



IOWA ADMINISTRATIVE BULLETIN

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Pages 1337 to 1388

CONTENTS IN THIS ISSUE

Pages 1348 to 1374 include ARC 9702A to ARC 9729A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice, Motor vehicle fuel—MTBE, 85.33
ARC 9724A 1348

ALL AGENCIES

Schedule for rule making 1340
Publication procedures 1341
Administrative rules on CD-ROM 1341
Agency identification numbers 1345

CITATION OF ADMINISTRATIVE RULES 1339

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice, Community economic betterment program, 53.2, 53.6(1) ARC 9726A 1348
Notice, Iowa export trade assistance program, 68.1 to 68.8 ARC 9725A 1349

EDUCATIONAL EXAMINERS BOARD[282] EDUCATION DEPARTMENT[281]"umbrella"

Notice, Temporary one-year classroom monitor authorization, 14.35 ARC 9727A 1350

EDUCATION DEPARTMENT[281]

Filed, Open enrollment, 17.2 to 17.4, 17.7, 17.8, 17.10(7) ARC 9707A 1366
Filed, Access to school breakfast program, 69.11 to 69.16 ARC 9708A 1367

HUMAN SERVICES DEPARTMENT[441]

Notice, Medicaid reimbursement rate for non-state-owned nursing facilities, 81.6(16)"d" ARC 9710A 1351
Filed, Disability-services management—county management plan, 25.11 to 25.19 ARC 9705A 1368
Filed, Community spouse's resources and maintenance needs; SSI program, 51.4(1), 51.7, 52.1, 75.5(3), 75.16(2), 177.4 ARC 9704A 1369

Filed, Quarterly report for transitional Medicaid, 75.1(31) ARC 9703A 1370
Filed, Child care payment for parents in academic or vocational training, 170.2(2) ARC 9702A 1371

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Division[193] COMMERCE DEPARTMENT[181]"umbrella"
Filed, Continuing education, 3.1 to 3.3, 3.5, 3.7 ARC 9723A 1372

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Notice, Use of nontoxic shot on wildlife areas, 51.9 ARC 9720A 1352
Notice, Waterfowl and coot hunting seasons, 91.1, 91.3, 91.4(2), 91.5(1), 91.6 ARC 9719A 1353
Notice, Wild turkey fall hunting, 99.2(2), 99.2(3) ARC 9721A 1354
Notice, Deer hunting, 106.1(4), 106.2(4), 106.3(3), 106.4 to 106.6, 106.8 ARC 9722A ... 1355
Filed Emergency, Lands and waters conservation fund program—application deadlines, 27.5 ARC 9714A 1364
Filed, Horsepower limit on Lake Icaria, 40.20 ARC 9711A 1372
Filed, Operation of motor vehicles in meandered streams, 49.5 ARC 9712A 1373
Filed, Scuba and skin spearing of rough fish in meandered streams, 83.2(1) ARC 9713A 1373

PERSONNEL DEPARTMENT[581]

Filed Emergency, IPERS, 21.4(2), 21.11(9) ARC 9728A 1364

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Filed, Speech pathology and audiology examiners, 300.6(2), 301.4 ARC 9709A 1373

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Des Moines, Iowa 50319

Continued on page 1339

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.

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PUBLIC FUNDS—AVAILABILITY		TRANSPORTATION DEPARTMENT[761]	
Public Health Department[641]		Notice, Knowledge test and driving test waivers, 604.21(2), 604.31(2) ARC 9715A	1357
Community-based programs of family planning (FP), maternal and child health (MCH), and special supplemental nutrition program for women, infants and children (WIC)	1347	USURY	
		Notice	1358
PUBLIC HEALTH DEPARTMENT[641]		UTILITIES DIVISION[199]	
Notice of public funds availability	1347	COMMERCE DEPARTMENT[181]"umbrella"	
PUBLIC HEARINGS		Notice, Individual meter measurement, 19.3(1), 20.3(1) ARC 9716A	1358
Summarized list	1342	Notice, Disconnection and reconnection, 19.4(15), 20.4(15) ARC 9717A	1359
REVENUE AND FINANCE DEPARTMENT[701]		Notice, Review of fuel procurement practices, 20.13 ARC 9729A	1360
Notice, Power of attorney, 7.34 ARC 9718A	1356	VETERANS AFFAIRS COMMISSION[801]	
SUPREME COURT		Notice, Waiver rules, 4.14, 4.15 ARC 9706A	1362
Decisions summarized	1375		

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 2000

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. 24 '99	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7	Jan. 26	Feb. 15	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 21	Feb. 9	Feb. 29	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 4	Feb. 23	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 18	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sept. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sept. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 12	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	June 23	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sept. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sept. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Aug. 18	Sept. 6	Oct. 11	Jan. 8 '01
July 7	July 26	Aug. 15	Aug. 30	Sept. 1	Sept. 20	Oct. 25	Jan. 22 '01
July 21	Aug. 9	Aug. 29	Sept. 13	Sept. 15	Oct. 4	Nov. 8	Feb. 5 '01
Aug. 4	Aug. 23	Sept. 12	Sept. 27	Sept. 29	Oct. 18	Nov. 22	Feb. 19 '01
Aug. 18	Sept. 6	Sept. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 5 '01
Sept. 1	Sept. 20	Oct. 10	Oct. 25	Oct. 27	Nov. 15	Dec. 20	Mar. 19 '01
Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
Sept. 29	Oct. 18	Nov. 7	Nov. 22	Nov. 24	Dec. 13	Jan. 17 '01	Apr. 16 '01
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 8	Dec. 27	Jan. 31 '01	Apr. 30 '01
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Dec. 22	Jan. 10 '01	Feb. 14 '01	May 14 '01
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '01	Jan. 5 '01	Jan. 24 '01	Feb. 28 '01	May 28 '01
Nov. 24	Dec. 13	Jan. 2 '01	Jan. 17 '01	Jan. 19 '01	Feb. 7 '01	Mar. 14 '01	June 11 '01
Dec. 8	Dec. 27	Jan. 16 '01	Jan. 31 '01	Feb. 2 '01	Feb. 21 '01	Mar. 28 '01	June 25 '01
Dec. 22	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5 '01	Jan. 24 '01	Feb. 13 '01	Feb. 28 '01	Mar. 2 '01	Mar. 21 '01	Apr. 25 '01	July 23 '01

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
20	Friday, March 17, 2000	April 5, 2000
21	Friday, March 31, 2000	April 19, 2000
22	Friday, April 14, 2000	May 3, 2000

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.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, 1st Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to an E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us
kbates@legis.state.ia.us

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

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Guide to Rule Making, June 1995 Edition, available upon request to the Iowa Administrative Code Division,
Lucas State Office Building, First Floor, Des Moines, Iowa 50319.

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
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Community economic betterment program, 53.2, 53.6(1) IAB 3/8/00 ARC 9726A	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	March 29, 2000 10 a.m.
Iowa export trade assistance program, 68.1 to 68.8 IAB 3/8/00 ARC 9725A	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	March 28, 2000 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Uniform waiver and variance rules, ch 6 IAB 2/9/00 ARC 9674A	Conference Room 2 South—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2000 11 a.m.
Initial applicants—state and federal background checks, 14.1 IAB 2/9/00 ARC 9672A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 14, 2000 3 p.m.
Alternative preparation license, 14.10, 14.33 IAB 2/9/00 ARC 9666A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 14, 2000 1 p.m.
Substitute teaching—two-year exchange license, 14.17(3) IAB 2/9/00 ARC 9670A	Conference Room 2 South—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2000 9 a.m.
Temporary one-year classroom monitor authorization, 14.35 IAB 3/8/00 ARC 9727A	State Board Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 28, 2000 4 to 5:30 p.m.
(ICN Network)	ICN Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 30, 2000 4 to 5:30 p.m.
	ICN Classroom Southern Prairie AEA 15 2814 N. Court St. Ottumwa, Iowa	March 30, 2000 4 to 5:30 p.m.
	ICN Classroom AEA 7 3712 Cedar Heights Dr. Cedar Falls, Iowa	March 30, 2000 4 to 5:30 p.m.

EDUCATIONAL EXAMINERS BOARD[282] (Cont'd)

(ICN Network)	ICN Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	April 3, 2000 4 to 5:30 p.m.
	ICN Classroom AEA 4 1382 4th Ave. NE Sioux Center, Iowa	April 3, 2000 4 to 5:30 p.m.
	ICN Classroom Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	April 3, 2000 4 to 5:30 p.m.
	ICN Classroom Southwestern Community College 2300 4th St./Hwy. 34 Red Oak, Iowa	April 3, 2000 4 to 5:30 p.m.
Staff development units for licensure renewal, 16.3(3), 16.5(1) IAB 2/9/00 ARC 9673A	Conference Room 2 South—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2000 10 a.m.

ELDER AFFAIRS DEPARTMENT[321]

Care review committees, amendments to ch 9 IAB 2/23/00 ARC 9696A	North Conference Room—3rd Floor Clemens Bldg. 200 Tenth St. Des Moines, Iowa	March 14, 2000 10 a.m.
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NATURAL RESOURCE COMMISSION[571]

Use of nontoxic shot on wildlife areas, 51.9 IAB 3/8/00 ARC 9720A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.
Waterfowl and coot hunting, 91.1, 91.3, 91.4(2), 91.5(1), 91.6 IAB 3/8/00 ARC 9719A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.
Wild turkey fall hunting, 99.2 IAB 3/8/00 ARC 9721A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.
Deer hunting, 106.1(4), 106.2(4), 106.3(3), 106.4 to 106.6, 106.8 IAB 3/8/00 ARC 9722A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.

TRANSPORTATION DEPARTMENT[761]

Junked vehicles, 400.23 IAB 2/23/00 ARC 9690A	Conference Room—Lower Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 16, 2000 10 a.m. (If requested)
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TRANSPORTATION DEPARTMENT[761] (Cont'd)

Licenses—field of vision test, 604.13(4) IAB 2/23/00 ARC 9694A	Conference Room—Lower Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 16, 2000 1 p.m. (If requested)
License examination, 604.21(2), 604.31(2) IAB 3/8/00 ARC 9715A	Conference Room—Lower Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 30, 2000 10 a.m. (If requested)

VETERANS AFFAIRS COMMISSION[801]

Waivers, 4.14, 4.15 IAB 3/8/00 ARC 9706A	Ford Memorial Conference Room Iowa Veterans Home 1301 Summit Marshalltown, Iowa	March 28, 2000 10 a.m. (If requested)
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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].

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	SERVICES	APPLICATION DUE DATE	CONTRACT AND PROJECT PERIOD
Public Health	Community-Based Programs of Family Planning (FP), Maternal & Child Health (MCH), and Special Supplemental Nutrition Program for Women, Infants and Children (WIC)	<p>MCH and WIC programs are to be delivered in regional service areas as determined by the applicant with assurance that all 99 counties will be covered for service. FP services are to be delivered in 45 counties.</p> <p>In areas of the state where existing programs are integrated (within the same agency), applicants are required to maintain the integration of these programs.</p>	Nonprofit and governmental entities within Iowa.	<p>MCH is development of essential public health services for the defined population. MCH includes comprehensive care coordination and prevention service programs.</p> <p>The FP and WIC programs are focused on prevention and direct clinical services.</p> <p>FP, MCH, and WIC serve children, women and their families.</p>	<p>The Intent to Apply form is required. This form is due on or before 4:30 p.m. April 3, 2000.</p> <p>The proposal due date is on or before 4:30 p.m. May 26, 2000.</p>	<p><u>Project period</u> October 1, 2000, to September 30, 2005.</p> <p><u>Contract period</u> October 1, 2000, to September 30, 2001.</p>

The RFP will be made available on March 10, 2000, to any interested parties.

An application packet may be requested in writing or by fax from:

Carolyn S. Adams, MPA
 Coordinator for Grants & Contracts
 Division of Family and Community Health
 Iowa Department of Public Health
 Lucas State Office Building
 Des Moines, Iowa 50319-0075

FAX: (515)242-6384

ARC 9724A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 section 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 section 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 159.5(11) and 214A.2 and 1999 Iowa Acts, chapter 204, section 15, the Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 85, “Weights and Measures,” Iowa Administrative Code.

This amendment is intended to implement 1999 Iowa Acts, chapter 204, section 15, which directs the Department of Agriculture and Land Stewardship to adopt administrative rules prohibiting a retail dealer of motor vehicle fuel from offering for sale in Iowa a motor vehicle fuel that contains more than 2 percent of methyl tertiary butyl ether (MTBE) by volume. The amendment also updates a reference to applicable standards of the American Society for Testing and Materials (A.S.T.M.).

Any interested person may make written suggestions or comments on the following proposed amendment prior to 4:30 p.m. on March 28, 2000. Such written material should be directed to Darryl Brown, Bureau Chief, Weights and Measures Bureau, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments can also be submitted by E-mail to Darryl.Brown@idals.state.ia.us or by fax to (515)281-6800.

This amendment is intended to implement 1999 Iowa Acts, chapter 204, and Iowa Code chapters 159 and 214A.

The following amendment is proposed.

Amend rule 21—85.33(214A,208A) as follows:

21—85.33(214A,208A) Motor vehicle fuel and antifreeze tests and standards. In the interest of uniformity, the tests and standards for motor vehicle fuel, oxygenate octane enhancers, raffinate natural gasoline and motor vehicle anti-freeze shall be those established by the American Society for Testing and Materials (A.S.T.M.) in effect on January 1, ~~1990~~ 2000, except that the standards for E-Grade denatured fuel ethanol shall be the American Petroleum Institute’s (API) specification in use at the Iowa terminals. *In addition, a retail dealer of motor vehicle fuel shall not sell or offer for sale in Iowa a motor vehicle fuel that contains more than 2 percent of methyl tertiary butyl ether (MTBE) by volume.*

This rule is intended to implement Iowa Code sections 208A.5, 208A.6 and 215.18 and 1999 Iowa Acts, chapter 204.

ARC 9726A

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 section 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 section 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 53, “Community Economic Betterment Program,” Iowa Administrative Code.

The proposed amendments revise the Department’s time frame for establishing the CEBA wage threshold. Rather than calculating the wage threshold on a quarterly basis, the amendments would permit an annual calculation that would be in effect for a twelve-month period. The proposed amendments do not change how the wage threshold is calculated, only the timing of the calculation. The intent of this revision is to recognize that most projects are not developed and finalized within a three-month period. Changing the wage levels during the planning phase is a hardship on applicants.

The proposed amendments revise and clarify starting wage threshold requirements. The current rules require an “average starting wage” of a stated amount. The amendments remove the word “average” from this phrase. It is the intent of the Department that the starting wages for all project jobs meet or exceed the established wage rates for the CEBA program.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on March 29, 2000. Interested persons may submit written or oral comments by contacting Ken Boyd, Bureau of Business Finance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4810; E-mail address ken.boyd@ided.state.ia.us. A public hearing to receive comments about the proposed amendments will be held on March 29, 2000, at 10 a.m. at the above address in the Business Finance Conference Room on the first floor. Individuals interested in providing comments at the hearing should contact Ken Boyd by 4 p.m. on or before March 28, 2000, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code sections 15.315 to 15.325.

The following amendments are proposed.

ITEM 1. Amend rule **261—53.2(15)**, definitions of “average county wage” and “average regional wage,” as follows:

“Average county wage” means the average the department calculates *annually* using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“Average regional wage” means the wage calculated *annually* by the department using a methodology in which

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining Iowa county, so that the resulting figure reflects a regional average that is representative of the true labor market area. In performing the calculation, the greatest importance is given to the central county by "weighting" it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from ~~the~~ that same county, as compared to commuters from other adjoining counties.

ITEM 2. Amend paragraph 53.6(1)"f" as follows:

f. No more than \$100,000 may be awarded to a business start-up unless ~~that business's average~~ *the project jobs have a starting wage equals equal to or exceeds exceeding* 90 percent of the average county wage, 90 percent of the average regional wage, or ~~\$9.50 the annual wage cap~~, whichever is lowest, and over 50 percent of the business's employees' wages are at or above the 90 percent level or ~~\$9.50 the annual wage cap~~, whichever is lower.

ITEM 3. Amend paragraph 53.6(1)"i" as follows:

i. To be eligible for assistance, applicants shall meet the following wage threshold requirements:

(1) Project positions shall have ~~an average a~~ starting wage of at least 90 percent of the average county wage, 90 percent of the average regional wage, or ~~\$9.50 the annual wage cap~~, whichever is lowest.

(2) Fifty percent or more of the jobs to be created or retained shall have ~~an average a~~ starting wage of at least 90 percent of the average county wage, 90 percent of the average regional wage, or ~~\$9.50 the annual wage cap~~, whichever is lowest.

