IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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Iowa Administrative Code

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Hoover State Office Building, Level A
Des Moines, IA 50319
Telephone: (515)242-5120

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).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

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
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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
25	**Friday, May 26, 2000**	**June 14, 2000**
26	**Friday, June 9, 2000**	**June 28, 2000**
27	**Friday, June 23, 2000**	**July 12, 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.

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
CORRECTIONS DEPARTMENT[201]		
Visits to offenders, 20.3 IAB 5/3/00 **ARC 9813A**	Conference Room—2nd Floor 420 Keo Way Des Moines, Iowa	May 23, 2000 11 a.m. to 1 p.m.
CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]		
Functions; juvenile justice youth development program, chs 1, 3 to 5 IAB 5/17/00 **ARC 9841A**	Conference Room—1st Floor Human Rights Department Lucas State Office Bldg. Des Moines, Iowa	June 6, 2000 1 p.m.
DENTAL EXAMINERS BOARD[650]		
Standards of practice and principles of professional ethics; record keeping, 27.2, 27.11 IAB 5/17/00 **ARC 9818A**	Conference Room Suite D 400 SW Eighth St. Des Moines, Iowa	June 6, 2000 2 to 3 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Housing fund, 25.5 IAB 5/17/00 **ARC 9820A**	Northeast Conference Rm.—2nd Floor 200 East Grand Ave. Des Moines, Iowa	June 6, 2000 11 a.m.
LHAP application procedure, 28.5(5) IAB 5/17/00 **ARC 9819A**	Northeast Conference Rm.—2nd Floor 200 East Grand Ave. Des Moines, Iowa	June 6, 2000 10 a.m.
EMERGENCY MANAGEMENT DIVISION[605]		
Organization, 1.1, 1.2 IAB 5/17/00 **ARC 9828A**	Conference Room—Level A Hoover State Office Bldg. Des Moines, Iowa	June 12, 2000 10 a.m.
Uniform rules on agency procedure; Iowa emergency plan, chs 2 to 6, 9 IAB 5/17/00 **ARC 9827A**	Conference Room—Level A Hoover State Office Bldg. Des Moines, Iowa	June 12, 2000 10 a.m.
Local emergency management, ch 7 IAB 5/17/00 **ARC 9826A** (See also **ARC 9824A** herein)	Conference Room—Level A Hoover State Office Bldg. Des Moines, Iowa	June 12, 2000 10 a.m.
Criteria for awards or grants, ch 8 IAB 5/17/00 **ARC 9825A**	Conference Room—Level A Hoover State Office Bldg. Des Moines, Iowa	June 12, 2000 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Water quality standards, 61.2, 61.3 IAB 5/17/00 **ARC 9839A**	Meeting Room A Iowa City Public Library 123 S. Linn St. Iowa City, Iowa	June 8, 2000 10 a.m.
	Meeting Room City Hall 400 Claiborne Dr. Decorah, Iowa	June 8, 2000 4 p.m.
	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa	June 12, 2000 11 a.m.
	Meeting Room Clear Lake Community Center 15 N. Sixth St. Clear Lake, Iowa	June 12, 2000 7 p.m.
	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	June 15, 2000 11 a.m.
	Conference Room—5th Floor West Wallace State Office Building Des Moines, Iowa	June 16, 2000 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

Child support guidelines—allowable deductions, extraordinary visitation adjustment, 99.2, 99.4(5) IAB 5/17/00 **ARC 9830A**	Conference Room—6th Floor Iowa Bldg., Suite 600 411 3rd St. SE Cedar Rapids, Iowa	June 8, 2000 10 a.m.
	Child Support Recovery Unit, Suite 32 300 West Broadway Council Bluffs, Iowa	June 7, 2000 9 a.m.
	Large Conference Room Bicentennial Bldg.—5th Floor 428 Western Ave. Davenport, Iowa	June 7, 2000 10 a.m.
	Bureau of Collections 400 SW Eighth St. Des Moines, Iowa	June 8, 2000 9 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	June 7, 2000 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	June 9, 2000 9 a.m.
	Conference Room B, Suite 500 520 Nebraska St. Sioux City, Iowa	June 7, 2000 10 a.m.

