneshiek County, Margaret L. Lingreen, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (7 pages \$2.80)

Patrick McIntyre appeals the district court's denial of his motion for an award of costs and attorney fees which accrued during his successful resistance to the State's forfeiture proceeding. He contends that an award was mandated by Iowa Code section 625.29 (1993). **OPINION HOLDS:** After reviewing the evidence presented by the State, we believe that a reasonable person could conclude McIntyre's property was used in or derived from a drug transaction. Because the State's position was supported by substantial evidence, section 625.29(1) required the court to *not* award costs and attorney fees. We need not address whether special circumstances would have rendered an award of attorney's fees unjust.

No. 95-191. IN RE MARRIAGE OF EKLOFE.

Appeal from the Iowa District Court for Wapello County, Phillip R. Collett, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Snell, J. (5 pages \$2.00)

The marriage of Robert and Patricia Eklofe was dissolved by decree in 1985. At that time they had no minor children, but did have a son twenty years old who planned to attend college the following fall. The decree provided Robert was to pay toward his support as long as the son remained in college, up to the point he turned twenty-two. The decree also provided Robert was to pay Patricia alimony until her death or remarriage. In November 1994, Patricia obtained an ex parte mandatory income withholding order deducting an amount from Robert's weekly wages for current and past due alimony. Robert filed a motion to strike and set aside the order. Robert appeals the district court's holding that because there was a child support order in the original decree, even though child support was no longer payable, Iowa Code section 252D.1(1) (1993) provided the alimony was considered support and a mandatory wage assignment was appropriate. **OPINION HOLDS:** The child support order here was no longer binding on the parties because the son had reached twenty-two years of age several years before the income assignment was sought. Since there is no valid order of child support, Patricia may not obtain alimony payments through withholding. We reverse the decision of the district court and remand to the district court with instructions to sustain Robert's motion to quash and void the mandatory income withholding order.

No. 94-2135. AUDAS v. SCEARCY.

Appeal from the Iowa District Court for Van Buren County, Harlan Bainter, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Snell, J. (6 pages \$2.40)

Angela Audas gave birth to a son and suspected Michael R. Scearcy, a coworker, was the father. Angela sought assistance from the Iowa Child Support Recovery Unit (CSRU) to establish paternity and obtain child support. Angela understood that the CSRU would determine paternity using blood tests and then obtain an order for past and future child support as well as medical support. However, the order obtained by CSRU did not make provision for past support or past or future unreimbursed medical expenses. The order determined Scearcy was the father and required him to pay future support. It is signed by Scearcy, his attorney, and a representative of the state. Angela was never asked to sign the document; she is not listed as a party in the caption. Angela's later filed petition to modify the order was denied. The district court found she was barred from such an action under Iowa Code chapter 600B (1993). Angela appeals. **OPINION HOLDS:** I. The issues of past medical support and past support were neither raised nor litigated in the prior action. The doctrine of issue preclusion does not therefore bar Angela from the relief sought. II. Section 600B.30 (binding parties to the terms of their support agreement) does not bar Angela from seeking relief for questions neither raised nor litigated by the parties to the order. III. Section 600B.31 provides the court with continuing jurisdiction to increase and decrease support judgments when it is appropriate, including amounts incurred for future unreimbursed medical expenses. Evidence has been presented to establish both parents have roughly the same income. IV. We remand to the district court for a determination of the appropriate amounts for past support and past unreimbursed medical expenses and a modification to provide Scearcy is responsible for one-half the child's future unreimbursed medical expenses. V. Angela has applied for an award of her trial and appellate attorney fees. Pursuant to section 600B.25, judgment shall be entered in her favor against Scearcy for costs and for \$1,245.26 for trial attorney fees. Judgment shall also be entered against Scearcy for her appellate attorney fees in the amount of \$1000 and for appellate costs.

No. 95-622. STATE v. HUNTER.

Appeal from the Iowa District Court for Polk County, Rodney J. Rvan and Glenn E. Pille, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (12 pages \$4.80)

Appellant, Frederick W. Hunter, was convicted of sexual exploitation of a minor after he, while clad only in his underwear and sexually aroused, photographed his partially-clothed, adopted daughter in provocative poses. On appeal, he claims Iowa Code section 728.1(6)(g) (1993) is void for vagueness. He contends section 728.1(6)(g) is unconstitutionally vague because it does not define the term "nudity" or the phrase "for the purpose of arousing or satisfying the sexual desires." He claims First Amendment rights are implicated because the statute reaches persons who merely derive sexual enjoyment from a photograph

No. 95-622. STATE v. HUNTER. (continued)

of a nude minor. **OPINION HOLDS:** Section 728.1(6)(g) is not unconstitutionally vague as applied to Hunter. His conduct clearly fell within the statute's prohibition of photographing a nude minor for the purpose of arousing or satisfying the sexual desires of a person viewing the pictures. Because the statute does not encompass a substantial amount of protected expression, Hunter lacks standing to raise a facial vagueness challenge. We affirm.