(3) If the applicant is a business start-up, project positions shall have ~~an average a~~ starting wage of at least 80 percent of the average county wage, 80 percent of the average regional wage, or ~~\$9.50 the annual wage cap~~, whichever is lowest, and over 50 percent of the business's employees' wages shall be at or above the 80 percent level or ~~\$9.50 the annual wage cap~~, whichever is lower.

(4) The ~~\$9.50 wage scale annual wage cap~~ referenced in this rule shall be adjusted annually by calculating the percent increase or decrease in average Iowa hourly earnings level for all production and nonproduction workers in the private sector from the month of June of the previous year to June of the current year. This report is compiled by the Iowa workforce development department.

(5) Where the community can document to the department's satisfaction that a significant differential exists between the actual local county wage (as determined by a local employer survey) and the average county wage or average regional wage, the department may substitute the community survey results for the average county wage or average regional wage for consideration in a specific project. Qualification of a project would not be anticipated unless the starting project wage was clearly above the survey wage.

(6) The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. The starting wage is associated with a training period which is of relatively short duration as documented by the business; and

2. The wages will exceed 90 percent of the average county wage, 90 percent of the average regional wage, or

~~\$9.50 the annual wage cap~~ at the conclusion of the training period as documented by the business; and

3. CEBA funds will be released only at the conclusion of the training period when the average county or average regional wage is achieved.

ARC 9725A

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 section 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 section 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 proposes to amend Chapter 68, "Iowa Export Trade Assistance Program," Iowa Administrative Code.

The proposed amendments provide a definition of "exporter," revise the definitions of "sales agent" and "trade mission," clarify eligibility and reimbursement requirements, and update statutory references.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on March 28, 2000. Interested persons may submit written or oral comments by contacting Kathy Hill, International Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4741. A public hearing to receive comments on the proposed amendments will be held on March 28, 2000, at 2 p.m. at the above address in the Business Finance Conference Room. Individuals interested in providing comments at the hearing should contact Kathy Hill by 4 p.m. on March 27, 2000, to be placed on the hearing agenda.

These amendments are intended to implement 1999 Iowa Acts, chapter 197, section 1, subsection 4.

The following amendments are proposed.

ITEM 1. Amend the parenthetical implementation for rules ~~261—68.1(77GA,SF2296)~~ through ~~261—68.8(77GA,SF2296)~~ by striking "77GA,SF2296" and inserting "78GA,ch197" in lieu thereof.

ITEM 2. Amend rule ~~281—68.2(77GA,SF2296)~~ as follows:

~~261—68.2(77GA,SF2296)~~ (78GA,ch197) Definitions.

"Department" means Iowa department of economic development.

"Division" means the international division of the department.

"Exporter" means a person or business that sells a manufactured or value-added product or agricultural product or service outside of the United States.

"Sales agent representative" means a contracted representative of an Iowa firm with the authority to consummate a sales transaction.

"Trade mission" means a mission event led by the department of economic development, U.S. Department of Commerce, or the U.S. Department of Agriculture, ~~or the Iowa~~

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

department of agriculture and land stewardship. Qualified trade missions ~~must~~ may include all *any* of the following:

- Advanced operational and logistical planning.
- Advanced scheduling of individualized appointments with prequalified prospects interested in participants' product or service being offered.
- Background information on individual prospects prior to appointments.
- In-depth briefings on market requirements and business practices for targeted country.
- Interpreter services.
- Development of a trade mission directory prior to the event containing individual company data regarding the Iowa company and the products being offered.
- In addition to the above criteria, some missions may also include technical seminars delivered by the mission participants ~~specifically designed to promote sales of advanced technology, products or services in targeted markets.~~

ITEM 3. Amend rule 261—68.3(77GA,SF2296) as follows:

~~261—68.3(77GA,SF2296)~~ (78GA,ch197) **Eligible applicants.** The export trade assistance program is available to Iowa firms *either producing products or adding value to products, or both,* or providing services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all four of the following criteria:

1. Be an entity employing fewer than 500 individuals, 75 percent or more of whom are employed within the state of Iowa,
2. Exhibit products or services or samples of Iowa manufactured, processed or value-added products or agricultural commodities in conjunction with a foreign trade show or trade mission (catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission),
3. Have at least one full-time employee or sales agent *representative* attend the trade show or participate in the trade mission, and
4. Provide proof of deposit or payment of the trade show or trade mission participation fee.

ITEM 4. Amend rule 261—68.4(77GA,SF2296) as follows:

~~261—68.4(77GA,SF2296)~~ (78GA,ch197) **Eligible reimbursements.** The department's reimbursement to approved applicants for assistance shall not exceed 75 percent of the *eligible* expenses ~~directly attributed to the applicant's cost of participation in a trade show or trade mission.~~ Total reimbursement shall not exceed \$4000 per event. Payments will be made by the department on a reimbursement basis upon submission of proper documentation and approval by the department of paid receipts received by the division. Reimbursement is limited to the following types of expenses:

- 68.4(1) Trade shows.
 - a. Space rental.
 - b. Booth construction at show site.
 - c. Booth equipment or furniture rental.
 - d. Freight costs associated with shipment of equipment or exhibit materials to the participant's booth and return.
 - e. Booth utility costs.
 - f. Interpreter fees *for the duration of the trade show.*
 - g. Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show; per diem is

calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in foreign areas; and per diem will be paid for only one ~~employee sales representative.~~

68.4(2) Trade mission.

- a. Mission participation fee, .
- b. Per diem (lodging and meals) for each day identified in the official mission itinerary. Per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in foreign areas and will be paid for only one ~~employee sales representative.~~
- c. *Freight costs associated with shipment of equipment or exhibit materials to the participant's meeting site and return.*
- d. *Presentation equipment at the meeting site.*
- e. *Interpreter fees, if not included in the participation fee, and as needed during the trade mission.*

ITEM 5. Amend subrule 68.5(3) as follows:

68.5(3) Have in attendance at the trade show or trade mission at least one full-time employee or sales agent ~~representative~~ of the applicant.

ITEM 6. Amend rule 261—68.7(77GA,SF2296) as follows:

~~261—68.7(77GA,SF2296)~~ (78GA,ch197) **Limitations.** A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year, ~~during the same fiscal year.~~ Participants shall not utilize export trade assistance program funds for participation in the same trade show during two consecutive state fiscal years, or for participation in the same trade show more than two times. Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year.

ITEM 7. Amend the implementation clause at the end of ~~261—Chapter 68~~ as follows:

These rules are intended to implement ~~1998 Iowa Acts, Senate File 2296, section 1, subsection 4, paragraph "b."~~ 1999 Iowa Acts, chapter 197, section 1, subsection 4.

ARC 9727A

EDUCATIONAL EXAMINERS BOARD[282]

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 section 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 section 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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed rule relates to a temporary one-year classroom monitor authorization pilot program. The Board is interested in conducting this pilot program to see if the use of classroom monitors has any impact on the availability of in-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

dividuals who could monitor a teacher's classroom during the teacher's absence. Participation by districts is voluntary.

There will be a face-to-face public hearing on March 28, 2000, from 4 to 5:30 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa.

The sites for the ICN public hearing on March 30, 2000, from 4 to 5:30 p.m. are as follows:

ICN Room
Second Floor, Grimes State Office Building
E. 14th and Grand Avenue
Des Moines, Iowa

ICN Classroom
Southern Prairie Area Education Agency 15
2814 N. Court Street
Ottumwa, Iowa

ICN Classroom
Area Education Agency 7
3712 Cedar Heights Drive
Cedar Falls, Iowa

The sites for the ICN public hearing on April 3, 2000, from 4 to 5:30 p.m. are as follows:

ICN Room
Second Floor, Grimes State Office Building
E. 14th and Grand Avenue
Des Moines, Iowa

ICN Classroom
Area Education Agency 4
1382 - 4th Avenue, N.E.
Sioux Center, Iowa

ICN Classroom
Iowa Western Community College
2700 College Road
Council Bluffs, Iowa

ICN Classroom
Southwestern Community College
2300 - 4th Street, Highway 34
Red Oak, Iowa

Persons may present their views at the public hearings either orally or in writing. Persons who wish to make oral presentations at the public hearings may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed rule before 4:30 p.m. on April 4, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

This rule is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** rule:

282—14.35(272) Requirements for a temporary one-year classroom monitor authorization.

14.35(1) Application requirements. Applicants for the classroom monitor authorization shall have completed the following requirements:

- a. Possess a baccalaureate degree from a regionally accredited institution.
- b. Complete an Iowa division of criminal investigation (DCI) background check.
- c. Meet requirements in Iowa Code section 272.6.
- d. Submit an application fee of \$38. The authorization fee is \$25 and the DCI fee is \$13.
- e. Submit a certificate of completion of coursework consisting of a minimum of 50 total clock hours in classroom and behavior management, diversity, and professional ethics. A local school district, an area education agency, or an institution of higher education may provide coursework that has been approved by the board. A certificate of completion must be provided to the local school district prior to employment.

14.35(2) Authorization.

a. The holder of this authorization is allowed to monitor a classroom up to 180 days, but no more than five consecutive days in any one assignment.

b. During this pilot program, the authorization will be valid from the date of issuance until August 31, 2001.

14.35(3) Local school district responsibility.

a. Any local school district is eligible to participate in this pilot program by notifying the board, on a form provided by the board, of the local school district's intent to participate in the program. The board will confirm in writing a local school district's intent to participate. The president of the local school district's board of directors and the school superintendent must sign the notification to participate.

b. The local school district is responsible for screening, hiring, paying, and evaluating classroom monitors.

c. The local school district is responsible for submitting to the board no later than June 1, 2001, on a form provided by the board, the following information: name(s) of the pilot program classroom monitors; date(s) the person(s) monitored a classroom in the local school district; subject area(s) monitored; and level(s) monitored.

d. The local school district is responsible for completing an assessment and evaluation form, provided by the board, prior to June 1, 2001, to assist the board in determining the future viability and success of a temporary one-year classroom monitor authorization.

e. The local school district is responsible to inform the board, on a form provided by the board, of any violations of professional ethics by any individual.

This rule will expire August 31, 2001.

This rule is intended to implement Iowa Code chapter 272.

ARC 9710A

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 section 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 section 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 249A.4, the Department of Human Services proposes to amend

HUMAN SERVICES DEPARTMENT[441](cont'd)

Chapter 81, "Nursing Facilities," appearing in the Iowa Administrative Code.

This amendment modifies a factor used to determine the Medicaid reimbursement rate for non-state-owned nursing facilities. The base reimbursement rate for those facilities is arrived at by dividing allowable reported expenses by total patient days during the reporting period or by 80 percent of the licensed capacity of the facility, whichever is greater, subject to the maximum reimbursement rates. Using 80 percent of the licensed capacity as a floor on total patient days effectively lowers the reimbursement rate for facilities that are below 80 percent occupancy.

This amendment provides that the 80 percent of licensed capacity floor on total patient days does not apply to patient care service expenses. Patient care service expenses are those that are tied to direct patient care. They do not include those fixed costs tied to administrative, building maintenance and property expenses but do include expenses such as nursing, activities, social services, rehabilitation, dietary, pharmacy, x-ray, laboratory, and associated supplies.

Patient care service costs are not fixed costs. Removing the 80 percent floor on total patient days for these costs allows a facility to be reimbursed for these actual costs and not be penalized for lower occupancy with respect to patient care service expenses.

This amendment is being implemented for a period of one year as part of the nursing facility transition payment strategy. During this transition period the Department will promulgate rules to implement a "case-mix" reimbursement system, pending legislative approval.

This amendment does not provide for waivers in specified situations because this change will confer a benefit to affected providers.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 29, 2000.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend subrule 81.6(16), paragraph "d," as follows:

d. For non-state-owned nursing facilities, an additional factor in determining the reimbursement rate shall be arrived at by dividing total reported patient expenses by total patient days during the reporting period. ~~Total patient~~ *Patient days for purposes of the computation of patient care service expenses shall be inpatient days as determined by subrule 81.6(7). Patient days for purposes of this the computation of all other expenses shall be inpatient days as determined in subrule 81.6(7) or 80 percent of the licensed capacity of the facility, whichever is greater.*

ARC 9720A

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 section 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 section 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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 51, "Game Management Areas," Iowa Administrative Code.

These rules give the regulations for public use of state game management areas. This amendment adds South Twin Lake in Calhoun County and Chichaqua in Polk and Jasper counties to the list of wildlife areas on which only nontoxic shot can be used.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 19, 2000. Such written materials should be directed to the Wildlife 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 Wildlife Bureau at (515) 281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 19, 2000, at 7:30 p.m. in the auditorium of the Wallace State Office Building at which time persons may present their views either 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 amendment.

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.

This amendment is intended to implement Iowa Code sections 456A.24 and 481A.6.

The following amendment is proposed.

Amend rule 571—51.9(481A) as follows:

571—51.9(481A) Use of nontoxic shot on wildlife areas. It shall be unlawful to hunt any migratory game bird or resident game or furbearers, except deer and turkeys, or target shoot with a shotgun while having in one's possession any shot other than nontoxic shot approved by the U.S. Fish and Wildlife Service on the following wildlife areas:

<u>County</u>	<u>Wildlife Area</u>
Boone	Harrier Marsh
Buena Vista	All state and federal areas except Bluebird Access
Calhoun	South Twin Lake
Cerro Gordo	All state and federal areas
Clay	All state and federal areas except Burr Access, Dry Mud Lake, Little Sioux, Highbridge, Fen Valley, and the Ocheyedan wildlife area target shooting range

NATURAL RESOURCE COMMISSION[571](cont'd)

Dickinson	All state and federal areas except the Spring Run target shooting range
Emmet	All state and federal areas except Birge Lake, Grass Lake, Ryan Lake, and the East Des Moines River Access
Greene	All state and federal areas except Rippey Access and McMahon Access
Guthrie	McCord Pond, Lakin Slough and Bays Branch, except the target shooting range at Bays Branch
Hamilton	Little Wall Lake, Gordon Marsh and Bauer Slough
Hancock	All state and federal areas except Schuldt and Goodell
Humboldt	All state and federal areas except Bradgate Access and Willows Access
Jasper	<i>Chichaqua</i>
Kossuth	All state and federal areas except Seneca Access
Osceola	All state and federal areas
Palo Alto	All state and federal areas
Pocahontas	All state and federal areas except Kalsow Prairie
Polk	Paul Errington Marsh <i>and Chichaqua</i>
Sac	All state and federal areas except White Horse Access and Sac City Access
Winnebago	All state and federal areas
Worth	All state and federal areas except Brights Lake
Wright	All state and federal areas except White Tail Flats

ARC 9719A

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 section 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 section 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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. Season dates are adjusted annually to comply with federal law and to ensure that seasons open on a weekend.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 19, 2000. Such written materials should be directed to the Wildlife 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 Wildlife Bureau at (515) 281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 19, 2000, at 7:30 p.m. in the auditorium of the Wallace State Office Building at which time persons may present their views either 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 amendments.

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 481A.38, 481A.39 and 481A.48.

The following amendments are proposed.

ITEM 1. Amend rule 571—91.1(481A), introductory paragraph, as follows:

571—91.1(481A) Ducks (split seasons). Open season for hunting ducks shall be September ~~18~~ 23 to September ~~22,~~ 1999 27, 2000; October ~~16~~ 14 to December ~~9,~~ 1999 7, 2000, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and September ~~18~~ 23 to September ~~22,~~ 1999 27, 2000; October ~~16~~ 14 to December ~~9,~~ 1999 7, 2000, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 2. Amend rule 571—91.3(481A) as follows:

571—91.3(481A) Geese. The north goose hunting zone is that part of Iowa north of a line beginning on the Nebraska-Iowa border at State Highway 175, east to State Highway 37, southeast to U.S. Highway 59, south to I-80 and along I-80 to the Iowa-Illinois border. The south goose hunting zone is the remainder of the state. ~~The open season for hunting Canada geese only is September 11 and 12, 1999, west of State Highway 63 in the north goose hunting zone only, except on the Big Marsh Wildlife Area where the season will remain closed.~~ The open season for hunting Canada geese, white-fronted geese and brant, *collectively referred to as dark geese*, is ~~October 2~~ September 30 to December ~~10,~~ 1999 8, 2000, in the north goose hunting zone and ~~October 2~~ September 30 to October ~~10~~ 15 and ~~October 16~~ November 4 to December ~~15,~~ 1999 27, 2000, in the south goose hunting zone. The open season for hunting ~~snow white- and blue-phase snow geese and Ross' geese, collectively referred to as light geese~~, is ~~October 2~~ September 30, 2000, to December ~~27,~~ 1999 January 14, 2001, statewide, ~~and will reopen statewide from February 19 to March 10, 2000.~~ *Light geese may also be taken under the conservation order from the U.S. Fish and Wildlife Service from February 15, 2001, through April 15, 2001.* Shooting hours are one-half hour before sunrise to sunset, *except that during the conservation order shooting hours will be extended to one-half hour after sunset each day.*

91.3(1) Bag limit. Daily bag limit is 2 Canada geese, 2 white-fronted geese, 2 brant and 20 ~~snow light~~ geese.