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	Child Support Recovery Unit Suite 400 510 Sycamore St. Waterloo, Iowa	June 8, 2000 1:30 p.m.
Child support parental obligation pilot projects, ch 100 IAB 5/17/00 **ARC 9831A**	Conference Room—6th Floor Iowa Bldg., Suite 600 411 3rd St. SE Cedar Rapids, Iowa	June 8, 2000 10 a.m.
	Child Support Recovery Unit, Suite 32 300 West Broadway Council Bluffs, Iowa	June 7, 2000 9 a.m.
	Large Conference Room Bicentennial Bldg.—5th Floor 428 Western Ave. Davenport, Iowa	June 7, 2000 10 a.m.
	Bureau of Collections 400 SW Eighth St. Des Moines, Iowa	June 8, 2000 9 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	June 7, 2000 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	June 9, 2000 9 a.m.
	Conference Room B, Suite 500 520 Nebraska St. Sioux City, Iowa	June 7, 2000 10 a.m.
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Hearing aid dealers examiners board, 120.1(5), 120.6 to 120.14, 120.212, ch 121 IAB 5/17/00 **ARC 9834A**	Board Conference Room—5th Floor Lucas State Office Building Des Moines, Iowa	June 7, 2000 9 to 11 a.m.

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	National Guard Armory 1160 19th St. SW Mason City, Iowa	May 23, 2000 10 a.m.
	Burlington High School 421 Terrace Dr. Burlington, Iowa	May 23, 2000 10 a.m.
	National Guard Armory 170 Boulevard Rd. Keokuk, Iowa	May 23, 2000 10 a.m.
	Building A, Room 925 Western Iowa Tech Community College-1 Sioux City, Iowa	May 23, 2000 10 a.m.

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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:

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CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]

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 17A.3, the Division of Criminal and Juvenile Justice Planning proposes to rescind Chapter 1, "Functions," Chapter 3, "Juvenile Justice Advisory Council," Chapter 4, "Juvenile Crime Prevention Community Grant Fund," and Chapter 5, "Juvenile Accountability Incentive Block Grant Program (JAIBG)," and adopt new Chapter 1, "Functions," and new Chapter 3, "Juvenile Justice Youth Development Program," Iowa Administrative Code.

A bill governing the juvenile crime prevention community grant program, 2000 Iowa Acts, Senate File 2429, passed the legislature this past session and awaits the Governor's signature to be enacted into law. Senate File 2429 would amend Iowa Code section 232.190 and would change the distribution of funding for that program and require administrative rule changes. Additionally, pursuant to the Governor's Executive Order Numbers 8 and 9, the Division is reorganizing and amending its rules to consolidate programs and facilitate the disbursement of funds to communities.

Consideration will be given to all written suggestions received on or before June 6, 2000. Such written materials should be sent to the Division of Criminal and Juvenile Justice Planning, Lucas State Office Building, Des Moines, Iowa 50319.

Also, there will be a public hearing on June 6, 2000, at 1 p.m. in the Department of Human Rights Conference Room, First Floor, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views. Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Division and advise of special needs.

This amendment does not provide for waivers because, in order to fairly distribute funds, the same rules must apply to all communities.

It is the Division's intention to file these rules emergency after notice because the rule changes need to be effective before the Division can distribute funds to communities. The emergency after Notice filing will benefit communities.

These rules are intended to implement Iowa Code sections 216A.131 to 216A.138 and section 232.190 as amended by 2000 Iowa Acts, Senate File 2429.

The following amendment is proposed.

Rescind **428—Chapters 1, 3, 4,** and **5,** and adopt the following **new** chapters.

CHAPTER 1
FUNCTIONS

428—1.1(216A) Definitions. As used in this chapter:

"Administrator" means the administrator of the division of criminal and juvenile justice planning.

"Criminal and juvenile justice planning advisory council (CJJPAC)" means the advisory council established in Iowa Code section 216A.132.

"Division" means the division of criminal and juvenile justice planning.

"Juvenile justice advisory council (JJAC)" means the state advisory group described in P. L. 93-415, Section 223(a)(3) and established through executive order to oversee the administration of the Juvenile Justice and Delinquency Prevention Act (JJDPA) formula grants in Iowa.

428—1.2(216A,PL93-415) Function of the division.