No. 95-499. GERST v. MARSHALL.

Appeal from the Iowa District Court for Louisa County, John C. Miller, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Ternus, J. (17 pages \$6.80)

The Gersts discovered petroleum contamination on land they had purchased from the Marshalls, who ran a gas station on the property with Reif Oil Co. supplying the petroleum products. The Gersts unsuccessfully sued the Marshalls and Reif Oil and now appeal. The parties dispute, among other things, whether causation is an element of the Gersts' citizen action under Iowa Code section 455B.111. **OPINION HOLDS:** I. Because we find the issue of causation as to all of the Gersts' claims to be dispositive, we address only that issue. II. The standing requirement in section 455B.111(1) incorporates causation as an element of a citizen action. III. We have consistently required a plaintiff to meet the traditional but-for test of causation in fact. The Gersts failed to meet this test because the record cannot support a finding the release of gasoline occurred, or the contamination existed, prior to their purchase of the property from the Marshalls. Therefore, the district court properly granted summary judgment to the defendants.

No. 95-399. IN RE ESTATE OF CRABTREE.

Appeal from the Iowa District Court for Chickasaw County, James L. Beeghly, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (7 pages \$2.80)

Archard Crabtree deposited \$20,000 in a one-year certificate of deposit, payable on his death to his daughter, Mary Ann. Crabtree subsequently suffered a stroke and moved to a nursing home. In November 1991, Crabtree executed a plenary power of attorney, appointing his other daughter, Sherry, his attorney-in-fact. Included in Sherry's appointment was the power and authority to renew or cash certificates of deposit. By March 1992, the cash on hand was insufficient to meet Crabtree's monthly expenses. At the same time, Crabtree expressed a desire to purchase a \$4000 burial contract and a \$1700 monument. In consultation with Crabtree and with his agreement, Sherry cashed the certificate payable to Mary Ann and placed the money in Crabtree's checking account. She then purchased the burial contract and monument Crabtree wanted. Crabtree died in December 1992. In his will any assets remaining after the payment of his legal obligations were to be distributed equally to Mary Ann and Sherry. Mary

No. 95-399. IN RE ESTATE OF CRABTREE. (continued)

Ann filed a claim in probate seeking \$20,000 based on a claim Sherry breached her fiduciary duty. The district court dismissed Mary Ann's claim. Mary Ann appeals. I. We conclude Sherry's cashing of the certificate of deposit did not result in a gift to her. Sherry acted in Crabtree's best interest, and with his approval, in cashing a mature certificate of deposit rather than one which would have required payment of a penalty. Sherry did not breach her fiduciary duty to Crabtree. II. Because Mary Ann did not present the issue of a duty to a third-party beneficiary at trial, it is deemed waived.

No. 96-333. IOWA SUPREME CT. BD. OF PROFESSIONAL ETHICS & CONDUCT v. SCHEETZ.

On review of the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (9 pages \$3.60)

In this attorney disciplinary proceeding, the Grievance Commission recommended that James Scott Scheetz of Des Moines be reprimanded for his failure to handle in a timely manner three probate matters he accepted. **OPINION HOLDS:** I. We agree that Scheetz violated several disciplinary rules in neglecting the probate matters and failing to respond to the ethics board's notices of complaint. II. Given Scheetz' voluntary remedial actions limiting his practice to areas of competence and his demonstrated ability to practice law in a more structured setting, we conclude the most appropriate sanction to impose is a public reprimand. Should Scheetz ever return to private practice, we (1) prohibit him from accepting probate or estate matters without first aligning himself with a mentor experienced in this area, and (2) require him to adopt, use and maintain effective law office management practices. Costs are assessed to Scheetz.

No. 95-405. LOVE v. STATE.