91.3(2) Possession limit. Possession limit is twice the daily bag limit and no possession limit on ~~snow light~~ geese.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 3. Amend subrule 91.4(2), paragraphs "m" and "o," as follows:

m. Area thirteen. Portions of Van Buren and Davis Counties bounded as follows: Beginning at the junction of Iowa Highway 16 and Iowa Highway 98 in Van Buren County; thence east and south along Highway 16 (including the right-of-way) to ~~County Road W40 Iowa Highway 1~~ in Van Buren County; thence south and west along Iowa Highway 1 (including the right-of-way) to County Road ~~W40~~ J40; thence east along County Road J40 (including the right-of-way) to Iowa Highway 2 in Van Buren County; thence south and east along Highway 2 (including the right-of-way) to Iowa Highway 81 in Van Buren County; thence south and west along Highway 81 (including the right-of-way) to the Iowa-Missouri border; thence west along the Iowa-Missouri border to Iowa Highway 15 in Van Buren County; thence north along Highway 15 (including the right-of-way) to ~~County Road J56 Iowa Highway 2~~ in Van Buren County; thence west along ~~County Road J56 Iowa Highway 2~~ (including the right-of-way) to County Road V42 in Davis County; thence north along County Road V42 (including the right-of-way) to County Road J40 in Davis County; thence east and south along County Road J40 (including the right-of-way) to County Road V64 in Van Buren County; thence north along County Road V64 (including the right-of-way) to Iowa Highway 98 in Van Buren County; thence north along Highway 98 (including the right-of-way) to the point of beginning.

o. Area fifteen. Portions of Butler County bounded as follows: Beginning at the junction of Iowa Highway 3 and County Road T16, thence south 8 miles on County Road T16 (including the right-of-way) to its intersection with County Road C55, thence east 9 miles on County Road C55 (including the right-of-way) to its intersection with Iowa Highway 14, thence north 8 miles on Iowa Highway 14 (including the right-of-way) to its intersection with Iowa Highway 3, thence west 9 miles on Iowa Highway 3 (including the right-of-way) to the point of beginning; but, excluding those lands within this bounded area east of Jay Avenue managed by the department of natural resources as Big Marsh Management Area that are not posted as closed to Canada goose hunting.

ITEM 4. Amend subrule 91.5(1), paragraph "c," subparagraph (2), as follows:

(2) Eight consecutively numbered tags will be issued with each permit. Geese will be tagged around the leg immediately upon being reduced to possession and will remain tagged until delivered to the person's abode. Within one week of the close of hunting within the closed area during at least the first three years the hunt is permitted, unused tags must be turned in at the wildlife unit headquarters within the closed area or the permittee must report the number of geese killed. Failure to turn in unused tags or report the number of geese killed within the specified time period may result in the permittee's forfeiting the opportunity to hunt within the closed area the following year.

ITEM 5. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held statewide on October 9, 1999 7, 2000. Youth hunters must be 15 years old or younger. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks, coots and Canada geese. The adult may hunt for

any other game birds for which the season is open. The daily bag limits are the same as for the regular waterfowl season, as defined in subrule 91.1(1), except the season for snow light geese will not be open. The possession limit is the same as the daily bag limit. All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

ARC 9721A

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 section 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 section 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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code.

These rules give the regulations for hunting wild turkeys during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take and transportation tag requirements. This proposed amendment rescinds subrule 99.2(2) and renumbers subrule 99.2(3) as 99.2(2). This change eliminates an exception that allows hunters to hunt outside their designated zones. The change is intended to reduce competition among hunters.

Any interested person may make written suggestions or comments on the proposed amendment prior to April 19, 2000. Such written materials should be directed to the Wildlife 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 Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 19, 2000, at 7:30 p.m. in the auditorium of the Wallace State Office Building at which time persons may present their views either 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 amendment.

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.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

The following amendment is proposed.

Rescind subrule 99.2(2) and renumber 99.2(3) as 99.2(2).

ARC 9722A

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 section 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 section 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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, "Deer Hunting," Iowa Administrative Code.

These rules give the regulations for hunting deer and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation tag requirements. These amendments eliminate the late January special antlerless season, add 50 early muzzleloader licenses for the Iowa Army Ammunition Plant and designate 21 counties in northern Iowa where the first three days of the first gun season will be antlered only.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 19, 2000. Such written materials should be directed to the Wildlife 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 Bureau at (515)281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 19, 2000, at 7:30 p.m. in the auditorium of the Wallace State Office Building at which time persons may present their views either 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 amendments.

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 481A.38, 481A.39 and 481A.48.

The following amendments are proposed.

ITEM 1. Rescind subrule **106.1(4)**.

ITEM 2. Rescind subrule **106.2(4)**.

ITEM 3. Amend subrule 106.3(3) as follows:

106.3(3) Muzzleloader seasons ~~and special late season~~. Legal shooting hours for hunting deer during the muzzleloader seasons ~~and special late season~~ shall be one-half hour before sunrise to one-half hour after sunset each day, regardless of weapon used.

ITEM 4. Rescind subrule **106.4(4)** and renumber subrule **106.4(5)** as **106.4(4)**.

ITEM 5. Amend subrule **106.5(1)**, paragraph "b," as follows:

b. Early muzzleloader season and first regular gun season. Any sex deer may be taken in all counties *except that in the following counties licenses will be valid only for antlered*

deer for the first three days of the first regular gun season: Chickasaw, Bremer, Black Hawk, Buchanan, Grundy, Howard, Osceola, Dickinson, Emmet, Palo Alto, Clay, O'Brien, Cherokee, Buena Vista, Pocahontas, Humboldt, Calhoun, Sac, Ida, Crawford, Carroll and Greene. Licenses will be valid in all counties for any sex deer during the last two days of the first regular gun season.

ITEM 6. Amend subrule 106.5(2) as follows:

106.5(2) Paid antlerless deer licenses. Paid antlerless deer licenses for the bow season, second regular gun season, ~~and late muzzleloader season and special late season~~ shall be valid only for antlerless deer and only in the following counties (special antlerless zone): Adair, Montgomery, Page, Fremont, Adams, Taylor, Union, Ringgold, Clarke, Decatur, Lucas, Wayne, Monroe, Appanoose, Wapello, Davis, Jefferson, Van Buren, Henry, Lee and Washington.

ITEM 7. Amend subrule **106.6(3)**, paragraph "a," as follows:

a. Early muzzleloader season. No more than 7,500 licenses will be sold for the *regular* October early muzzleloader season. *Fifty additional licenses will be issued to and will be valid only for the Iowa Army Ammunition Plant.* Hunters obtaining a *any* paid early muzzleloader season license are not eligible to purchase any other gun season license.

ITEM 8. Rescind subrule **106.6(6)**.

ITEM 9. Amend subrule 106.8(1) as follows:

106.8(1) County recorder—issuance. All free landowner/tenant deer licenses issued to qualifying landowners or tenants shall be issued by the county recorder's office in the county of residence. Regular shotgun and late muzzleloader season licenses shall be issued through the first Friday in November. ~~Special late season licenses and bow~~ Bow licenses shall be issued through January 10. Additional paid deer licenses must be purchased through the department of natural resources.

ITEM 10. Amend subrule 106.8(2) as follows:

106.8(2) Regular gun, late muzzleloader season and antlerless licenses. All applications for paid regular gun, late muzzleloader season, ~~special late season~~ and antlerless bow licenses shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. Applications for all statewide licenses and the first antlerless license must be accompanied by \$25.50 for each license. Applications for all antlerless licenses after the first antlerless license must be accompanied by \$10 for each license. Only individual applications will be accepted. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received after the application period will not be considered a valid application.

a. Statewide licenses. Applications will be received and accepted from the second Monday in July through the last Friday in August or if the application form bears a valid and legible U.S. Postal Service postmark prior to that date.

b. Antlerless licenses. Paid antlerless licenses will be issued by quota established for each county in the special antlerless zone. Applications will be received and accepted from the second Monday in July through the last Friday in August or if the application form bears a valid and legible U.S. Postal Service postmark prior to that date. Hunters may apply for one license for one of the following seasons: bow; second regular gun; or late muzzleloader. ~~Hunters may apply for one additional license for the special late season.~~ A drawing will be held for each county where the number of

NATURAL RESOURCE COMMISSION[571](cont'd)

applications exceeds the quota. Applications will be accepted on a first-come, first-served basis after September 1 if any county quotas do not fill. Applications for the bow season or second regular gun season or late muzzleloader season will be accepted through the first Friday in November or until quotas fill. ~~Applications for the special late season will be accepted through January 3, or until quotas fill.~~ If licenses are still available after September 1, hunters may apply for one additional license for the bow season or second regular gun season or late muzzleloader season ~~and one additional license for the special late season.~~ The maximum number of antlerless licenses for an individual is ~~four~~ **two**: two for the bow or second regular gun or late muzzleloader season ~~and two for the special late season~~ (if second licenses are available).

ITEM 11. Amend subrule 106.8(4) as follows:

106.8(4) Alternate application methods. The department may develop ~~media/telecommunication options that would allow for additional methods of~~ *electronic licensing procedures* for obtaining a deer license. Methods and deadlines may be determined by the department as a part of the alternative methods developed.

ARC 9718A**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 section 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 section 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 Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 7, "Practice and Procedure Before the Department of Revenue and Finance," Iowa Administrative Code.

These amendments to rule 701—7.34(17A) provide that the Department will accept the use of a preparer's federal identification number on a power of attorney form submitted to the Department as an alternative to the social security number previously and exclusively allowed. These amendments also allow the Department to accept a federal Power of Attorney form that properly designates information regarding state tax issues. In addition, these amendments also provide for a procedure for waiver of the application of this rule, in whole or in part, in certain circumstances.

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.4A (1998 Iowa Acts, chapter 1202, section 10). The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A (1998 Iowa Acts, chapter 1202, section 10) if a written request is filed by delivery or by mailing postmarked no later than April 10, 2000, to the Policy Section, Compliance Division, 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 Administrative Rules Coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before April 7, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, 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 March 31, 2000.

These amendments are intended to implement Iowa Code section 421.60.

The following amendments are proposed.

ITEM 1. Amend subrules 7.34(2), 7.34(6), 7.34(9), 7.34(11), 7.34(13) and 7.34(14) as follows:

7.34(2) A power of attorney or any supplemental notification intended to be utilized as a power of attorney must contain the following information to be valid ~~must contain all of the following information:~~

- a. Name and address of the taxpayer;
- b. Identification number of the taxpayer (i.e., social security number, ~~and/or~~ federal identification number, or any state-issued tax identification number relative to matters covered by the power of attorney);
- c. Name, mailing address, *and PTIN (preparer's tax identification number), FEIN (federal employer identification number) or SSN* ~~and~~ (social security number) of the representative; ~~and~~

d. Description of the matter(s) for which representation is authorized which, if applicable, must include:

- (1) The type of tax(es) involved;
- (2) The specific year(s) or period(s) involved; and
- (3) In estate matters, decedent's date of death; *and*

e. A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s) *as provided in 7.34(1).*

7.34(6) A new power of attorney for a particular tax type(s) and tax period(s) revokes a prior power of attorney for that tax type(s) and tax period(s), *unless the taxpayer has indicated on the power of attorney form that a prior power of attorney is to remain in effect. For a previously designated representative to remain as the taxpayer's representative when a subsequent power of attorney form is filed, a taxpayer must attach a copy of the previously submitted power of attorney form which designates the representative that the taxpayer wishes to retain. To revoke a designated power of attorney without appointing a new power of attorney, see 7.34(7).*

EXAMPLE A. A taxpayer executes a power of attorney for the taxpayer's accountant to represent the taxpayer during an audit of the taxpayer's books and records. After the department issues a notice of assessment, the taxpayer wishes to have the taxpayer's attorney-at-law as an authorized representative in addition to the taxpayer's accountant. ~~The taxpayer must list both the taxpayer's accountant and attorney-at-law on the taxpayer's new power of attorney form. The taxpayer may use one of two options to designate the accountant and the attorney-at-law as the taxpayer's representatives: (1) The taxpayer may complete and submit to the de-~~

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

partment a new power of attorney, Form IA2848 or federal Form 2848, designating both the accountant and the attorney-at-law as the taxpayer's authorized representatives. By submitting a new power of attorney form, the prior power of attorney designations are revoked, leaving only the subsequent new power of attorney form effective; or (2) the taxpayer may properly complete a new power of attorney form by including the designated attorney-at-law's name, address, PTIN, FEIN, or SSN, tax type and tax period on the first page and checking the appropriate box on page 2 of Form IA2848 or page 2 of federal Form 2848. In addition, to retain the accountant as the taxpayer's representative, the taxpayer must also attach to the new completed power of attorney form a copy of the previously submitted power of attorney form designating the accountant as the taxpayer's representative.

EXAMPLE B. Same factual scenario as in Example A applies; however, the taxpayer seeks to use power of attorney Form IA14-101 (a form that preceded the current Form IA2848). In this situation, the taxpayer must attach a statement to the completed Form IA14-101. The statement must state that the previously designated accountant is to be retained and the attorney-at-law is to be added. Such notification must also include the names, identification numbers of all the parties, addresses, tax types and tax periods of representation.

EXAMPLE C. A taxpayer wishes to designate an additional power of attorney and retain a prior power of attorney. However, the taxpayer does not wish to utilize an IA2848 or federal 2848 form. In this situation, the taxpayer must send written notification to the department designating the new power of attorney's name, address, PTIN, SSN or FEIN, the tax type, the tax period of representation and the name, address, and PTIN, SSN or FEIN of the previously designated power of attorney that seeks to be retained for that tax period.

In each of the foregoing examples, the original power of attorney will continue to automatically receive the notices concerning the specified tax matter, unless such authority is explicitly revoked by the taxpayer. Also see subrule 7.34(13) regarding notices.

7.34(9) A properly completed Iowa power of attorney, Form IA14-101 or IA2848, ~~State of Iowa Department of Revenue and Finance Power of Attorney Form~~, or properly designated federal form as described in this subrule, satisfies the requirements of this rule.

In addition to the Iowa power of attorney, Form IA2848 or IA14-101, ~~the~~ department ~~cannot~~ can accept Internal Revenue Service Form 2848, even if references to the "Internal Revenue Service" are crossed out and "Iowa Department of Revenue and Finance" is inserted in lieu thereof, as long as such a form contains specific designation by the taxpayer for the state-related taxes at issue. Designation must include, but is not limited to, name, address, PTIN, SSN or FEIN of the representative, the tax type and tax period. In addition, ~~the~~ department will accept any other document which satisfies the requirements of this rule.

7.34(11) The department will accept either the original, an electronically scanned and transmitted power of attorney form, or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (fax) will be accepted. All copies, facsimiles and electronically scanned and transmitted power of attorney forms must include a valid signature of the taxpayer to be represented.

7.34(13) Any notice or other written communication (or copy thereof) required or permitted to be given to the taxpayer in any matter before the department must be given to the

taxpayer and, unless restricted by the taxpayer, to the taxpayer's first designated power of attorney who is ~~representative representing the taxpayer for the tax type and tax period contained in the notice.~~ Due to limitations of the department's automated systems, it is the general practice of the department to limit distribution of copies of documents by the department to the taxpayer's first designated power of attorney. Determination of the first designated power of attorney will be based on the earliest execution date of the power of attorney and the first name designated on a power of attorney form listing more than one designated representative. ~~If the taxpayer designates more than one recognized representative to receive notices and other written communications, it will be the practice to give copies to the individuals so designated.~~

7.34(14) Information from ~~powers~~ power of attorney forms, including the representative's social security number, PTIN, SSN, or FEIN, is utilized by department personnel to:

- Determine whether a representative is authorized to receive or inspect confidential tax information;
- Determine whether the representative is authorized to perform the acts set forth in subrule 7.34(1);
- Send copies of computer-generated notices and communications to the representative as authorized by the taxpayer; and
- Ensure that the taxpayer's representative receives all notices and communications authorized by the taxpayer, but notices and communications are not sent to a representative with the same or similar name.