1.2(1) The division shall provide staff support to the CJJPAC and the JJAC and shall assist them with the coordination of their efforts. Additionally, the division shall perform functions consistent with the duties and requirements outlined in Iowa Code chapter 216A, subchapter 9, P. L. 93-415 and other relevant federal and state requirements.

1.2(2) The division shall establish and maintain procedures to collect and report all instances of juvenile detention and confinement occurring in the state of Iowa consistent with P. L. 93-415, Section 223(a)(15). The monitoring function shall include the following:

a. The division shall collect relevant self-report information and perform on-site verification of data from jails, police lockups, juvenile detention facilities, state training schools, mental health institutes, locked residential treatment facilities for youth and other secure facilities.

b. Through written agreement, the jail inspection unit of the department of corrections shall provide the division and the specific jails and lockups with certification of their ability to separate juveniles and adults, consistent with P. L. 93-415, Section 223(a)(13).

c. Through written agreement, the department of inspections and appeals shall provide information to the division on holdings relative to 223(a)(12)(A) P. L. 93-415 in contracted private facilities that the department of inspections and appeals has authority to inspect.

d. Through written agreement, the department of human services shall provide information to the division on holdings relative to 223(a)(12)(A) of P. L. 93-415 in state institutions that the department of human services administers.

1.2(3) Inquiries shall be directed to the division, the CJJPAC or the JJAC, Lucas State Office Building, Des Moines, Iowa 50319. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

428—1.3(216A) Function and activity of the CJJPAC. The CJJPAC is established by Iowa Code section 216A.132 and is charged with the responsibility to identify and analyze justice system issues of concern; develop and assist others in implementing recommendations and plans for system improvement; and provide for a clearinghouse of justice system information to coordinate with data resource agencies and to assist others in the use of justice system data. The CJJPAC shall advise the division on its administration of state and federal grants and appropriations and shall carry out other functions consistent with the intent of Iowa Code chapter 216A, subchapter 9.

428—1.4(216A) Function and activity of the JJAC. The JJAC is established through executive order pursuant to P. L. 93-415 to advise the division on juvenile justice issues; make recommendations to the governor and legislature; review and comment on the division's reporting of Iowa's compliance with the requirements of P. L. 93-415, paragraphs 223(a)(12), (13), (14) and (23); advise the division on its administration

of state and federal grants and appropriations; supervise the division's administration of the Juvenile Justice and Delinquency Prevention Act formula grant and Title V delinquency prevention programs established in P. L. 93-415; and carry out other functions consistent with the intent of P. L. 93-415.

428—1.5(216A) CJJPAC and JJAC meetings.

1.5(1) Notice of meetings of the CJJPAC and the JJAC shall be published 24 hours in advance of the meeting and will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas shall be available by mail from the division to any interested persons if requested not less than five days in advance of the meeting. All meetings shall be open to the public, unless a closed session is voted by two-thirds of the entire membership or by all members present for one of the reasons specified in Iowa Code section 21.5. Special or electronic meetings may be called by the chair upon a finding of good cause and shall be held in accordance with Iowa Code section 21.8. CJJPAC or JJAC meetings shall be governed by the following procedures:

a. Persons wishing to appear before the CJJPAC or the JJAC shall submit the request to the respective council not less than five days prior to the meeting. Presentations may be made at the discretion of the respective chair and only upon matters appearing on the agenda.

b. Persons wishing to submit written material shall do so at least five days in advance of the scheduled meeting to ensure that CJJPAC or JJAC members have adequate time to receive and evaluate the material.

c. At the conclusion of each meeting, a time, date and place of the next meeting shall be set unless such meeting was previously scheduled and announced.

d. Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. The chair may request a person using such a device to discontinue its use when it is obstructing the meeting. If the person fails to comply with this request, the presiding officer shall order that person excluded from the meeting.

e. The chair may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

f. Other meeting protocol and procedures consistent with this subrule and Iowa Code chapter 21 may be established by the CJJPAC or the JJAC through bylaws approved by a majority of the members of the council subject to the bylaws.

1.5(2) Minutes of CJJPAC or JJAC meetings are prepared and are available for inspection at the division office during business hours. Copies may be obtained without charge by contacting the office.

1.5(3) The CJJPAC or JJAC may form committees to carry out those duties as are assigned by the respective council. Meetings of the committees shall conform to the conditions governing the respective full councils as listed in subrule 1.5(1).