Appeal from the Iowa District Court for Jones County, Thomas L. Koehler, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (9 pages \$3.60)

James Love was an inmate at the Iowa Men's Reformatory (IMR). A correctional officer searched Love's cell at IMR and found legal papers belonging to another inmate. Under a local correctional facility rule, inmates at IMR are permitted to help other inmates with their legal work only if the inmates involved sign an agreement of understanding. Love admitted he had failed to sign the agreement before agreeing to help the fellow inmate with his legal problem. Love received a disciplinary notice charging him with violating several rules. At the disciplinary hearing, Love conceded he had violated rule 16, a minor rule prohibiting inmates from possessing anything not authorized. Rule 23 is a major rule providing that inmates commit a violation by failing to obey a (1) written or

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posted order, or (2) a verbal order given by any person in authority or staff of the institution. Love argued he had not violated rule 23 because he had not received a direct order. The committee found Love guilty of violating rules 16 and 23. The committee imposed discipline, which was partially modified through correctional appeals. Love filed an application for postconviction relief. Following a hearing, the district court affirmed the committee's decision and dismissed Love's application. Love appeals, complaining the committee improperly found he had violated rule 23 and raising procedural due process concerns. **OPINION HOLDS:** To insure fairness, consistency, and integrity in the disciplinary process, we require prison authorities to abide by the following requirement when charging a rule 23 violation. If the alleged conduct involves violation of a rule or posted order not classified as a major rule, the disciplinary notice, as well as the disciplinary committee's decision, must state adequate reasons—in addition to the infraction—to justify rule 23 sanctions. Prison authorities failed to do so here. Consequently, the committee's decision relative to the alleged rule 23 violation cannot stand. We reverse the district court order dismissing Love's postconviction relief application. We remand for consideration of the appropriate sanction for Love's uncontested violation of rule 16.

No. 94-2009. STATE v. BAYLES.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (20 pages \$8.00)

Edgar Karrol Bayles appeals from a judgment of conviction and sentence for kidnapping in the first degree. He contends (1) the district court abused its discretion by admitting character evidence concerning other crimes, which he claims was irrelevant, lacked sufficient foundation, and was unfairly prejudicial, (2) the evidence was insufficient to establish his guilt, and (3) his trial counsel were ineffective because they failed to object to alleged instances of prosecutorial misconduct. **OPINION HOLDS:** I. The district court admitted Bayles' statements to J.W. regarding other crimes he allegedly committed. This evidence was relevant to Bayles' claim of consent. These statements are (1) admissions of a party-opponent, (2) not hearsay, and (3) admissible on the strength of J.W.'s testimony alone. The district court did not abuse its discretion when it concluded the evidence was not unfairly prejudicial and admitted it. II. We assume, without deciding, that the State must prove Bayles intentionally performed a sex act against the will of J.W. during the alleged kidnapping. Here, a jury could reasonably infer that Bayles intended to have sex with J.W. whether she wanted to or not. More important, Bayles had no basis to think that J.W. had in fact consented to sexual intercourse during her confinement. There was substantial evidence to support the jury's finding that Bayles intentionally committed sexual abuse during the alleged kidnapping. III. The record here is sufficient to reach the merits of Bayles' ineffective assistance of counsel claim. We assume, without deciding, that the prosecutor's line of questioning was improper. However, because the law governing the issue complained of was unsettled at the time the case was tried, defense counsel were under no duty to object to prosecutorial

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questions on the truth or veracity of other witnesses. Even if defense counsel had been under such a duty, no prejudice resulted from the jury hearing Bayles' answers. The evidence of Bayles' guilt on the kidnapping charge was overwhelming. We affirm.

No. 95-259. FREESE v. BITUMINOUS CAS. CORP.

Appeal from the Iowa District Court for Woodbury County, Dewie Gaul, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Carter, J. (4 pages \$1.60)

Julie Ann and Raymond Freese were involved in an automobile collision with Walter Kosinski. Julie Freese received severe injuries and recovered damages from Kosinski in the sum of \$165,000. Kosinski did not have liability insurance. The automobile in which the Freeses were riding was owned by Raymond Freese's employer, who had underlying automobile liability insurance. The liability insurer ultimately paid Julie Freese \$100,000 under the uninsured motorist coverages provided in that policy. The employer's commercial umbrella policy issued by Bituminous Casualty Corporation required payment for "the ultimate net loss in excess of the retained limit in the underlying policy" for which the insured was legally liable. The umbrella policy also contained an uninsured motorist exclusion. The Freeses brought an action seeking to recover uninsured motorist benefits under the umbrella policy. The district court entered a judgment denying such coverage. The Freeses appeal. **OPINION HOLDS:** The only implications that may be drawn from the language of the endorsement on which the Freeses rely is that it is eliminating any coverage otherwise existing under the umbrella policy with respect to the use of any automobile other than those automobiles insured by the underlying policy. The umbrella clearly provides no coverages other than liability coverages. The judgment of the district court should be affirmed.