ITEM 2. Amend rule 701—7.34(421) by adopting the following new subrule:

7.34(15) Procedure for waiver. Any person who believes that the application of these amendments would result in hardship or injustice to that person may petition the department for a waiver of the rule in the manner set out in Section II of the governor's Executive Order Number 11, issued September 13, 1999, until superceded by a uniform departmental waiver rule.

ARC 9715A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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 section 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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 604, "License Examination," Iowa Administrative Code.

These amendments permit the Department to waive the knowledge test for an applicant who has a valid, equivalent out-of-state driver's license. These amendments also permit the Department to waive the knowledge and driving tests when the applicant has a valid, equivalent driver's license issued by a foreign jurisdiction with which Iowa has a non-binding reciprocity agreement. These amendments are an acknowledgment of uniform testing methods employed by other United States jurisdictions and comparable testing used by foreign jurisdictions.

TRANSPORTATION DEPARTMENT[761](cont'd)

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: jfitzge@max.state.ia.us.
5. Be received by the Director's Staff Division no later than March 28, 2000.

A meeting to hear requested oral presentations is scheduled for Thursday, March 30, 2000, at 10 a.m. in the conference room of the Motor Vehicle Division, which is located on the lower level of Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code section 321.186.

Proposed rule-making actions:

ITEM 1. Amend subrule 604.21(2) as follows:

604.21(2) Knowledge test waivers. The department may waive a knowledge test listed in subrule 604.21(1) if the applicant meets one of the following qualifications:

a. The applicant has passed the same *type of* test for another Iowa license or an equivalent out-of-state license that is still valid or has expired within the past 60 days.

b. *The applicant has a valid, equivalent license issued by a foreign jurisdiction with which Iowa has a nonbinding reciprocity agreement.*

b c. The applicant has a military extension and is renewing a noncommercial Class C or Class M Iowa license or the equivalent within six months following separation from active duty.

ITEM 2. Amend subrule 604.31(2) as follows:

604.31(2) Driving test waivers. The department may waive a required driving test listed in subrule 604.31(1) if the applicant meets one of the following qualifications:

a. The applicant is applying for the applicant's first Iowa license that permits unaccompanied driving following successful completion of the appropriate Iowa-approved course or courses. The appropriate Iowa-approved courses are the following: driver education for a Class C license other than motorized bicycle, driver education and motorcycle rider education for a Class M license, and motorized bicycle education for a motorized bicycle license. However:

(1) The department may select dates and require a driving test of applicants whose birth dates fall on the selected dates. The department shall notify the Iowa department of education quarterly of the dates selected.

(2) If an applicant is under the age of 21, a driving test is required if so requested by the applicant's parent, guardian, or instructor.

b. The applicant is renewing a Class C, Class D or Class M Iowa license within 14 months after the expiration date.

c. The applicant has passed the same *type of* driving test for another Iowa license that is still valid or has expired within the past 14 months.

d. The applicant has a military extension and is renewing a Class C or Class M Iowa license or the equivalent within six months following separation from active duty.

e. The applicant is applying for a Class C or Class M Iowa license that permits unaccompanied driving and has an equivalent out-of-state license that is valid or has expired within the past six months.

f. The applicant is applying for a Class D Iowa license and has an equivalent out-of-state license that is valid or has expired within the past six months.

g. *The applicant has a valid, equivalent license issued by a foreign jurisdiction with which Iowa has a nonbinding reciprocity agreement.*

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

February 1, 1999 — February 28, 1999	6.75%
March 1, 1999 — March 31, 1999	6.75%
April 1, 1999 — April 30, 1999	7.00%
May 1, 1999 — May 31, 1999	7.25%
June 1, 1999 — June 30, 1999	7.25%
July 1, 1999 — July 31, 1999	7.50%
August 1, 1999 — August 31, 1999	8.00%
September 1, 1999 — September 30, 1999	8.00%
October 1, 1999 — October 31, 1999	8.00%
November 1, 1999 — November 30, 1999	8.00%
December 1, 1999 — December 31, 1999	8.00%
January 1, 2000 — January 31, 2000	8.00%
February 1, 2000 — February 29, 2000	8.25%
March 1, 2000 — March 31, 2000	8.75%

ARC 9716A

UTILITIES DIVISION[199]

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 section 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 section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4 and 476.2 (1999), the Utilities Board (Board) gives notice that on February 15, 2000, the Board issued an order in Docket No. RMU-00-4, In re: Individual Meter Measurement, "Order Commencing Rule Making." The Board is proposing to rescind current paragraphs 199 IAC 19.3(1)"b" and 20.3(1)"b" and replace them with new paragraphs 19.3(1)"b" and 20.3(1)"b." The Board is proposing to add new paragraphs "c" and "d" to each subrule.

The Board's proposed amendments are intended to provide clarification of the Board's policy regarding individual meter measurement. The Board adopted the original rules in 1978. Congress had enacted the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. §§2601-45, which mandated individual metering and established restrictions in instances in which individual metering was not used to measure electric power in new buildings. The purpose of the in-

UTILITIES DIVISION[199](cont'd)

dividual metering requirement is to provide individual customers with an economic incentive and the means to control energy use. See Docket No. RMU-78-7.

The Board has amended the original rules twice. See Docket Nos. RMU-85-5 and RMU-87-12. The Board is proposing changes to make it clear that multioccupancy premises must be individually metered except in certain specific instances. In those specific instances, the renters or owners of the individual units may not be directly billed for their individual electric or natural gas usage.

The amendments state three instances in which individual metering is not required. The first is when electricity or natural gas is used in centralized heating, cooling, or water heating systems. Second, facilities that are designated for elderly or handicapped persons are not required to be individually metered because these facilities usually have community spaces, all utility services are usually included in the rent, and most of the facilities are Housing and Urban Development projects. Requiring individual metering would add significantly to the cost of the project and serve no purpose. Finally, the Board does not require individual metering where it was not required prior to 1966.

In proposed new paragraph "c," the Board has set out a condition that must be met in each instance in which a multioccupancy premises is not individually metered. The condition is that the customer of the utility may not bill individual renters or owners for natural gas or electric costs. If the customer is allowed to bill or resell energy or the benefits derived therefrom, there could be a situation in which the individual renter or owner is improperly or unfairly billed for energy usage. The customer could disconnect the individual renter or owner. In those situations, it is conceivable that the customer who is reselling could be deemed a "public utility" under Iowa Code section 476.1. See Iowa State Commerce Commission v. Northern Natural Gas Company, 161 N.W.2d 111 (Iowa 1968). A person who lives in a multioccupancy premises must not be directly billed for energy usage by anyone other than a public utility.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474) is applicable to these rules.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before March 28, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(1)"b," or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

These amendments are intended to implement Iowa Code chapters 17A and 476.

The following amendments are proposed.

ITEM 1. Rescind paragraph 19.3(1)"b" and adopt the following new paragraph in lieu thereof:

b. All gas or the benefits thereof delivered to multioccupancy premises where units are separately rented or owned must be sold by the utility on the basis of individual meter measurement for each unit, except in the following instances:

- (1) Where gas is used in centralized heating, cooling, or water-heating systems;
- (2) Where a facility is designated for elderly or handicapped persons; or
- (3) Where individual metering was not required prior to 1966.

ITEM 2. Amend subrule 19.3(1) by adopting new paragraph "c" and relettering existing paragraphs "c" and "d" as "d" and "e":

c. In all cases in which gas is not sold on the basis of individual meter measurement to a multioccupancy premises, an end user may not be directly billed for individual natural gas consumption or the benefits derived therefrom. Any charge for natural gas or the benefits derived therefrom may be included only as an unidentified portion of the rent, condominium fee, or similar payment.

ITEM 3. Rescind paragraph 20.3(1)"b" and adopt the following new paragraph in lieu thereof:

b. Electricity or the benefits thereof delivered to multioccupancy premises where units are separately rented or owned must be sold by the utility on the basis of individual meter measurement for each unit, except in the following instances:

- (1) Where electricity is used in centralized heating, cooling, or water-heating systems;
- (2) Where a facility is designated for elderly or handicapped persons; or
- (3) Where individual metering was not required prior to 1966.

ITEM 4. Amend subrule 20.3(1) by adopting new paragraph "c" and relettering existing paragraphs "c" and "d" as "d" and "e":

c. In all cases in which electricity is not sold on the basis of individual meter measurement to a multioccupancy premises, an end user may not be directly billed for individual electric consumption or the benefits therefrom. Any charge for electricity or the benefits derived therefrom may be included only as an unidentified portion of the rent, condominium fee, or similar payment.

ARC 9717A

UTILITIES DIVISION[199]

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 section 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 section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 474.5, 476.1, and 476.20 (1999), the Utilities Board (Board) gives notice that on February 8, 2000, the Board issued an order in Docket No. RMU-00-5, In re: Disconnection and Reconnection. The Board is proposing to amend current 199 IAC 19.4(15)"i"(2) and 20.4(15)"i"(2) to make them consistent with the Board's standard customer notice forms contained in 199 IAC 19.4(15)"h"(3) and 20.4(15)"h"(3). The customer notice forms provide that electric and gas residential customers cannot be disconnected unless the utility is prepared to reconnect the same day if payment or other arrangements are made.

UTILITIES DIVISION[199](cont'd)

199 IAC 19.4(15)“i”(2) and 20.4(15)“i”(2) currently provide that “[t]he disconnection of a residential customer may not take place on a weekend, a holiday or after 2 p.m., unless the utility is prepared to reconnect the same day.” While these rules can be read consistently with the language contained in the standard customer notice form, the Board believes having two sets of rules in effect is confusing. The goal is simple: Disconnection cannot occur unless the utility is prepared to reconnect the same day. The language in the current rule emphasizing holidays, weekends, and after 2 p.m. may provide useful information to some customers but is likely confusing to most because it could cause customers to believe same day reconnection is not available at other times. The proposed amendments will make it clear that the utility must be prepared to reconnect on the same day disconnection occurs if payment or other arrangements are made.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before March 28, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(1)“b,” or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

These rules are intended to implement Iowa Code sections 476.1 and 476.20.

The following amendments are proposed.

ITEM 1. Amend subparagraph 19.4(15)“i”(2) as follows:

(2) The disconnection of a residential customer may not take place ~~on a weekend, a holiday or after 2 p.m.~~, unless the utility is prepared to reconnect the same day *if payment or other arrangements are made*, and may not take place where gas is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with 19.4(15)“h”(3) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of this rule.

ITEM 2. Amend subparagraph 20.4(15)“i”(2) as follows:

(2) The disconnection of a residential customer may not take place ~~on a weekend, a holiday or after 2 p.m.~~, unless the utility is prepared to reconnect the same day *if payment or other arrangements are made*, and may not take place where electricity is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service

forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with 20.4(15)“h”(5) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of this rule.

ARC 9729A

UTILITIES DIVISION[199]

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 section 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 section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 474.5, 476.1, and 476.6(16) (1999), the Utilities Board (Board) gives notice that on February 17, 2000, the Board issued an order in Docket No. RMU-00-6, In re: Review of Fuel Procurement Practices. The Board is proposing to amend current 199 IAC 20.13(1) and 20.13(2) to reflect recent amendments to Iowa Code section 476.6(16). Section 476.6(16) now requires the Board to conduct a periodic, rather than an annual, proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility’s electric fuel procurement and contracting practices.

Subrules 199 IAC 20.13(1) and 20.13(2) currently require the Board to conduct an annual contested case to review each rate-regulated electric utility’s fuel procurement practices. The proposed amendments reflect the statutory change from an annual to a periodic review. The proposed amendments provide that the Board will notify the rate-regulated electric utilities by January 31 of each year if the utilities will be required to file an electric fuel procurement plan for that year. The amendments further provide that, in the years a full plan filing is not required, the Board may request certain information for review.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before March 28, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(2)“b,” or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

These amendments are intended to implement Iowa Code sections 476.1 and 476.6(16).

The following amendments are proposed.

UTILITIES DIVISION[199](cont'd)

Amend rule 199—20.13(476) as follows:

199—20.13(476) Annual Periodic electric energy supply and cost review [476.6(16)].

20.13(1) Procurement plan. *The board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's electric fuel procurement and contracting practices. By January 31 each year the board will notify a rate-regulated utility if the utility will be required to file an electric fuel procurement plan. In the years in which it does not conduct a contested case proceeding, the board may require a utility to file certain information for the board's review. In years in which a full proceeding is conducted, a All rate-regulated utilities utility providing electric service in Iowa shall prepare and file with the board on or before May 15 of each required filing year a complete electric fuel procurement plan for an annual period commencing June 1, or in the alternative, for the annual period used by the utility in preparing its own fuel procurement plan. The utility shall be required to use the same annual fuel procurement planning period in all subsequent reports that are filed with the board pursuant to this subrule. A utility's initial procurement plan shall include all required information and documents. If any of the information or documents required to be filed under this subrule in a subsequent procurement plan has been filed in a previous procurement plan or in other filings made with the board, the utility may specifically identify the document or information by reference in lieu of re-filing it in its procurement plan. The board staff or consumer advocate may request, at any time during the review proceeding, copies of a specific contract. One utility will be allowed to file contracts for jointly owned units on behalf of all owners. A utility's procurement plan shall be organized to include required information as follows:*

a. Introduction. An introductory paragraph shall preface the plan stating on whose behalf the report is filed.

b a. Index. The plan shall include an index of all documents and information required to be filed in the plan, and the identification of the board files in which the documents incorporated by reference are located.

e b. Purchase contracts and arrangements. A utility's initial procurement plan shall include detailed summaries of the following types of contracts and agreements executed since the last procurement review:

(1) All contracts and fuel supply arrangements for obtaining fuel for use by any unit in generating electricity generation;

(2) All contracts and arrangements for transporting fuel from point of production to the site where placed in inventory, including any unit generating electricity for the utility;

(3) Purchased power contracts or arrangements, including sale-of-capacity contracts, involving over 25 MW of capacity;

(4) Pool interchange agreements;

(5) Multiutility transmission line interchange agreements; and

(6) Interchange agreements between investor-owned utilities, generation and transmission cooperatives, or both, not required to be filed by either subparagraph (2) or (3) above; which were entered into or in effect during the previous 12-month period since the last filing, and all such contracts or arrangements which will be entered into or exercised by the utility during the prospective 12-month period. In addition, the utility shall separately set forth a list of all contracts and agreements filed in the procurement plan

~~which will become subject to renegotiation, extension, or termination within five years.~~

All subsequent procurement plans filed by a utility shall include all of the types of contracts and arrangements listed in subparagraphs (1) and (2) of this paragraph which will be entered into or exercised by the utility during the prospective 12-month period. In addition, the utility shall file an updated list of contracts which that are or will become subject to renegotiation, extension, or termination within five years. The utility shall also annually update any price adjustment affecting any of the filed contracts or arrangements.

~~d c.~~ Allowance contracts and arrangements. A utility's annual procurement plan shall include detailed summaries of the following types of contracts and arrangements:

(1) All contracts and arrangements for purchasing or selling allowances entered into or exercised during the previous 12-month period since the last filing, and all contracts or arrangements which will be entered into or exercised by the utility during the prospective 12-month period.

(2) All allowance futures contracts entered into or exercised during the previous 12-month period since the last filing or which will be entered into or exercised by the utility during the prospective 12-month period.

(3) A list of contracts which that are subject to renegotiation, extension, or termination within five years.

(4) Annual updates Updates to any price adjustment affecting any of the filed contracts or arrangements.

~~e d.~~ Other contract offers. The procurement plan shall include a list and description of those types of contracts and arrangements listed in paragraphs 20.13(1)"e b" and "d c" offered to the utility during the previous 12-month period since the last filing into which the utility did not enter. In addition, the procurement plan shall include a list of those types of contracts and arrangements listed in paragraphs 20.13(1)"e b" and "d c" which were offered to the utility for the prospective 12-month period and into which the utility did not enter.

~~f e.~~ Studies or investigation reports. Initial procurement plans shall include all studies or investigation reports considered by the utility in deciding whether to enter into any of those types of contracts or arrangements listed in paragraphs 20.13(1)"c," "d," and "e" in the previous 12 months. In addition, the initial and subsequent The procurement plans shall include all studies or investigation reports which have been considered by the utility in deciding whether to enter into any of those types of contracts or arrangements listed in paragraphs 20.13(1)"e b," "d c" and "e d" which will be exercised or entered into during the prospective 12-month period.

~~g f.~~ Price hedge justification. The procurement plan shall justify purchasing allowance futures contracts as a hedge against future price changes in the market rather than for speculation.

~~h g.~~ Actual and projected costs. The procurement plan shall include an accounting of the actual costs incurred in the purchase and transportation of fuel and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraphs 20.13(1)"e b" and "d c" for the previous 12-month period.