These rules are intended to implement Iowa Code chapter 17A, Iowa Code sections 216A.131 to 216A.136, and section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and Public Law 93-415.

CHAPTER 3
JUVENILE JUSTICE
YOUTH DEVELOPMENT PROGRAM

428—3.1(216A,232) Definitions. As used in this chapter:

"Administrator" means the administrator of the division of criminal and juvenile justice planning within the department of human rights.

"Applicant" means a city, county or other designated eligible entity preparing and submitting an application for funding through this program.

"Application" means a request to the division for funding that complies with federal and state requirements.

"Criminal and juvenile justice planning advisory council (CJJPAC)" means the advisory council established in Iowa Code section 216A.132.

"Decategorization," as established in Iowa Code section 232.188, means the department of human services' program whereby approved counties are permitted to pool their allocations of designated state and federal child welfare and juvenile justice funding streams, establish local planning and governance structures, and design and implement service systems that are more effective in meeting local needs.

"Decategorization governance board" means the board required to provide direction and governance for a decategorization project, pursuant to Iowa Code section 232.188.

"Division" means the division of criminal and juvenile justice planning within the department of human rights.

"Formula-based allocation" means a process that uses a formula to determine funding amounts to units of government or local public planning entities on a statewide basis.

"Grant review committee" means a committee established by the JJAC, the CJJPAC or the division to review and rank applications for funding. Individuals who are not members of the JJAC or the CJJPAC may serve on this committee.

"Justice Research and Statistics Association (JRSA)" is a national nonprofit organization that provides a clearinghouse of current information on state criminal justice research, programs, and publications.

"Juvenile Accountability Incentive Block Grant (JAIBG)" means a federally funded program to provide state and local governments funds to develop programs to reduce delinquency, improve the juvenile justice system, and increase accountability for juvenile offenders.

"Juvenile crime prevention community grants" means the community grant fund program established in Iowa Code section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and the federal Title V delinquency prevention program.

"Juvenile justice advisory council (JJAC)" means the state advisory group described in P. L. 93-415, Section 223(a)(3) and established through executive order to oversee the administration of the JJDPA formula grants in Iowa.

"Juvenile Justice and Delinquency Prevention Act (JJDPA)" means the federal Act, P. L. 93-415.

"Law enforcement expenditures" means the expenditures associated with police, prosecutorial, legal, and judicial services, and corrections as reported by the units of local government to the U.S. Census Bureau during the Census of Governments.

"Local public planning entities" means entities that have a local governance structure to plan, develop and coordinate services for children and families, and provide for implementation of services for children and families. Examples of local public planning entities include, but are not limited to, units of local government such as cities or counties, decategorization governance boards, community empowerment area boards, and school districts.

"Office of Juvenile Justice and Delinquency Prevention (OJJDP)" means the federal office within the U.S. Depart-

ment of Justice that administers the Juvenile Justice and Delinquency Prevention Act and JAIBG.

"State juvenile crime enforcement coalition (JCEC)" means a group of individuals that develops a state plan to achieve the goals of JAIBG. The CJJPAC and the JJAC shall jointly act as the state JCEC.

"Subgrantee" means any applicant receiving funds through this program from the division.

"Title V delinquency prevention grants" means Title V, Sections 501-506, "Incentive Grants for Local Delinquency Prevention Programs Act," of the JJDPA.

"Unit of local government" means a county, township, city, or political subdivision of a county, township, or city that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes, and the recognized governing body of an Indian tribe that carries out substantial governmental duties and powers.

428—3.2(216A,232) Purpose and goals.

3.2(1) The purpose of the juvenile justice youth development program is to assist the state in the establishment and operation of juvenile crime prevention programs; provide for greater accountability in the juvenile justice system; implement a results framework that promotes youth development; and comply with the JJDPA core requirements regarding the deinstitutionalization of status offenders, sight and sound separation of adults and juveniles in secure facilities, prohibitions on the use of adult jails to hold juveniles, and the disproportionate confinement of minority youth.

3.2(2) The primary goal of the coordinated juvenile justice and prevention program is to promote positive youth development by helping communities provide their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster healthy and nurturing environments that support the growth and development of productive and responsible citizens. Other specific goals of this program are to reduce youth violence, truancy, youth involvement in criminal gangs, substance abuse and other delinquent behavior.