No. 94-2034. HILDRETH v. IOWA DEP'T OF HUMAN SERVS.

Appeal from the Iowa District Court for Polk County, Ross A. Walters, Judge. **REVERSED.** Considered en banc. Opinion by Carter, J. Dissent by Harris, J. (7 pages \$2.80)

The Iowa Department of Human Services determined that Tracey Hildreth was guilty of child abuse as a result of spanking his eight-year-old daughter on the buttocks with a wooden spoon. The spanking left two red marks still observed the following morning and several days later. The department determined the reddening of skin was evidence of a nonaccidental physical injury under section 232.68(2)(a) (1993). On judicial review, the district court upheld the agency's decision. Hildreth appealed. **OPINION HOLDS:** The definition of a foreseeable physical injury contained in Iowa Administrative Code rule 441-175.1 required for a finding of child abuse is expressed in terms of a necessary healing process of bodily tissue so as to be restored to a sound and healthy condition. Under this definition, welts, bruises, or similar markings are not physical injuries

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(continued)

per se but may be and frequently are evidence from which the existence of a physical injury can be found. The department should have concluded that Hildreth could not reasonably have foreseen that the rather limited striking of Amanda's buttocks would produce a physical injury. Because we conclude that the department's finding of a nonaccidental physical injury was contrary to law, the judgment of the district court and the decision of the agency are reversed. This disposition makes it unnecessary to consider Hildreth's contentions based on the free exercise of his religion. **DISSENT ASSERTS:** I think the administrative rule is an eminently reasonable definition of physical injury. Hildreth easily qualifies as an abuser under that definition. I would affirm.

No. 95-446. IN RE ESTATE OF BICKFORD.

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Larson, J. (7 pages \$2.80)

This is a declaratory judgment action to determine who is entitled to the proceeds of two life insurance policies—the named beneficiary, Sonia Kruse, who had been divorced from the decedent, or the decedent's estate. Sonia argued that the Employee Retirement Income Security Act (ERISA) preempts state law in this case, and under federal *common* law, the proceeds must be paid to her as the named beneficiary. The estate countered that ERISA does not preempt state law because it is silent on the specific issue of whether a divorce will terminate the rights of an insurance beneficiary and further that even under federal common law a dissolution decree may effectively terminate the interests of a divorced beneficiary. The district court ruled that the named beneficiary was entitled to the proceeds notwithstanding the intervening divorce. The estate appeals. **OPINION HOLDS:** We conclude that, even if ERISA were not deemed to be preemptive, the dissolution decree did not terminate Sonia's interest as the named beneficiary.

No. 95-205. STATE v. HARTLEY.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, Robert J. Curran, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT REVERSED; CASE REMANDED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Larson, J. (5 pages \$2.00)

Jeffrey and Ruthann Hartley were arrested in their home and charged with domestic abuse. The next day the district court found probable cause for the defendants' arrest but dismissed the complaints "for lack of a prosecution witness." On the State's application for reinstatement of the charges, the court, in two separate orders, reaffirmed its previous dismissal. Following a hearing, the district court entered its third order, which stated that the assistant county

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attorney had voluntarily elected not to be present at the initial appearance and, alternatively, that a dismissal under rule 27.1 barred another prosecution. The court of appeals affirmed on a divided vote. We granted the State's application for further review. **OPINION HOLDS:** The district court's first two orders, which were entered without any notice to the county attorney's office, are invalid. We have judicially imposed a requirement of notice to the State of an intent to dismiss. As to the third order, there is no evidence to support the court's conclusion that the county attorney had voluntarily elected not to be present at the initial appearance. Finally, we reject the court's alternate conclusion in the third order. An erroneous dismissal prior to a defendant's being placed in jeopardy does not prevent future prosecution. For these reasons, we vacate the court of appeals decision, reverse the judgment of the district court, and remand for further proceedings.

No. 95-1348. HOTH v. MEISNER.

Appeal from the Iowa District Court for Clayton County, K.D. Briner, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Per curiam. (5 pages \$2.00)

Tina Hoth suffered injuries while riding in a car driven by a minor who allegedly became intoxicated while attending a party at a business known as LD's Restaurant and Lounge. Lyle Meisner was the sole owner of LD's. The suit brought by Hoth against Meisner asserted that Meisner violated the law by furnishing beer to a minor. The district court entered summary judgment against Hoth on the ground that the common-law suit was preempted by our dramshop statute. Relying on Iowa Rule of Civil Procedure 252, Hoth petitioned the district court to vacate the summary judgment based upon fraud and the discovery of new evidence. She claimed to have discovered documents from the state alcohol beverage division that proved the minor consumed the alcohol on unlicensed premises, making the dramshop statute inapplicable. The court denied the petition, and Hoth appealed. **OPINION HOLDS:** I. We agree with the district court that Meisner's affidavit, which mistakenly suggested all of his premises were licensed, cannot be fairly characterized as fraudulent for purposes of rule 252. II. Hoth has failed to establish due diligence in obtaining the newly discovered evidence when she knew from the beginning of the litigation that Meisner would be relying upon the preemption of the dramshop statute as an affirmative defense. We find no abuse of discretion in the court's refusal to vacate the judgment.