The procurement plan also shall include an accounting of all costs projected to be incurred by the utility in the purchase and transportation of fuel and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraphs 20.13(1)"e b" and "d c" in the prospective 12-month period.

UTILITIES DIVISION[199](cont'd)

If applicable, the reporting of transportation costs in the procurement plan shall include all known liabilities, including all unit train costs.

h. Costs directly related to the purchase of fuel. The utility shall provide a list and description of all other costs directly related to the purchase of fuels for use in generating electricity not required to be reported by paragraph "g."

i. Compliance plans. Beginning with the 1993 procurement plan, each utility shall file its compliance plan as submitted to the EPA. Revisions to the compliance plan shall be filed with each subsequent procurement plan.

j. Evidence submitted. Each utility shall submit all factual evidence and written argument in support of its evaluation of the reasonableness and prudence of the utility's procurement practice decisions in the manner described in its procurement plan. The utility shall file data sufficient to forecast fuel consumption at each generating unit or power plant for the prospective 12-month period. The board may require the submission of machine-readable data for selected computer codes or models.

k. Each utility shall file additional information as ordered by the board.

20.13(2) Annual Periodic review proceeding. The board shall annually periodically conduct a proceeding to evaluate the reasonableness and prudence of a rate-regulated utility's procurement practices. The prudence review of allowance transactions and accompanying compliance plans shall be determined on information available at the time the options or plans were developed. The board shall docket the matter as a contested case within 30 days of the utility's filing of its procurement plan in accordance with subrule 20.13(1).

a. On or before June 30 May 15 of each a required filing year, the consumer advocate and any intervenors shall file prepared direct testimony and exhibits each utility shall file prepared direct testimony and exhibits in support of its fuel procurement decisions and its fuel requirement forecast. This filing shall be in conjunction with the filing of the plans. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased fuel costs.

b. On or before July 30 of each year, the rate-regulated utility shall file prepared rebuttal testimony and exhibits. The board shall disallow any purchased fuel costs in excess of costs incurred under responsible and prudent policies and practices.

c. The board will schedule a public hearing, to be held within five months after the filing of a procurement plan, for the purpose of cross-examining all filed testimony. The hearing shall be conducted in accordance with the provisions of rule 199—7.7(476). The board shall establish briefing schedules on a case-by-case basis. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased fuel costs.

d. The board may, in its discretion, modify the procedural schedule for an annual review proceeding.

20.13(3) Annual meeting of electric utilities. Rescinded IAB 4/3/91, effective 3/15/91.

ARC 9706A

VETERANS AFFAIRS COMMISSION[801]

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 section 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 section 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 35A.3(2), the Commission of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 4, "Agency Procedure for Rule Making," Iowa Administrative Code.

The intent of the proposed amendment is to incorporate the Uniform Waiver Rule outlined in State of Iowa Executive Order Number 11 and printed in the Iowa Administrative Bulletin into agency rule making to increase the flexibility of administrative rule enforcement as applied to compelling individual cases.

Any interested person may make written suggestions or comments on the proposed amendment on or before March 28, 2000. Such written materials should be directed to Jack J. Dack, Commandant, Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485, or faxed to (515) 753-4278. E-mail may be sent to jdack@dhs.state.ia.us. Persons who wish to convey their views orally should contact the Commandant's office at (515)753-4309 at the Iowa Veterans Home.

If requested in writing, a public hearing on the proposed amendment will be held on March 28, 2000, at 10 a.m. in Ford Memorial Conference Room at the Iowa Veterans Home at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record. Any persons who intend to attend a public hearing and have special requirements, such as hearing or mobility impairments, should contact the Iowa Veterans Home to advise of specific needs. If no written or oral requests for a public hearing are received, the public hearing will be canceled without further notice.

This amendment is intended to implement Iowa Code chapter 35D.

The following amendment is proposed.

Amend 801—Chapter 4 by adopting new rules 801—4.14(35D) and 801—4.15(35D) as follows:

801—4.14(35D) Uniform waiver rule.

4.14(1) Except to the extent prohibited by statute, the commission of veterans affairs may issue an order, in response to a completed petition or on its own motion, granting a waiver of a rule adopted by said commission, in whole or in part, as applied to the circumstances of a specified person, if the commission finds that:

a. The application of the rule to the person at issue would result in hardship or injustice to that person; and

b. The waiver of the rule on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. The waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the

VETERANS AFFAIRS COMMISSION[801](cont'd)

chairperson of the commission of veterans affairs, upon consideration of all relevant factors.

4.14(2) In response to the timely filing of a completed petition requesting a waiver, the commission shall, except to the extent prohibited by statute, grant a waiver of a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the commission finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

4.14(3) The person shall assume the burden of persuasion when a petition is filed for a waiver of any agency rule.

4.14(4) This uniform waiver rule shall not preclude the commission from granting waivers in other contexts or on the basis of other standards if the statute or other agency rules authorize it to do so, and the commission deems it appropriate to do so.

This rule is intended to implement Iowa Code chapter 35D and Executive Order Number 11.

801—4.15(35D) Procedures for granting waivers.

4.15(1) Any person may file a petition with the commission of veterans affairs requesting a waiver, in whole or in part, of a commission rule on the grounds that the application of the uniform waiver rule to the particular circumstances of that person would justify a waiver under the commission's uniform waiver rule. The commission chairperson shall receive written petitions.

4.15(2) A petition for a waiver shall include the following information where applicable and known to the requester:

a. The name, address, and case number or state identification number of the person or entity for whom a waiver is being requested.

b. A description and citation of the specific rule to which a waiver is requested.

c. The specific waiver requested, including the precise scope and operative period that the waiver will extend.

d. The relevant facts that the person believes would justify a waiver. This statement shall include a signed statement from the person attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the person believes will justify a waiver.

e. A history of the commission's action relative to the person.

f. Any information regarding the commission's treatment of similar cases, if known.

g. The name, address, and telephone number of any person inside or outside of state government who would be adversely affected by the granting of the petition, or who otherwise possesses knowledge of the matter with respect to the waiver request.

h. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver.

i. The procedures stated under the Iowa Administrative Procedure Act, Iowa Code chapter 17A, shall govern the form, filing, timing and contents of petitions for the waivers of rules, and the procedural rights of persons in relation to such petitions.

j. The commission shall acknowledge a petition upon receipt. The person shall serve notice on all persons to whom notice is required by any provision of law, and provide a written statement to the commission attesting that notice has been served.

k. Prior to issuing an order granting or denying a waiver petition, the commission may request additional information from the person relative to the application and surrounding circumstances.

l. An order granting or denying a waiver shall be in writing and contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which that action is based, and a description of the precise scope and operative period of the waiver if one is issued. The commission shall grant or deny a petition for the waiver of all or a portion of a rule as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the person agrees to a later date. However, if a waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the commission to grant or deny such a petition within the required time period shall be deemed a denial of that petition by the commission.

m. Within seven days of its issuance, any order issued under the uniform waiver rule shall be transmitted to the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

n. Subject to the provisions of Iowa Code section 17A.3(1)"e," the commission shall maintain a record of all orders granting and denying waivers under the uniform rule. The records shall be indexed by rule and available for public inspection.

o. The provisions of rules 4.14(35D) and 4.15(35D) shall not apply to rules that define the meaning of a statute or other provisions of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition and do not authorize the commission to waive any requirement created or duty imposed by statute.

p. After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

This rule is intended to implement Iowa Code chapter 35D and Executive Order Number 11.

ARC 9714A

NATURAL RESOURCE
COMMISSION[571]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 27, "Lands and Waters Conservation Fund Program," Iowa Administrative Code.

These amendments change the application deadline date from November 15 to March 15 for both state and local (city and county) grants. Reasons for the change are as follows:

1. A spring application deadline is more in sync with the congressional budgeting and apportionment schedules;
2. Many other grant programs administered by the Department have fall application deadlines; and
3. Changing the Land and Water Conservation Fund application deadline to a spring date will help to distribute the grant administration workload more evenly.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because the National Park Service, the federal agency which administers the Land and Water Conservation Fund, urges expeditious obligation and expenditure of this year's national appropriation of \$40 million to serve as an affirmation of the high level of need for the cost-sharing program and as justification for seeking higher levels of appropriations in future years. In addition, the March 15 deadline is more in sync with federal budgeting and apportionment schedules and with typical budgeting and construction schedules in Iowa.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on February 17, 2000, as they confer a benefit by expediting the awarding of grants for recreational acquisition and development in Iowa.

The Natural Resource Commission adopted these amendments on February 10, 2000.

These amendments are intended to implement Iowa Code sections 456A.30 through 456A.35.

These amendments became effective February 17, 2000. The following amendments are adopted.

ITEM 1. Amend subrule 27.5(2) as follows:

27.5(2) Application timing. The following information applies to local projects only. Grant applications and amendment requests which increase the existing grant amount shall be reviewed and selected for funding on an annual basis as provided in subrule 27.2(2). Annual reviews shall be held in ~~October~~ *April*. Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, by the close of business on the work day closest to the fifteenth day of the month preceding each review month.

ITEM 2. Amend subrule 27.5(5) as follows:

27.5(5) Application timing. The following applies only to state projects. Applications will be reviewed annually in ~~December~~ *April*. Grant applications and amendment requests exceeding 10 percent of the original grant amount will

be due in the budget and grants bureau of the department on ~~November 15~~ *March 15* or the closest working day thereto.

[Filed Emergency 2/17/00, effective 2/17/00]
[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9728A

PERSONNEL DEPARTMENT[581]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 97B.15, the Department of Personnel hereby amends Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

These amendments make the following changes:

1. Subrule 21.4(2) is amended by striking the first unnumbered paragraph. This paragraph pertains to IPERS wage reporting for certain individuals who have the right to accelerate or defer wage payments.
2. Subrule 21.11(9) is amended by adding a new unnumbered paragraph to clarify that continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

The change to subrule 21.4(2) will permit school employees who are eligible to receive their annual wages in 12, 10 or 9 monthly installments to receive the balance of their annual wages following completion of their duties and have those wages reported in the quarter received, even if that payment option is only provided to retirees and terminated employees. The rule change will also permit school employees who elect to receive the balance of their contracted wages at the end of a school year to begin retirement benefits at an earlier date.

The change to subrule 21.11(9) will permit retirees to retain group insurance coverage at employee rates for the remainder of the school year following completion of services without violating IPERS' bona fide retirement rules, which require a complete severance of employment.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest in this case because the amendments are designed to make changes which confer benefits or remove restrictions on IPERS members.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and that the amendments be made effective upon filing with the Administrative Rules Coordinator on February 18, 2000, because the amendments implement new policies that will be beneficial to members and will give members and their employers adequate notice of the changes. In addition to publication in the Iowa Administrative Bulletin, IPERS will post a summary of this rule making in the administrative rule docket maintained on its Web site at www.state.ia.us/ipers.

The Department adopted these amendments on February 18, 2000.

PERSONNEL DEPARTMENT[581](cont'd)

These amendments are intended to implement Iowa Code chapter 97B.

These amendments became effective on February 18, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 21.4(2) as follows:

21.4(2) Wages are reportable in the quarter in which they are actually paid to the employee, except in cases where employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, in which case the employer shall file wage adjustment reporting forms with IPERS allocating said wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

~~Wages received by employees who have the right to accelerate or defer the receipt of wages (e.g., by shifting from a 12-month to a 10-month wage payment schedule, or vice versa) must be reported in the quarter the wages otherwise would normally have been received, if such rights are offered primarily for purposes of increasing a member's three-year average covered wage (e.g., by offering the right to shift from a 12-month to a 10-month wage payment schedule only to employees who are retiring or terminating employment).~~

An employer cannot report wages as having been paid to employees as of a quarterly reporting date if the employee has not actually or constructively received the payments in question. For example, wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on June 30 would be reported as second quarter wages, but wages that are mailed, transmitted via electronic

funds transfer for direct deposit, or handed to an employee on July 3 would be reported as third quarter wages.

IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 21.4(1) above and shall not be covered.

ITEM 2. Amend subrule **21.11(9)** by adopting a **new** unnumbered paragraph at the end of the subrule as follows:

Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

[Filed Emergency 2/18/00, effective 2/18/00]

[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9707A

EDUCATION DEPARTMENT[281]

Adopted and Filed

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

The amendments eliminate the "good cause" deadline of June 30 from the rules and create uniform language between the rules and the Iowa Code.

These amendments reflect statutory provisions. Therefore, a waiver of these rules or any portion of these rules would conflict with state law.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as ARC 9531A. A public hearing was held January 6, 2000. No written or oral comments were received.

These amendments are intended to implement Iowa Code section 282.18.

These amendments will become effective April 12, 2000. The following amendments are adopted.

ITEM 1. Amend rule **281—17.2(282)**, definitions of "good cause" and "timely filed application," as follows:

"Good cause" is a condition that occurs after the open enrollment filing deadline of ~~October 30~~ related to change in the status of a pupil's residence or change in the status of a pupil's resident district that qualifies the parent/guardian to file a request for open enrollment which shall be considered in the same manner as if the deadline had been met.

"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, and 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~~ On or before 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 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)**, second unnumbered paragraph, as follows:

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 on or before~~ January 1, good cause applications filed ~~by June 30,~~ kindergarten applications filed ~~by June 30,~~ and continuation applications filed ~~by on or before~~ the third Thursday of the following September, or any combination

that the board determines. The same timelines for approval, forwarding, and notification shall apply.

ITEM 4. Amend rule 281—17.4(282), introductory paragraph, as follows:

281—17.4(282) Filing after the January 1 deadline—good cause. A parent/guardian may apply for open enrollment after the filing deadline of January 1 ~~and until June 30~~ of the school year preceding the school year for which open enrollment is requested if good cause exists 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 January 1, or the closing or loss of accreditation of a nonpublic 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:

17.4(1) Good cause related to change in the pupil's residence shall include:

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

ITEM 6. Rescind subparagraph **17.4(2)"a"(4)**.

ITEM 7. Amend rule 281—17.7(282), introductory paragraph, 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 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 on or before the third Thursday of September 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.

ITEM 8. Amend subrule 17.8(6) as follows:

17.8(6) Change in residence when participating in open enrollment. If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, *to open enroll to another school district*, or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment *or to open enroll to another school district*, the original district of residence shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place *on or after* the third Friday in September. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

If the move takes place between the end of one school year and the third Friday of September of the following school

EDUCATION DEPARTMENT[281](cont'd)

year, the new district of residence shall be responsible for that year's payment as well as succeeding years.

If the pupil is to remain under open enrollment *or to open enroll to another school district*, the parent/guardian shall write a letter, delivered by mail or by hand ~~prior to on or before~~ the third Thursday of the next September, to notify the original resident district, the new resident district, and the receiving district of this decision.

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

ITEM 9. Amend subrule 17.8(7) as follows:

17.8(7) Change in residence when not participating in open enrollment. If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program *or to open enroll to another school district*. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made ~~no later than on or before~~ the third Thursday of the following September. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is *on or after* the third Friday in September, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

ITEM 10. Amend subrule 17.10(7) as follows:

17.10(7) Late transfers. The resident district and the receiving district boards by mutual agreement may effectuate the transfer of an open enrollment pupil at any time following receipt of a petition for transfer which is approved by the two boards. *A transfer due to good cause is a late transfer. If this any transfer is made on or after the third Friday in September, the resident district is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.*

[Filed 2/11/00, effective 4/12/00]

[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9708A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 256.7(5), the State Board of Education hereby adopts amendments to Chapter 69, "Waiver of School Breakfast Program Requirement," Iowa Administrative Code.

The new rules reflect the statutory changes made to the school breakfast program by 1999 Iowa Acts, chapter 147.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9530A**. These rules are identical to those published under Notice.

A public hearing was held on January 11, 2000. One person was in attendance for the purpose of hearing comments. Prior to the hearing, two oral comments and one written comment were received. These comments concerned the process, rather than the content, of the rules.

These rules are intended to implement 1999 Iowa Acts, chapter 147.

These rules will become effective July 1, 2000.
The following rules are adopted.

ITEM 1. Amend 281—Chapter 69 by reserving rules **69.9** and **69.10** and designating **281—69.1(283A)** to **281—69.10** as Division I.

ITEM 2. Further amend 281—Chapter 69 by adopting the following new rules:

DIVISION II

ACCESS TO A SCHOOL BREAKFAST PROGRAM

(Effective July 1, 2000)

281—69.11(78GA,ch147) General statement. Effective July 1, 2000, a school district shall operate or provide for the operation of a school breakfast program at all attendance centers in the district or provide access to a school breakfast program at an alternative site if the district meets the criteria established in 69.14(78GA,ch147).