428—3.3(216A,232,PL93-415) Program funding distribution. The division shall distribute funds available for this program through the following methods:

1. Competitive grants.
2. Formula-based allocations.
3. Sole source contracts.

Funding through any of these methods may be on an annual or multiyear basis.

428—3.4 (216A,232,PL93-415) Competitive grants.

3.4(1) Application announcement. The administrator of the division shall announce through public notice the opening of any competitive grant application process. The announcement shall provide potential applicants with information that describes eligibility conditions, purposes for which the program funding shall be available, application procedures, and all relevant time frames established for proposal submittal and review, grant awards, and grant expenditure periods.

3.4(2) Preapplication. The division may request potential applicants to submit a preapplication summary of their proposal. If a preapplication is required, the division shall provide all potential applicants with sufficient information detailing the extent of the preapplication and the criteria for review. Preapplications received in a timely manner shall be presented to the grant review committee for screening. The committee shall use the same ranking system for each preapplication. It shall be based on the criteria provided to the applicant through the division activities specified in subrule 3.4(1). Applicants shall be notified in writing of the screening decisions.

3.4(3) Content of applications. Required elements of the applications shall be published in the request for applications and shall be based on a point system established by the division that reflects the requirements of federal and state funding sources. The division shall develop the application and selection criteria.

3.4(4) Application review and selection process. The division shall conduct a preliminary review of each application to ensure that the applicant is eligible and the application is complete. All applications that are submitted in a timely manner by eligible applicants and contain the necessary information shall be presented to the grant review committee. Members of the grant review committee shall review each application and shall assign numerical scores to each application using criteria and point values established by the division and listed in the request for applications. The rank order of scores assigned to the applications by the review committee shall be the basis for funding recommendations for each application reviewed. The grant review committee shall forward their funding recommendations for approval and final award decisions pursuant to rule 428—3.7(216A,232,PL93-415). Decisions to make final awards shall be consistent with applicable state and federal program requirements.

3.4(5) Conflict of interest. Persons shall not serve on the grant review committee or otherwise participate personally through decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which funds administered by the division are used, when to the person's knowledge, the person or a member of the person's immediate family, a partner, an organization in which the person is serving as an officer, director, trustee, partner, or employee or any person or organization with whom the person is negotiating or has any arrangement concerning prospective employment, or has a financial interest of less than an arms-length transaction. If a person's agency or organization submits an application the person shall not be present when the grant review committee's recommendations are acted upon by the JJAC or the CJJPAC.

428—3.5(216A,232,PL93-415) Formula-based allocations.

3.5(1) Funding recipients. Only units of local government and local public planning entities may be considered eligible applicants to receive funding through this distribution method. The determination of which units of local government and local public planning entities are eligible applicants shall be made according to the state or federal law or regulation that makes funding available to the division for this distribution method. When such a determination is not established in law or regulation, the administrator shall make the determination with the advice of the CJJPAC and the JJAC.

3.5(2) Formula to determine individual allocation amounts. Allocation amounts to individual units of local government or local public planning entities shall be calculated according to the state or federal law or regulation that makes funding available to the division for this distribution method. When an allocation formula for funding to be distributed by the division is not established in this chapter or other law or regulation, the division shall calculate alloca-

tions based on a formula determined by the administrator. The formula shall be based on the number of children residing in the respective areas and may also be based on poverty rates, delinquency rates and other data relevant to child and family well-being. Application materials provided to the eligible units of local government or local public planning entities shall specify the formula used to calculate the allocation.

3.5(3) Application procedures and requirements.

a. Each unit of local government or local public planning entity that is eligible to be an applicant for funds pursuant to 3.5(1) shall be contacted by the division and provided an application that must be completed by the applicant prior to the applicant's receipt of the allocation.

b. The application may require the submission of a comprehensive plan to prevent and reduce juvenile crime that reflects the purposes and goals in rule 428—3.2(216A,232) and that structures the coordination and collaboration of other relevant community programs and activities. Evidence of such coordination and collaboration may be required to include assurances and documentation that the plan for this program was developed to include, or be an integral part of, other areawide plans related to, for example, child welfare, substance abuse, health, or education.

c. The application may require documentation that the application was completed with the participation of representatives from, for example, law enforcement, county attorneys, county and city governments, health, human services, education and community service agencies.

d. The application may also require the applicant to certify and make assurances regarding policies and practices related to, but not limited to, funding eligibility, program purposes, service delivery and planning and administration capacities.

e. Each notified applicant shall submit the required information by the deadline established and announced by the division. The division reserves the right to extend the deadline.

f. Following its receipt and approval of a completed application, the division shall offer the applicant a contract authorizing the obligation of funds. These rules and all applicable state and federal laws and regulations shall become part of the contract by reference.