No. 95-452. STATE v. McSORLEY.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Snell, and Ternus, JJ. Per curiam. (6 pages \$2.40)

McSorley made false entries in his employer's corporate records to conceal a \$4559.86 deficiency in cash receipts. He now appeals from his conviction for second-degree fraudulent practice, contending the district court erred in finding him guilty of second rather than fifth-degree fraudulent practice because he did not actually obtain any money, services, or property as a result. He argues the word "involved" as used in the penalty sections means "obtained" and that for purposes of second-degree fraudulent practice the State had to prove he received money, property, or services valued between \$1000 and \$10,000. **OPINION HOLDS:** The word "involved" does not refer to amounts taken or obtained, based on legislative history and the definition of the crime. If the fraud had been incapable of being quantified as to value or amount, then the penalty provision of section 714.11(3) (third-degree fraudulent practice) would have applied. However, the amount in this case was quantifiable and fell within the value range for second-degree fraudulent practice. Thus, there was no error.

No. 95-723. WINTERS v. STATE.

Appeal from the Iowa District Court for Lee County, John C. Miller, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Carter, J. (5 pages \$ 2.00)

Prison inmate Jeffrey Winters, who is white, was found guilty of violating prison rule 23 (disobeying an order) when he refused to share a cell with a black inmate. Winters' refusal was based on his claim that racial separation is a doctrine of his church. He exhausted his administrative remedies and was denied an application for postconviction relief. He appeals. Winters argues that the court erred when it refused to apply heightened scrutiny to his claim under the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb, because he did not specifically base his claim on this. **OPINION HOLDS:** The RFRA is of general application and does not need to be specifically alleged as the basis for a particular claim. Nonetheless, Winters failed to support his conclusory description of his church's religious tenets with any credible evidence. Consequently, the district court was unable to ascertain whether Winters' adherence to his beliefs was in fact burdened by an integrated prison setting. We have considered all issues presented and affirm the judgment of the district court.

No. 95-810. STATE v. STARK.

Appeal from the Iowa District Court for Buena Vista County, John P. Duffy, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Andreasen, JJ. Opinion by Carter, J. (6 pages \$2.40)

Defendant was charged with two counts of attempted murder after she slit the throats of her two minor children. The district court found that the State had

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proven the elements of the offenses but determined that defendant was not guilty by reason of insanity. Under Iowa Rule of Criminal Procedure 21(8)(b), the court ordered defendant committed to a state mental health institute for an evaluation and a report to the court concerning the present status of her mental illness and the degree of danger that she posed to herself and others. At the ensuing hearing, the chief medical officer and the other two witnesses testified that defendant will probably be permanently afflicted with schizophrenia. They also concluded, however, that, if defendant could live in a proper environment and be administered a prescribed medication in strict compliance with a physician's directions, she would pose no danger to herself or others. Absent such assurance, the witnesses believed that defendant could revert to a delusional and highly dangerous state. The district court ordered that defendant continue to be committed for an indefinite time. The court concluded that, in applying rule 21(8)(e), it lacked authority, following defendant's release, to impose the necessary conditions to assure defendant would only be subjected to a suitable environment and that her prescribed medications would be regularly administered. Defendant appeals. **OPINION HOLDS:** I. We conclude both rule 21(8)(b) and due process require a finding of both mental illness and danger to the defendant or others in order to continue the initial commitment. The fact that a person has been found, beyond a reasonable doubt, to have committed a criminal act that caused serious injury to another is some indication that that person's continued liberty could imperil the safety of others. II. We are persuaded that the district court does have authority to order a conditional release under rule 21(8)(e) to control defendant's mental disease. Nevertheless, we are satisfied that the district court's order continuing the defendant's initial commitment was proper at the time that order was made. If future reports reveal the need for another hearing on this issue, a record may be developed on the feasibility and means to impose the conditions necessary to assure that defendant will not pose a threat to herself or others. Because the present record is inadequate to show if and how this may be done, we affirm the order continuing defendant's commitment.

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