281—69.12(78GA,ch147) Definitions. The following definitions are used in these rules:

"Attendance center" means a public school of high school grade or under.

"Department" means the state department of education.

"Nutritionally adequate breakfast" means a meal which meets the minimum criteria for eligibility for federal reimbursement under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

"School board" means a board of school directors regularly elected by the registered voters of a school corporation or district of the state of Iowa.

"School breakfast program" means a program under which breakfasts are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

281—69.13(78GA,ch147) Institutions impacted. Iowa Code section 283A.2 as amended by 1999 Iowa Acts, chapter 147, states that a school district shall operate or provide for the operation of school breakfast programs serving nutritionally adequate breakfasts at all attendance centers in the district. However, a school district that meets the requirements of rules 69.14(78GA,ch147) through 69.16(78GA,ch147) may provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

281—69.14(78GA,ch147) Criteria for a plan to provide safe, reasonable student access to a school breakfast program. A school board that wishes to provide safe, reasonable student access to a school breakfast program, rather than operate or provide for the operation of a school breakfast program at a specific attendance center within the district shall

EDUCATION DEPARTMENT[281](cont'd)

develop an alternative site plan to operate the school breakfast program at another attendance center within the school district and shall annually certify to the department that the plan meets the following criteria:

1. Provides safe travel routes to and from the alternative breakfast site for all eligible students.
2. Minimizes student travel time between the student's attendance center and the alternative breakfast site.
3. Provides for a reasonable relationship between the time breakfast is offered, the time the student is required to arrive at the attendance center and alternative site, and the daily school start time.
4. Provides an alternative breakfast site facility adequate for the number of students participating in the breakfast program.

281—69.15(78GA,ch147) Notification requirements. The school board that wishes to provide access to a school breakfast program in accordance with this provision shall notify the parent, guardian, or legal or actual custodian of a child enrolled in the school district of the school district's intention to develop and implement a plan to provide school breakfast programs only in certain attendance centers. At any time in which the school district proposes to make substantive changes to a plan certified with the department, the notification requirements of this rule shall apply.

281—69.16(78GA,ch147) Certification requirements. The school board shall annually certify to the department that the plan meets the criteria outlined in rule 69.14(78GA, ch147). The certification shall be submitted to the department of education, on forms provided, not later than May 1 each year for the school year beginning July 1. Any changes to the plan requiring a new notification must be certified with the department within 30 days of adoption of the new plan.

These rules are intended to implement 1999 Iowa Acts, chapter 147.

[Filed 2/11/00, effective 7/1/00]

[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9705A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 331.439(1)"b," the Department of Human Services hereby amends Chapter 25, "Disability Services Management," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules February 9, 1999. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on December 29, 1999, as **ARC 9562A**.

This amendment rewrites the rules that define the standards for county management plans for mental health, mental retardation, and developmental disability services. Each county must complete a plan in order to meet the requirements of Iowa Code section 331.439. 1999 Iowa Acts, chapter 160, division IV, amended Iowa Code section 331.439 to implement a three-part plan for the county mental health, mental retardation, and developmental disability services.

These rules reflect the direction mandated by the General Assembly. Changes include:

§ The management plan is separated into three separate parts: the Policies and Procedures Manual, the Management Plan Annual Review, and the Three-Year Strategic Plan. The "Policies and Procedures" part of the management plan will describe the system management and plan administration. The "Strategic Action Plan" shall describe the county's vision for its mental health, mental retardation and developmental disabilities system for the ensuing three years. The "Management Plan Annual Review" shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by the managed care entity on behalf of the county.

§ The qualifications of the Central Point of Coordination Administrator are revised to require two years of experience working with people with disabilities and to provide a grandfathering clause for persons continually employed as Central Point of Coordination administrators prior to April 1, 1996.

§ The definition of "service coordinator" is expanded to include county caseworkers, county social workers, and qualified case managers as defined in rule 441—24.1(225C).

§ Other definitions are revised for clarity and some definitions are removed that are no longer used in the body of the rules. Various Iowa Code and rule citations are corrected.

Both the Department of Human Services and county governments supported the changes to the Iowa Code regarding the county management plans. County and state governments discussed the ramifications requiring implementation of 1999 Iowa Acts, chapter 160, division IV, for Fiscal Year 2000 or Fiscal Year 2001. It was a group consensus that the plans should be changed for Fiscal Year 2001 with the understanding that the writing of the management plans would happen simultaneously with the approval process for the rules.

At the request of the State-County Management Committee, a workgroup comprised of a consumer representative, a provider representative and county and state government representatives addressed the task to rewrite the rules. Input was sought from all the represented groups and was considered for the rules. The final draft of the rules was presented to the State-County Management Committee, which then requested that the Department of Human Services submit them to the Council on Human Services for consideration.

These rules do not provide for waivers in specified situations because county management plans are required by law and there is no situation where a plan would not be required. These rules allow significant flexibility in the planning process and also have a procedure for changing the plan should a county's circumstances change.

Eight public hearings were held around the state. Six persons attended. The following revisions were made to the Notice of Intended Action as a result of the comments received:

Subrule 25.12(2), paragraph "b," subrule 25.13(3), and rule 441—25.17(331) were revised to change the term "annual plan review" to "management plan annual review" for clarification.

These rules are intended to implement Iowa Code sections 331.424A, 331.439 as amended by 1999 Iowa Acts, chapter 160, and 331.440.

These rules shall become effective April 12, 2000.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text

HUMAN SERVICES DEPARTMENT[441](cont'd)

of these rules [Ch 25, Div. II] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 9562A**, IAB 12/29/99.

[Filed 2/9/00, effective 4/12/00]

[Published 3/8/00]

[For replacement pages for IAC, see IAC Supplement 3/8/00.]

ARC 9704A**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 217.6 and 249A.4 and 1999 Iowa Acts, chapter 203, section 11, subsections 1 and 2, section 33, subsection 13, and section 47, the Department of Human Services hereby amends Chapter 51, "Eligibility," Chapter 52, "Payment," Chapter 75, "Conditions of Eligibility," and Chapter 177, "In-Home Health Related Care," appearing in the Iowa Administrative Code.

These amendments implement the annual adjustment in the maximum amount of resources to be attributed to the community spouse and the amount used for determining the community spouse's maintenance needs and the following changes to the State Supplementary Assistance Program:

- Pass along the January 1, 2000, Supplemental Security Income (SSI) cost-of-living adjustment increases.

The Department received confirmation from the Department of Health and Human Services (DHHS) that the social security cost-of-living increase which became effective January 1, 2000, is established at 2.4 percent. The Department has decided to pass along this increase to recipients of State Supplementary Assistance. Therefore, the SSI increase of \$12 for an individual results in an increase in the total allowance in a family life home from \$582.20 to \$594.20. Individuals in family life homes will receive the same personal needs allowance as residents in residential care facilities. The benefit rate for an essential person increased by \$6 from \$251 to \$257 resulting in the same increase for a dependent person.

- Increase the personal needs allowance for residents of residential care facilities. The Seventy-eighth General Assembly in 1999 Iowa Acts, chapter 203, section 11, subsection 1, required the Department to increase the personal needs allowance for residents of residential care facilities (RCFs) by the same percentage and at the same time as federal Supplemental Security Income and federal social security benefits are increased due to a recognized increase in the cost of living. At the current time, residents of RCFs receive a total personal needs allowance of \$71, of which \$65.23 is for personal expenses and \$5.26 is for Medicaid copayment expenses. A 2.4 percent increase in the personal expenses part of the allowance increases that part of the allowance to \$66.80. This amount added to the average copayment expense of \$5.48 totals \$72.28. Thus, the personal needs allowance is rounded up to \$73 effective January 1, 2000.

- Increase the maximum and flat State Supplementary Assistance (SSA) residential care facility (RCF) and in-home health related care (IHHRC) reimbursement rate by 1.8 percent. The maximum RCF reimbursement rate will be increased from \$23.83 to \$24.26 per day. The flat RCF reim-

bursement rate will be increased from \$17.05 to \$17.36 per day. The monthly IHHRC reimbursement rate will be increased from \$458.20 to \$466.49.

The Seventy-eighth Iowa General Assembly in 1999 Iowa Acts, chapter 203, section 33, subsection 3, directed that the Department increase the RCF and IHHRC reimbursement rates to the amounts indicated in these amendments.

The maximum amount of resources to be attributed to a community spouse and the maintenance needs of a community spouse are indexed annually by the consumer price index. The Department has received confirmation from DHHS that the maximum amount of resources to be attributed to the community spouse has increased from \$81,960 to \$84,120 and the maintenance needs of the community spouse have increased from \$2,049 to \$2,103.

These amendments do not provide for waivers in specified situations because everyone should be subject to the amounts set by these amendments and these amendments confer a benefit on those affected.

These amendments were previously Adopted and Filed Emergency and published in the December 29, 1999, Iowa Administrative Bulletin as **ARC 9568A**. Notice of Intended Action to solicit comments on that submission was published in the December 29, 1999, Iowa Administrative Bulletin as **ARC 9567A**.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments February 9, 2000.

These amendments are intended to implement Iowa Code sections 249.3, 249.4, and 249A.4 and 1999 Iowa Acts, chapter 203, section 11, subsections 1 and 2, and section 33, subsection 3.

These amendments shall become effective May 1, 2000, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than ~~\$251~~ \$257. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249) as follows:

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, ~~\$251~~ \$257 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 3. Amend rule 441—52.1(249) as follows:

Amend subrules 52.1(1) and 52.1(2) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a protective living arrangement:

Family life home certified under rules in 441—Chapter 111.

\$511.20	\$521.20	care allowance
71.00	73.00	personal allowance
<hr/> \$582.20	<hr/> \$594.20	Total

HUMAN SERVICES DEPARTMENT[441](cont'd)

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

a. Aged or disabled client and a dependent relative	\$751	\$769
b. Aged or disabled client, eligible spouse, and a dependent relative	\$1002	\$1026
c. Blind client and a dependent relative	\$773	\$791
d. Blind client, aged or disabled spouse, and a dependent relative	\$1024	\$1048
e. Blind client, blind spouse, and a dependent relative	\$1046	\$1070

Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of ~~\$17.05~~ \$17.36 or on a cost-related reimbursement system with a maximum reimbursement per diem rate of ~~\$23.83~~ \$24.26. A cost-related per diem rate shall be established for each facility choosing this method of payment according to rule 441—54.3(249).

Further amend subrule 52.1(3), paragraph "a," subparagraph (2), as follows:

(2) Effective ~~January 1, 1999~~ January 1, 2000, a \$71-\$73 allowance to meet personal expenses and Medicaid copayment expenses.

ITEM 4. Amend subrule 75.5(3), paragraph "d," as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than \$24,000, then \$24,000 shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds ~~\$81,960~~ \$84,120, the amount over ~~\$81,960~~ \$84,120 shall be attributed to the institutionalized spouse. (The maximum limit shall be indexed annually by the consumer price index.)

If the institutionalized spouse has transferred resources to the community spouse under a court order for the support of the community spouse, the amount transferred shall be the amount attributed to the community spouse if it exceeds the specified limits above.

ITEM 5. Amend subrule 75.16(2), paragraph "d," subparagraph (3), as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~\$2,049~~ \$2,103. (This amount shall be indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above ~~\$2,049~~ \$2,103, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

Also, if a court has entered an order against an institutionalized spouse for monthly income to support the community spouse, then the community spouse income allowance shall not be less than this amount.

ITEM 6. Amend rule 441—177.4(249) as follows:

Amend subrule 177.4(3) as follows:

177.4(3) Maximum costs. The maximum cost of service shall be ~~\$458.20~~ \$466.49. The provider shall accept the payment made and shall make no additional charges to the recipient or others.

Amend subrule 177.4(7), introductory paragraph, as follows:

177.4(7) Income for adults. The gross income of the individual and spouse, living in the home, shall be limited to ~~\$458.20~~ \$466.49 per month if one needs care or ~~\$916.40~~ \$932.98 if both need care, with the following disregards:

Amend subrule 177.4(8), paragraph "b," introductory statement, as follows:

b. The income of the child shall be limited to ~~\$458.20~~ \$466.49 per month with the following disregards:

[Filed 2/9/00, effective 5/1/00]

[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9703A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments February 9, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on December 29, 1999, as ARC 9563A.

These amendments clarify what constitutes a complete quarterly report for transitional Medicaid.

Transitional Medicaid provides medical assistance for a period of up to 12 additional months to families who are canceled from the Family Medical Assistance Program (FMAP) because of increased earnings of the specified relative of the dependent child. A recipient of transitional Medicaid is required to submit a complete quarterly report in the fourth, seventh, and tenth months of the transitional Medicaid period.

Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the first day of the budget month, and accompanied by the requested verification.

These amendments align transitional Medicaid with FMAP-related policy to provide consistency with the public assistance eligibility report (PAER) requirements and the quarterly report requirements, thereby decreasing program complexity and potential for error.

These amendments do not provide for waiver in any specified situations because a complete quarterly report form should always be required. Individuals may request waivers in exceptional situations pursuant to the Department's general rule on exceptions at rule 441—1.8(217).

These amendments are identical to those published under Notice of Intended Action.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective May 1, 2000. The following amendments are adopted.

ITEM 1. Amend subrule 75.1(31), paragraph "h," as follows:

h. If the family receives transitional Medicaid coverage during the entire initial six-month period and has returned, by the twenty-first day of the fourth month, a complete Notice of Decision/Quarterly Income Report, Form 470-2663, Medicaid shall continue for an additional six months, subject to paragraphs "g" and "i" of this subrule. *Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the first day of the budget month, and accompanied by verification as required in paragraphs 75.57(1)"f" and 75.57(2)"l."*

ITEM 2. Amend subrule 75.1(31), paragraph "i," subparagraph (1), introductory paragraph, as follows:

(1) The family fails to return ~~the~~ a complete Notice of Decision/Quarterly Income Report, Form 470-2663, by the twenty-first day of the first month or the fourth month of the additional six-month period as required in paragraph 75.1(31)"h," unless the family establishes good cause for failure to report on a timely basis. Good cause for failure to return the report timely shall be established when the family demonstrates one or more of the following conditions exist:

[Filed 2/9/00, effective 5/1/00]

[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9702A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 170, "Child Care Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment on February 9, 2000. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on December 29, 1999, as **ARC 9564A**.

This amendment revises policy governing payment for child care when the parent is in academic or vocational training. Policy is being revised to clarify when child care assistance will not be provided to be consistent with policy currently in PROMISE JOBS rules at 441—paragraph 93.114(11)"c." Payment shall not be approved for clients in academic or vocational training for the following:

1. When labor market statistics for a local area indicate low employment potential. Exceptions may be made when the client has a job offer prior to entering the training or if a client is willing to relocate after training to an area where there is employment potential. Clients willing to relocate must provide documentation from the department of workforce development, private employment agencies, or employers that jobs paying at least minimum wage for which

training is being requested are available in the locale specified by the client.

2. Jobs paying less than minimum wage.

3. College coursework for a client who possesses a baccalaureate degree unless the coursework is to obtain a teaching certificate or complete continuing education units.

4. The course or training is one that the client has previously completed.

5. When the client was previously unable to maintain the cumulative grade point average required by the training or academic facility in the same training for which application is now being made. This does not apply to parents under the age of 18 who are enrolled in high school completion activities.

In addition, a policy which allowed child care assistance to be paid for study time for PROMISE JOBS participants if approved by the PROMISE JOBS worker and a policy which allowed child care assistance to be paid if a parent in a Family Investment Program (FIP) household remains in the household and receives social security are being deleted to make policy for PROMISE JOBS participants consistent with policy for other clients. PROMISE JOBS staff have indicated that they have very few, if any, clients using the study time policy. PROMISE JOBS participants are allowed an exemption for Supplemental Security Income, but not for social security.

This amendment does not provide for waivers in specified situations because individuals may request a waiver of child care assistance policies under the Department's general rule on exceptions at rule 441—1.8(217).

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 234.6(6)"a."

This amendment shall become effective May 1, 2000.

The following amendment is adopted.

Amend subrule 170.2(2), paragraph "b," subparagraph (1), as follows:

(1) The parent is in academic or vocational training. Child care provided while the parent participates in postsecondary education *leading up to and including a baccalaureate degree program* or vocational training shall be limited to a 24-month lifetime limit. A month is defined as a fiscal month or part thereof and shall generally have starting and ending dates ~~falling~~ *that fall* within two calendar months but shall only count as one month. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the 24-month limit.