3.5(4) Allocations declined, waived or combined.

a. As allowed by federal or state law, when an eligible local public planning entity or unit of local government declines to submit an application for funds, such funds shall be retained by the division to be reallocated among all participating units of local government or local public planning entities or to be otherwise distributed for the development of services that have a statewide impact.

b. As allowed by federal or state law, the division may permit an eligible unit of local government to waive its right to a direct allocation and request that its allocation be awarded to and expended for its benefit by a larger or contiguous unit of local government or local public planning entity. A written waiver shall be required from the unit of local government that waives its right to a direct allocation and names a requested unit of local government or local public planning entity to receive and expend the funds. The unit of local government or local public planning entity receiving the funds must agree, in writing, to accept the redirected funds, to carry out all planning and application requirements and to serve as the fiscal agent for receiving the waived allocation. The division's instructions to eligible applicants shall describe the procedures required to implement this subrule.

c. As allowed by federal or state law, the division may permit applicants to enter into regional coalitions by planning for and utilizing combined allocations from the participating units of local government or local public planning entities. A unit of local government or local public planning entity shall serve as the applicant and fiscal agent for purposes of carrying out planning and application requirements, and for receiving the allocation and obligating and expending funds for the benefit of the combined units. The division's instructions to eligible applicants shall describe the process to implement this subrule.

428—3.6(216A,232,PL93-415) Sole source contracts. The division may determine, because of the nature of a certain problem or desired programmatic response, that a competitive grant or formula-based allocation process would not be the most appropriate or expeditious process through which to award funds. In such cases, the division may seek out a potential subgrantee with which it can develop a sole source contract for services. The division shall be alert to organizational conflicts of interest and noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. The division's awarding and administration of any sole source contract shall be governed by all relevant state and federal laws and regulations.

428—3.7(216A,232,PL93-415) Program funding sources and related provisions.

3.7(1) Sources of funding for this program may include juvenile crime prevention community grants, JJDPA formula grants, JAIBG funds and other funds made available to the division for the purpose of this program. The division may combine funding from these federal and state appropriations and grant programs to distribute through any of the methods outlined in 428—3.3(216A,232,PL93-415).

3.7(2) Juvenile crime prevention community grants.

a. These funds, when available, shall be distributed according to the provisions of 428—3.5(216A,232,PL93-415).

b. The decategorization governance boards established in Iowa Code section 232.188 shall be the eligible recipients of these funds.

c. The administrator may approve applications for these funds except that the JJAC may exercise approval authority over those applications that will be funded in whole or in part with federal Title V delinquency prevention grants.

d. The CJJPAC and the JJAC shall advise the division on its administration of these funds.

3.7(3) JJDPA formula grants.

a. The JJAC shall determine the amounts of these funds, when available, that are to be distributed according to the provisions of 428—3.3(216A,232,PL93-415).

b. The JJAC shall determine any specific purposes for which this funding shall be distributed through the provisions of 428—3.4(216A,232,PL93-415) and 428—3.6(216A,232, PL93-415).

c. The JJAC may review and exercise approval authority over any applications for these funds distributed through the provisions of 428—3.4(216A,232,PL93-415).

d. The administrator may approve applications for these funds when distributed through the provisions of 428—3.5(216A,232,PL93-415) and 428—3.6(216A,232, PL93-415).

3.7(4) Determination of JAIBG funding amounts to be distributed when available.

a. OJJDP determines the amount of JAIBG funds that the division will distribute to units of local government through the provisions of 428—3.5(216A,232,PL93-415).

CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428](cont'd)

b. The state JCEC may determine an amount and the purposes of JAIBG funds to be distributed through the provisions of 428—3.4(216A,232,PL93-415) and 428—3.6(216A,232,PL93-415) and the amount of JAIBG funds to be distributed to local public planning entities through the provisions of 428—3.5(216A,232,PL93-415).

3.7(5) JAIBG funding for units of local government.

a. Each year JAIBG funding is available, the division shall conduct a review of state and local juvenile justice expenditures to determine the primary financial burden for the administration of juvenile justice within the state of Iowa. If, after conducting this review, the state's financial burden in the program purpose areas is greater than 50 percent of the expenditures, the division may request OJJDP's approval to distribute to units of local government a lower percentage of the available funding than the percentage initially established by Congress for units of local government. The division shall consult with units of local government or organizations representing such units prior to submitting such a request.

b. The JAIBG allocations for individual units of local government shall be determined by a formula set by Congress which is based on a combination of law enforcement expenditures for each unit of local government and the number of Uniform Crime Report Part 1 violent crime reports by each unit of local government. Two-thirds of each unit of local government's allocation will be based on the law enforcement expenditure data and one-third will be based on the reported violent crime data, in the same ratio to the aggregate of all other units of general local government in the state.

c. To apply the formula set by Congress, the division shall use data collected by the U.S. Census Bureau pertaining to law enforcement expenditures and the Federal Bureau of Investigation pertaining to reported Part 1 violent crime, as compiled by the JRSA, and the department of public safety (DPS) of the state of Iowa.

d. If data, as compiled by JRSA, indicates that units of local government have not reported law enforcement expenditures, or have reported only partial law enforcement expenditures, the division may request complete law enforcement expenditure reports directly from the affected units of local government to determine the correct allocation. If no additional information is received from units of local government within 15 calendar days after requesting such expenditure reports, the division shall use the data as presented by JRSA.

e. If data, as compiled by JRSA, indicates that units of local government have not reported crime data to the DPS or have reported only partial crime data, the division may request complete violent crime data directly from the affected units of local government to determine the correct allocation. If no additional data is received from units of local government within 15 calendar days after requesting such data, the division shall use the data as presented by JRSA.

f. No unit of local government shall receive an allocation that exceeds 100 percent of the law enforcement expenditures of such unit as reported to the Census Bureau.

g. In order to qualify for JAIBG funds, a unit of local government's allocation must be $5,000 or more. If, based on the formula, the allocation for a unit of local government is less than $5,000 during a fiscal year, the amount shall be distributed by the division to the local decategorization governance board for those areas encompassing the unit of local government, as described in subrule 3.7(6).

3.7(6) JAIBG funding for local public planning entities. In any year in which JAIBG funds are available and the state JCEC determines an amount of these funds to be distributed through the provisions of 428—3.5(216A,232,PL93-415), the division may make such funds available to local decategorization governance boards. The division shall calculate allocations to each of the decategorization governance boards based on the number of children aged 5 to 17 years residing in the respective areas. The most recent available population data for children aged 5 to 17 years shall be used to calculate the allocations. In any year in which the division makes JAIBG funds available to local decategorization governance boards, the division shall make funds available to any county that is not participating in decategorization. The division shall calculate allocations to each county that is not participating in decategorization based on the number of children aged 5 to 17 years residing in the respective areas. The most recent available population data for children aged 5 to 17 years shall be used to calculate the allocations.

3.7(7) Other funds. When funds other than those provided for in subrules 3.7(2) through 3.7(6) are made available to the division for the purposes of this program, the division shall distribute such funds through the provisions of this chapter. With the advice of the JJAC and the CJJPAC, the division shall, consistent with applicable state and federal law and regulation, determine the distribution methods, eligible applicants and any allocation formulas to be used when making such funding available.

428—3.8(216A,232) Appeals.

3.8(1) Applicants choosing to appeal funding decisions must file a written appeal with the administrator within ten calendar days of the postmarked date of the written notification of the program's funding decisions.

3.8(2) All letters of appeal shall clearly state the reason(s) for the appeal and evidence of the reason(s) stated. Reason(s) for appeal must be based on a contention that the rules and procedures governing the funding process have not been applied properly. All appeals must clearly state in what manner the division failed to follow the rules of the selection process as governed by these administrative rules or procedures outlined in the application materials provided to all applicants by the division. The letter of appeal must also describe the remedy being sought.