Payment shall not be approved for the following:

1. *When labor market statistics for a local area indicate low employment potential. Exceptions may be made when the client has a job offer prior to entering the training or if a client is willing to relocate after training to an area where there is employment potential. Clients willing to relocate must provide documentation from the department of workforce development, private employment agencies, or employers that jobs paying at least minimum wage for which training is being requested are available in the locale specified by the client.*

2. *Jobs paying less than minimum wage.*

3. *College coursework for a client who possesses a baccalaureate degree unless the coursework is to obtain a teaching certificate or complete continuing education units.*

4. *The course or training is one that the client has previously completed.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

5. *When the client was previously unable to maintain the cumulative grade point average required by the training or academic facility in the same training for which application is now being made. This does not apply to parents under the age of 18 who are enrolled in high school completion activities.*

PROMISE JOBS child care allowances provided while the parent is a recipient of the family investment program and participating in PROMISE JOBS components in post-secondary education or training shall count toward the 24-month lifetime limit.

~~Child care assistance may be paid for study time for PROMISE JOBS participants if approved by the PROMISE JOBS worker.~~

Further amend subrule 170.2(2), paragraph "b," last unnumbered paragraph, as follows:

If a parent in a family investment program household remains in the home, child care assistance can be paid if that parent receives Supplemental Security Income ~~or social security.~~

[Filed 2/9/00, effective 5/1/00]

[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9723A

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544B.5, the Landscape Architectural Examining Board hereby amends Chapter 3, "Continuing Education," Iowa Administrative Code.

The amendments reflect changes to the continuing education requirements which specify that hours be earned in public protection subjects and the method by which the hours may be earned. The Board feels these changes will safeguard the health, safety and welfare of the public.

Waivers from provisions of these rules may be sought pursuant to 193D—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9529A**. The following changes from the Notice have been made:

1. The definition of "hours" is revised by adding the word "contact" in the last sentence as follows: "One Continuing Education Unit (C.E.U.) offered by an accredited sponsor shall be considered equivalent to ten contact hours of continuing education."

2. The second sentence of the definition of "public protection subjects" is revised by deleting the word "or" and inserting "systems," as follows: "Such subjects include environmental systems, site design, land use analyses, landscape architecture programming, grading and drainage, storm water management, erosion control, site and soils analyses, accessibility, building codes, evaluation and selection of products and materials, construction methods, contract documentation, construction administration and the like."

3. The second sentence of the definition of "related practice subjects" is revised by adding the words "design, environmental systems," as follows: "Such subjects include design, environmental systems, cost analysis, construction contract negotiation, construction-phase office procedures, project management, review of state registration laws including rules of professional conduct."

4. Subrule 3.2(4), paragraph "a," was revised to read as follows: "a. Contact hours in attendance at short courses or seminars dealing with landscape architectural subjects and sponsored by colleges, universities or professional organizations."

These amendments were approved by the Board on February 15, 2000.

These amendments will become effective on September 1, 2000.

These amendments are intended to implement Iowa Code section 544B.8.

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 amendments [3.1, 3.2(1) to 3.2(4), 3.3, 3.5, 3.7] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9529A**, IAB 12/15/99.

[Filed 2/17/00, effective 9/1/00]

[Published 3/8/00]

[For replacement pages for IAC, see IAC Supplement 3/8/00.]

ARC 9711A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment increases the current horsepower restriction on Lake Icaria in Adams County from 200 to 300 horsepower. The Adams County Conservation Board has petitioned the Department to increase the horsepower limit due to the newer manufactured boats with modern engines and higher horsepower ratings.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 1, 1999, as **ARC 9514A**. No comments were received during the comment period or at the public hearings held in the Wallace State Office Building and Lake Icaria headquarters. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 462A.26.

This amendment will become effective April 12, 2000.

The following amendment is adopted.

Amend rule 571—40.20(462A), introductory paragraph, as follows:

571—40.20(462A) Lake Icaria, Adams County—watercraft use. Motorboats of outboard or inboard-outdrive type with power not to exceed ~~200~~ 300 horsepower shall be

NATURAL RESOURCE COMMISSION[571](cont'd)

permitted on Lake Icaria. The following rules shall govern vessel operation on Lake Icaria in Adams County.

[Filed 2/17/00, effective 4/12/00]
[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9712A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 49, "Operation of Motor Vehicles in Meandered Streams, Navigable Streams and Trout Streams," Iowa Administrative Code.

This amendment adds a segment of the Des Moines River to the existing list of Iowa meandered streams and corrects a previous omission.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 29, 1999, as **ARC 9581A**. No comments were received during the comment period or at the public hearing held January 19, 2000. No changes were made from the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 462A.34.

This amendment will become effective April 12, 2000. The following amendment is adopted.

Amend rule **571—49.5(462A)** by adopting the following **new** paragraph "**1**" and renumbering existing paragraphs "**1**" to "**10**" as "**2**" to "**11**":

1. Des Moines river. From Mississippi river to west line of T-95N, R-32W, Palo Alto county, west branch, and north line of T-95N, R-29W, Kossuth county, east branch at a point near Algona.

[Filed 2/17/00, effective 4/12/00]
[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9713A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts amendments to Chapter 83, "Scuba and Skin Spearfishing of Rough Fish," Iowa Administrative Code.

This amendment corrects typographical errors in the legal description for locations of meandered streams, including the Wapsipinicon River and Little Maquoketa River.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 29, 1999, as **ARC 9582A**. No comments were received during the comment

period or at the public hearing held January 19, 2000. No changes were made from the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 481A.67.

This amendment will become effective April 12, 2000. The following amendment is adopted.

Amend subrule **83.2(1)**, paragraphs "**e**" and "**k**," as follows:

e. Wapsipinicon River—From Mississippi River to west line ~~T-89N~~ T-86N, R-6W, above Central City in Linn county.

k. Little Maquoketa River—From Mississippi River to west line Section ~~25-90-2~~ 35-90N-2 east, Dubuque county.

[Filed 2/17/00, effective 4/12/00]
[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

ARC 9709A

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby amends Chapter 300, "Board of Speech Pathology and Audiology Examiners," and Chapter 301, "Speech Pathology and Audiology Continuing Education and Disciplinary Procedures," Iowa Administrative Code.

These amendments allow the licensee to obtain continuing education credit for educational presentations, make a slight modification for renewal of an initial license, and make a modification in procedures for accredited sponsors.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9547A**. A public hearing was held on January 4, 2000, from 9 to 11 a.m. in the Professional Licensure Board Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. There were no written or oral comments received in response to the amendments. These amendments are identical to those published under Notice.

The Board of Speech Pathology and Audiology Examiners adopted these amendments at a Board meeting on February 11, 2000.

The amendments are intended to implement Iowa Code chapters 147 and 272C.

These amendments will become effective April 12, 2000. The following amendments are adopted.

ITEM 1. Amend subrule 300.6(2) as follows:

300.6(2) Beginning January 1, 2000, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 300.7(147). Individuals who were issued their initial licenses within six months of the start of the next renewal period will not be required to renew their licenses until the next renewal two years later. The new licensee is exempt from meeting the continuing education requirements for the continuing education biennium in which the license is originally issued. Individuals will be required to report 30 hours

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

of continuing education for ~~the first renewal and~~ every renewal thereafter.

ITEM 2. Adopt ~~new~~ paragraph **301.4(1)“e”** as follows:

e. All accredited sponsors shall notify the board if there is a change of address or telephone number or if the contact person changes. Such changes should be sent to the board within 60 days of the change.

ITEM 3. Amend subrule 301.4(3) as follows:

301.4(3) Independent study. The independent study plan must be submitted and approved prior to beginning the study. The projected date of completion must be recorded on the board-provided application form. An independent study report must be filed within 30 days after the projected date of completion. One 30-day extension may be granted upon the condition that such a request in writing is received within 30 days of the projected date of completion. A reminder will not be sent by the board.

~~Program presenters will not receive continuing education credit for programs presented. Presenters may request independent study credit for preparation. A maximum of 10 hours~~

of credit will be given for presenting professional programs that meet the criteria as listed in 301.3(2). Two hours of credit will be awarded for each hour of new presentation material. A course schedule or brochure must be maintained for audit, and an independent study plan must be submitted and approved prior to the presentation. An independent study report shall be filed within 30 days after the completion of the presentation.

~~The maximum independent study which can be accrued during any biennium is six hours of the required 30 hours.~~
The maximum number of independent study hours that can be accrued during any biennium is 16 hours of the 30 hours required. Ten hours of independent study can be accrued for presentations, and 6 hours can be accrued for other independent study activities.

[Filed 2/15/00, effective 4/12/00]

[Published 3/8/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/8/00.

* SUMMARY OF DECISIONS
 THE SUPREME COURT OF IOWA
FILED FEBRUARY 16, 2000

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. 99-1768. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. LEMANSKI.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered en banc. Opinion by McGiverin, C.J.
 (7 pages \$2.80)

The Iowa Supreme Court Board of Professional Ethics and Conduct filed a complaint against respondent, David A. Lemanski of Dubuque, Iowa, alleging that he had violated disciplinary rules by neglecting a legal matter entrusted to him, by failing to disburse and account for client funds held in his possession, and by failing to respond to inquiries from the Board. The charges were based upon Lemanski's conduct in connection with a workers' compensation case. The deputy industrial commissioner excluded Lemanski's client's witnesses and exhibits because Lemanski was late in complying with a hearing assignment order. Lemanski then deposited the resulting endorsed settlement check into his client trust account, but despite numerous requests, he failed for one year to disburse any settlement funds and failed to render an accounting. Lemanski then failed to cooperate with his local ethics board and our board. Our Grievance Commission found that the Board had proved the alleged ethical violations and recommended that Lemanski's license to practice law be suspended for thirty days. **OPINION HOLDS:** We conclude that a convincing preponderance of the evidence supports the Commission's findings and conclusions concerning Lemanski's ethical violations. We determine that Lemanski be suspended from the practice of law in Iowa with no possibility of reinstatement for one month from the filing of this opinion. Costs are taxed to Lemanski.

No. 99-1646. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. JAY.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered en banc. Opinion by Carter, J. (8 pages \$3.20)

In 1993 Daniel Jay's uncle died, and his will appointed Jay executor of the estate. Jay designated himself attorney for the estate. Jay requested and received fees as executor and as attorney for the estate. Jay's fee application omitted any disclosure concerning an Iowa inheritance tax return, which was not filed until after Jay had paid himself the fees approved. The final report had no accounting attached and wrongly recited that such was being provided each distributee. One of the beneficiaries, after finally receiving the final report, filed objections. The district court concluded Jay had misrepresented matters to the court and removed him as executor and attorney and ordered him to make full accounting to a successor and deliver all records to that party. For more than seventeen months,
 (continued)

No. 99-1646. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. JAY (continued).

Jay failed to comply. **OPINION HOLDS:** I. Jay's professional neglect supports the finding of the Grievance Commission that he violated DR 6-101 and DR 7-101 of the Iowa Code of Professional Responsibility for Lawyers. II. Jay's withdrawal of attorney fees violates DR 2-106(A). III. Jay's false representations in documents filed with the probate court violates DR 1-102(A)(4). IV. Based on Jay's (1) persistent refusal to refund fees and turn over records, and (2) two prior ethical violations, we suspend his license to practice law in this state indefinitely with no possibility of reinstatement for one year. We also order him to satisfy the judgment against him in favor of the estate and reimburse that estate the attorney fees required to be paid to the objector's attorney.

No. 99-1770. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT V. JONES.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered en banc. Per curiam. Dissent by Lavorato, J.
(12 pages \$4.80)

The board of professional ethics and conduct charged attorney Oscar E. Jones with violating several disciplinary rules by engaging in conduct involving misrepresentation, engaging in conduct reflecting adversely on his fitness to practice law, and assisting a client in conduct the lawyer knows to be illegal or fraudulent. Jones entered into an agreement with Leon Currie whereby Jones was to procure a \$5000 loan for Currie so Currie could purchase risk insurance for delivery of \$25,300,000 allegedly owed him from a pipeline contract in Nigeria. In return for Jones obtaining the financing and helping secure the balance owed Currie, Currie would purchase a two million dollar annuity for Jones. Jones persuaded a former client, Delbert Jones, to loan Currie the money. Jones told Delbert that, if Delbert loaned the money within two days, Currie would repay him \$15,000 within thirty days. Jones did not tell Delbert that several American banks and other individuals had refused to loan Currie the money. Jones also said he could not make the loan himself because Currie was his client. Delbert borrowed the money and loaned it to Currie. Currie never repaid Delbert, and Delbert had to pay the loan balance plus interest. The grievance commission found the board failed to prove Jones was involved in fraudulent conduct, but did find he engaged in misrepresentation and conduct reflecting adversely on his fitness to practice law. The commission recommended Jones be reprimanded. The matter is now before us for our de novo review. **OPINION HOLDS:** I. We agree that Jones did not assist in fraudulent conduct. We think he naively believed the "pie in the sky" story that Currie handed him. II. We find Jones' statements and omissions misled Delbert and caused him to make the loan. At a minimum, Jones should have disclosed that several potential lenders wanted no part of this risky venture. Jones also rushed Delbert into making the decision, thereby depriving him of any real opportunity to seek outside advice. We therefore agree Jones committed the disciplinary violations found by the commission. III. We consider the nature of Jones' conduct, the harm caused to
(continued)

No. 99-1770. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. JONES (continued).

his client, and his prior reprimand in determining the appropriate sanction. We suspend Jones' license to practice law with no possibility of reinstatement for two months from the date of filing of this opinion. As a condition of reinstatement, Jones shall make restitution to Delbert for the principal and interest he paid on the loan. Costs are assessed to Jones. **DISSENT ASSERTS:** I think the discipline in this case is too severe. Jones testified he is in the process of winding down his practice. We should let him retire without besmirching an almost unblemished record of forty-seven years of practice. I agree with the commission's recommendation of a reprimand, but I would strongly suggest Jones repay Delbert.

No. 98-924. GABELMANN v. NFO, INC.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Story County, Joel Swanson, Judge. **COURT OF APPEALS DECISION VACATED, DISTRICT COURT JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Carter, Lavorato, Neuman, and Ternus, JJ. Opinion by Neuman, J. (8 pages \$3.20)

Karl Gabelmann sued his employer, NFO, Inc., over its refusal to pay him a housing allowance. In an earlier opinion, we affirmed the jury's finding of employer liability but remanded for entry of a reduced judgment recognizing the statute of limitations for wage payments. *Gabelmann v. NFO, Inc.*, 571 N.W.2d 476, 484 (Iowa 1997). On remand (1) the parties stipulated Gabelmann was owed unpaid wages of \$1200, (2) the court rejected Gabelmann's claim for liquidated damages, (3) the court pared Gabelmann's attorney fees from \$29,195.50 to \$3500, citing the small size of the judgment, and (4) rejected Gabelmann's request to compel production of billing records for NFO's attorneys. Gabelmann appealed. We transferred the case to our court of appeals, which ruled the billing records were relevant on Gabelmann's attorney fee claim and remanded for a hearing on trial and appellate attorney fees. We granted NFO further review. **OPINION HOLDS:** I. The court was within its discretion to limit introduction of the billing records and it could make a determination whether Gabelmann's fees were "usual and necessary" without access to NFO's records. II. It may be inferred from NFO's arguments that it believes Gabelmann should have given up on his wage claim long before he did. We believe it is precisely this attitude that the legislature sought to address with section 91A.8's remedial provisions (attorney fees award mandatory in a successful wage claim litigation). The court misapplied the statute by placing undue emphasis on the size of the judgment. This constitutes an abuse of discretion. We reverse and remand for a fresh consideration of Gabelmann's entitlement to attorney fees, including attorney fees for these appellate proceedings.

No. 98-944. IN RE MARRIAGE OF GOODWIN.

Appeal from the Iowa District Court for Washington County, Robert Bates, Judge. **AFFIRMED AS MODIFIED.** Considered by Larson, P.J., Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Ternus, J. (17 pages \$6.80)

Sue and David Goodwin were married in 1967 and had two children, Paul, who died in 1990, and Jami. Paul's life insurance policy left \$43,000 payable to Sue. Sue filed a petition for dissolution in 1996. The court made a property division in the amount of \$172,861 to Sue and \$129,815 to David. The court also ordered Sue to pay the balance of the \$30,000 bank loan. Sue netted approximately \$14,000 more than did David from the property distribution. Sue appealed. **OPINION HOLDS:** I. As Sue was the only beneficiary of Paul's life insurance policy, we conclude that the proceeds constitute a gift to or inheritance by her. We find no inequity in setting aside the identifiable assets purchased with the insurance proceeds to Sue. II. Regarding Sue's inheritance, we exclude from the property distribution an annuity, \$14,800 of Sue's IRA, and \$7,200 of the value of the marital home, resulting in reduction of \$37,371 in the property awarded to her. III. The trial court properly included a vehicle transferred to their daughter in its property division. IV. Sue's unilateral disposal of David's insurance policy does not prevent its inclusion in the court's division of their property. V. Prior to filing this action, Sue liquidated her mutual fund and received approximately \$29,000. We consider contributions Sue had made to the account during the marriage a marital asset. VI. We conclude Sue should have additional assets in lieu of an alimony award. We modify the court's judgment by deleting Sue's obligation to pay the mortgage on a home awarded to David. VII. We reject Sue's contention that she should be awarded an additional share of the parties' assets as compensation for domestic abuse she claims to have suffered as it is not a factor to be considered under Iowa Code section 598.21(1). VIII. We deny both parties' requests for attorney fees.

No. 97-370. STATE v. HALLUM.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul and Phillip S. Dandos, Judges. **AFFIRMED.** Considered en banc. Opinion by Ternus, J. (13 pages \$5.20)

Matthew Hallum was charged with the murder of Tanya Rubottom. Hallum's brother, Carlos Medina, admitted in a videotaped interview that Hallum and he sexually assaulted and strangled Rubottom. Medina later refused to testify in Hallum's trial even after he was granted immunity. The trial court determined that Hallum had procured Medina's unavailability as a witness at trial, rendering his statement admissible over Hallum's hearsay and confrontation objections. Medina's statement was admitted at trial, and Hallum was convicted. We affirmed his convictions on appeal, finding no merit in the hearsay and confrontation objections. The United States Supreme Court granted his petition for writ of certiorari and remanded to this court for further consideration. **OPINION HOLDS:** I. We hold that Hallum procured Medina's unavailability by encouraging and influencing him not to testify. Therefore, Hallum forfeited his right to object to the admission of Medina's videotaped statement, and the trial court properly admitted that statement. We need not reach the merits of Hallum's hearsay and confrontation objections. We affirm his convictions.

No. 99-618. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BD. v. SHELL OIL CO.

Appeal from the Iowa District Court for Polk County, James W. Brown, Judge. **AFFIRMED.** Considered en banc. Opinion by Cady, J. (9 pages \$3.60)

The Tank Fund Board brought this action against Shell Oil Company as an owner or operator under Iowa Code section 455G.13(1) (1997) to recover the cost of the corrective action taken to clean up a petroleum release at a gasoline station Shell had previously owned. Shell admitted the underground storage tank released petroleum, but asserted it was not responsible for the costs of corrective action. At trial, Shell offered evidence that any release that occurred at the site during the time of its ownership had been cleaned with no remnant petroleum and that petroleum leaked from the underground storage tanks after it sold the station. The district court instructed the jury the Board must prove Shell owned the underground storage tank system at the time a release of petroleum occurred from the system, and the release was a cause of the corrective action at the site. The jury found Shell owned the tank system while a release occurred, but that the release was not a cause of the corrective action taken. The Board appeals. **OPINION HOLDS:** The trial court properly instructed the jury to include proximate cause as an element to be proved by the Board in an action against an owner or operator for costs under section 455G.13(1) of the Tank Fund Act.

No. 99-31. IN RE R.P.

Appeal from the Iowa District Court for Dubuque County, Alan Pearson, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J. (7 pages \$2.80)

Respondent's mother filed an application pursuant to Iowa Code section 125.75 (1997), alleging that he was a chronic substance abuser. A judicial hospitalization referee held a bifurcated hearing on the substance abuse matter and a separate application that alleged that the respondent was seriously mentally impaired. The applicant did not hire an attorney or request the district court to appoint one for her as permitted by Iowa Code section 125.78(a). An assistant county attorney presented the case for commitment but was not a party to the application for substance abuse treatment. Instead, the referee asked the questions regarding the application. On appeal, the respondent challenges the procedure under which the referee found that he was a substance abuser. He contends the commitment statute "clearly envision[s] an adversarial process in which the applicant bears the burden of establishing by clear and convincing evidence that the Respondent is a substance abuser." **OPINION HOLDS:** We believe evidence was "presented by the applicant," as required by section 125.78(2), through her own testimony and that of her witnesses. We find that the referee did not display any evidence of becoming an advocate by extensive questioning, leading questions, or cross-examining the respondent, and the limited involvement of the referee in this case clearly did not violate the respondent's due process rights. We believe the burden of proof under section 125.82(4) does not refer to the mechanics of presenting the evidence as argued by the respondent. Rather, it refers to the burden of proof in the sense that the applicant must bear the risk of nonpersuasion. That is, if the evidence in support of the application is not clear and convincing, the application fails. That was not the case here.

No. 98-914. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BD. v. MOBIL OIL CORP.

Appeal from the Iowa District Court for Boone County, Ronald A. Schectman, Judge. **AFFIRMED.** Considered en banc. Opinion by Cady, J. (5 pages \$2.00)

Mobil owned a gas station in Boone from 1952 to 1958. In 1958, the site was purchased by Miller Oil Company. Miller was known as a Mobil "jobber," or independent distributor of Mobil petroleum. Under the distributorship agreement, Mobil had the ability to debrand or remove the Mobil trademark and refuse to supply Mobil gasoline to a jobber station if the jobber placed a competitor's brand of petroleum in the tanks, or the jobber did not pay its bill. The agreement permitted Mobil to refuse to deliver Mobil gasoline if the jobber's hoses, tanks, and connections were not maintained in a good and clean condition. Mobil also had the ability to request tests to be performed on the tank system, and a right to receive copies of any test results. A petroleum contamination was discovered at the Boone station in 1990. Miller applied for financial support under the Iowa Comprehensive Petroleum Underground Storage Tank Fund Act, Iowa Code chapter 455G (1997). The Tank Fund Board approved the claim and paid for the corrective action costs incurred at the site. The Board instituted this action against Mobil as an "operator" of the tank under Iowa Code section 455G.13(1) to recover the past and future corrective action costs expended. The trial court granted Mobil summary judgment on the basis that the Act excluded a wholesale supplier of petroleum who did not also participate in the daily operations of the station. The court found no facts to indicate Mobil participated in the daily operations of the tank. The Board appeals. **OPINION HOLDS:** Even with the general control exercised by Mobil under the distributorship agreement, we agree with the district court that Mobil was not an operator under the Tank Fund Act as a matter of law. Its marginal ability to control was insufficient to create liability as an "operator."

No. 98-1251. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD v. SHELL OIL CO.

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr., Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Cady, J. (11 pages \$4.40)

Shell Oil Company began operating a gas station on leased property in DeWitt, in 1955. The station sold petroleum products under the Shell trademark. The gasoline was stored on the property in an underground storage tank. Shell entered into a sublease with an individual in 1962 to operate the Shell station. Shell continued to supply gasoline to the station. Shell assigned its lease to Jones County Oil Company in 1973, and the station continued to be operated under a sublease. The station maintained the Shell trademark, and continued to sell Shell gasoline and products. Jones County Oil Company was an independent distributor of Shell gasoline. As a Shell distributor or "jobber," Jones County Oil purchased gasoline exclusively from Shell and resold it to various Shell stations, including the Shell station in DeWitt. Casey's General Store purchased the land in 1985 and upon removal of underground storage tank system petroleum contamination was discovered. Casey's applied for benefits under the Iowa Comprehensive Petroleum Underground Storage Tank Fund Act. Iowa Code ch. 455G (1997). The Tank Fund Board approved Casey's claim. The Board brought this action against Shell under the Act to recover the costs of
(continued)

No. 98-1251. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD v. SHELL OIL CO.
(continued).

the corrective action. It claimed Shell was an “operator” of the underground storage tank system until 1985 and was liable for the petroleum contamination discovered by Casey’s. At trial, the district court instructed the jury that an “operator” was a person or entity “in control of, or having responsibility for, the daily operation of the underground storage tank system” and that the Board was required to prove that the petroleum release was a proximate cause of the corrective action costs. The jury was further instructed the Board was required to prove the reasonableness of its corrective action costs. The jury found Shell was an operator from 1962 to 1973, but determined it did not operate the site after it assigned the lease to the Shell distributor in 1973. The jury awarded the Board the full past corrective action costs and \$1000 for future corrective action costs. The Board appealed and Shell cross-appealed. **OPINION HOLDS:** I. Based on our decisions in *Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. Mobil Oil Corp.*, ___ N.W.2d ___ (Iowa 2000) (*Mobil I*) and *Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. Shell Oil Co.*, ___ N.W.2d ___ (Iowa 2000), the district court did not err in instructing the jury on the definition of an operator or in imposing a proximate cause requirement. II. The Board has the burden to establish the reasonableness of the corrective action costs. III. Even though the particular underground tank at issue in this case was in operation prior to the requirement that the owner or operator maintain responsibility, that fact does not exclude the tank from the Act. If the tank, regardless of when it was placed in the ground, is a type for which the owner or operator is required to maintain proof of responsibility, it is covered under the Act. IV. We find the Tank Fund Act was designed to address past and future petroleum leaks, and that our legislature intended its retroactive application. We affirm the district court’s judgment.

No. 98-372. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BD. v. MOBIL OIL CORP.

Appeal from the Iowa District Court for Carroll County, Joel E. Swanson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Cady, J. (15 pages \$6.00)

Schroeder Oil Company, as an independent distributor (a jobber), operated a gas station in Carroll, Iowa since 1974 under the Mobil trademark and sold Mobil gasoline. Mobil had the ability to “debrand” the station by terminating its relationship if the jobber placed another brand of gasoline into a Mobile branded station, or if the jobber did not pay its bills for the petroleum products purchased. A petroleum leak from the underground storage tank at Schroeder’s Mobil station occurred in 1984 and was detected in 1988. Under the Iowa Comprehensive Petroleum Underground Storage Tank Fund Act, Iowa Code chapter 455 G (1997), the tank fund board paid and will continue to pay for the corrective action costs incurred at the site. In 1997, the Board filed pursuant to section 455G.13(1) a petition in district court against Mobil Oil seeking to recover the corrective action costs. The Board alleged Mobil’s liability is as that of an “operator.” Mobil moved for summary judgment. The trial court granted summary judgment for Mobil. It interpreted the Act to exclude a wholesale supplier who did not participate in the daily operations of the station, and found

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No. 98-372. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BD. v. MOBIL OIL CORP.
(continued).

no facts to indicate Mobil participated in the daily operation of the tank. The Board appeals. **OPINION HOLDS:** An “operator” must be “in control of, or have responsibility for, the daily operation of the underground storage tank” to be subject to liability for corrective costs under chapter 455G. The control exercised by Mobil was far removed from the daily operation of the tank. Instead, it related to circumstances that were fundamental to its business relationship with distributors and retail sellers of its gasoline. The legislature did not intend to include oil refiners, such as Mobil, who sell gasoline to independent distributors within the definition of an operator subject to liability for corrective costs paid by the Board under chapter 455G based solely on their ability to stop selling gasoline or exert leverage over a station by denying use of the trademark. Accordingly, the district court did not err in granting Mobil’s motion for summary judgment.

No. 99-156. STATE v. LUTGEN.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge. **SENTENCE VACATED; REMANDED FOR RESENTENCING.** Considered en banc. Opinion by Larson, J.(5 pages \$2.00)

Donald Lutgen entered an *Alford* plea to operating while intoxicated (OWI), third offense, in violation of Iowa Code section 321J.2 (Supp. 1997). At the combined plea and sentencing proceeding, Lutgen requested that the court convert the fine portion of his sentence to community service hours. The court sentenced Lutgen to an indeterminate term of incarceration not to exceed five years, placement in a treatment program, and a fine of \$2500 plus surcharges, and it denied his request to perform community service in lieu of the fine, believing it lacked authority to do so. Lutgen claims the court erred in its interpretation of the sentencing statute by denying community service as an alternative to the fine. **OPINION HOLDS:** We agree that section 321J.2(2)(a)(2) does not permit a court to convert a fine to unpaid community service on a second or subsequent OWI offense. We conclude, however, that the court did have authority to convert the OWI fine to community service under section 909.3A, upon proper findings as required by section 909.3A concerning the deterrent effect of conversion to community service. Accordingly, we vacate the sentence and remand for resentencing. We do not address Lutgen’s ineffective-assistance-of-counsel claim because we believe his trial attorney, at least minimally, preserved error on the conversion issue by requesting a community service alternative at the time of the plea and sentencing.

No. 98-404. IN RE MARRIAGE OF BALLSTAEDT.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Larson, J. (11 pages \$4.40)

David and Sheila Ballstaedt's marriage was dissolved, and David was ordered to pay child support and alimony. While the dissolution was pending, David contracted to sell his business, Dave Ballstaedt Fort, Inc. (DBF), to John Deery, Sr. There was evidence that the real estate was owned by David, and DBF owned the remainder of the assets. Deery did not pay any of the monthly amounts during the early stages of the contract because it claimed an offset for payments owed to it by DBF. An order for mandatory income withholding was served on Deery, seeking funds to be applied to David's delinquent alimony and child support. Deery petitioned to intervene in the dissolution case, seeking a ruling on whether (1) the money it owed under the purchase agreement was considered income, and (2) it was entitled to a setoff for sums owed to it by David or the corporation. Bellwether Cos., to which David and DBF had assigned their contract rights, also filed a petition to intervene. The district court denied Deery a setoff and ordered the proceeds paid to the child support recovery unit. The court did not allow Bellwether's intervention until after it ordered Deery to pay the proceeds under the support-withholding order. David, Deery, and Bellwether have appealed. **OPINION HOLDS:** I. We conclude the district court correctly ruled that Deery's payments were income pursuant to Iowa Code section 252D.16(1) (1999). II. We do not agree with the court that, as a matter of law, David and DBF are one and the same. The district court failed to make any findings regarding the factors to consider for piercing the corporate veil. On remand, the district court should hear evidence and make findings regarding (a) whether the income is owned by David, DBF, or both; and (b) if some or all of the payments are made to DBF whether the corporate structure is a sham. III. On rehearing, all parties, including Bellwether, should be heard. IV. We also conclude the district court on remand should determine whether and to what extent the purchase price is owed to David in his personal capacity. For any such amounts, Deery should be allowed a right of setoff.

No. 98-528. ELLEFSON v. CENTECH CORP.

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Lavorato, J. (26pages \$10.40)

Intervenor, Winnebago Industries, Inc., was the assignee of a purported pledge that allegedly gave the assignor, Republic Acceptance Corporation, a lien on funds belonging to defendant, Centech Corporation, which Centech held in two bank accounts. Republic also assigned to Winnebago its rights under a security agreement with Centech that covered the collateral from which the funds were derived. Plaintiff, Dixie Ellefson, obtained a default judgment against

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No. 98-528. ELLEFSON v. CENTECH CORP. (continued).

Centech in another action and filed this suit to garnish the funds in Centech's bank accounts. Winnebago claimed its right to the funds was superior by virtue of the purported pledge and the security agreement, perfected before the garnishment. The district court ruled in favor of Winnebago. Ellefson appeals. **OPINION HOLDS:** I. Although a creditor cannot create an original security interest in a debtor's bank account under the Uniform Commercial Code, we conclude the common law as to pledges is alive and well in Iowa and that pledges can serve as a security device for creditors. There was no valid pledge in this case, however, because neither Republic nor its agent, the bank, had absolute, unequivocal, and exclusive possession and control of the accounts. Thus, Republic and Winnebago, its assignee, had no lien by virtue of any pledge, and the district court erred by concluding otherwise. II. The security agreement did give Republic and its assignee a continuing security interest in the proceeds of the two bank accounts to the extent those proceeds came from the sale or other disposition of the collateral covered by the agreement. Republic did not waive its lien by allowing Centech to use those proceeds in its business or by failing to require Centech to account for the proceeds. III. Substantial evidence supports the district court's unstated finding—which we assume as fact in the absence of a motion for enlargement of findings—that the funds in the bank accounts at the time of the garnishment came from collateral proceeds. The district court correctly concluded Winnebago's security interest in the bank account proceeds was superior to Ellefson's garnishment claim. IV. We reject Ellefson's claim that Winnebago's security interest in the account proceeds was limited by Iowa Code section 554.9306(4)(d)(ii) (1995) after Republic and Winnebago sold Centech assets. The assets were not sold in contemplation of insolvency or to provide a fund to pay all of Centech's creditors in proportion to their claims. Rather, the assets were sold pursuant to the security agreement to satisfy Centech's debt to Republic and Winnebago. Because the sales did not constitute an assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate Centech's estate, they were not insolvency proceedings, as Ellefson claims, and the limitations under section 554.9306(4)(d)(ii) have no application to this case. We conclude the court did not err in authorizing the bank to release the bank account funds to Winnebago.

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

Bulk Rate
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