3.8(3) If an appeal is filed within the ten calendar days, the division shall not enter into a contract with any applicant involved in the application process being appealed until the administrator has reviewed and decided on all appeals received in accordance with the criteria in subrules 3.8(1) and 3.8(2). The division administrator shall consider the information submitted by the appellant and relevant information from division staff when conducting the review. The review shall be conducted as expeditiously as possible so that all funds can be distributed in timely manner.

3.8(4) The decision of the division administrator shall represent the final division action for the purpose of implementing Iowa Code chapter 17A.

428—3.9(216A,232) Contract agreement.

3.9(1) Contract offer. Applicants shall be notified in writing of the division's intent to fund, contingent upon the funds available. The administrator shall have flexibility in determining which state and federal funds shall be utilized in awards and allocations to subgrantees. These rules and all applicable state and federal laws and regulations become a part of the contract by reference.

3.9(2) Preaward negotiation. The applicant may be requested to modify the original application in the negotiation process. The division reserves the right to fund all or part of the applicant's application.

3.9(3) Withdrawal of contract offer. If the applicant and the division are unable to successfully negotiate a contract, the division may withdraw the award offer and redistribute program funds in a manner consistent with the provisions of rule 428—3.14(216A,232).

3.9(4) Contract modifications. The subgrantee or the division may request a modification or revision of the contract.

3.9(5) Reimbursement of expenditures. Funds are to be spent to meet program goals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

428—3.10(216A,232) Contract termination.

3.10(1) Termination by subgrantee. The contract may be terminated by the subgrantee at any time during the contract period by giving 30 days' notice to the division.

3.10(2) Termination by the division.

a. The division may terminate a contract upon ten days' notice when the subgrantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The division may terminate a contract upon 30 days' notice when there is a reduction of funds by executive order.

b. Termination for convenience. The performance of work under the agreement may be terminated by the division in accordance with this clause in whole or, from time to time, in part whenever the division shall determine that such termination is in the best interest of the state. The division shall pay all reasonable costs associated with the agreement that the subgrantee has incurred up to the date of termination. The division shall not pay for any work that has not been done prior to the date of termination.

c. Termination for default. If the subgrantee fails to fulfill its obligations under this agreement properly or on time, or otherwise violates any provision of this agreement, the division may terminate the agreement by written notice to the subgrantee. The notice shall specify the acts of commission or omission relied on as cause for termination. All finished or unfinished products and services provided by the subgrantee shall, at the option of the division, become the state's property. The division shall pay the subgrantee fair and equitable compensation for satisfactory performance prior to receipt of notice of termination.

3.10(3) Responsibility of subgrantee at termination. Within 45 days of the termination, the subgrantee shall supply the division with a financial statement detailing all costs up to the effective date of the termination.

428—3.11(216A,232) Required reports.

3.11(1) Expenditure claim reports shall be required from subgrantees on provided forms. The division, pursuant to regular reimbursement procedures of the state of Iowa, shall reimburse subgrantees for actual expenditures specified in the approved budget.

3.11(2) Quarterly reports on program outcomes, program status and financial status shall be required from subgrantees on provided forms.

3.11(3) Other reports, including audit reports prepared by independent auditors, may be required by the division and specified in the request for applications or contract to assist in the monitoring and evaluation of programs.

3.11(4) Failure to submit required reports by the due date shall result in suspension of financial payments to the subgrantee by the division until such time as the reports are received. No new awards shall be made for continuation programs where there are delinquent reports from prior grants.

428—3.12(216A,232) Subgrantee records. Financial records, supporting documents, statistical records and all other records pertinent to the program shall be retained by the subgrantee in accordance with the following:

3.12(1) Records for any project shall be retained for three years after final closeout and audit procedures are completed and accepted by the division.

3.12(2) Representatives of the state auditor's office and the division shall have access to all books, accounts, documents, and other property belonging to or in use by a subgrantee pertaining to the receipt of funds under these rules.

428—3.13(216A,232) Allowable costs and cost restrictions.

3.13(1) Grant funds from this program shall be used to support only those activities and services specified and agreed to in the contract between the subgrantee and the division. The contract shall identify specific cost categories against which all allowable costs must be consistently charged.

3.13(2) Funds appropriated for this program shall not be expended for supplantation of federal, state, or local funds supporting existing programs or activities. Instructions for the application and acceptance of competitive grants, formula-based allocations, and sole source contracts may specify other cost limitations including, but not limited to, costs related to political activities, interest costs, fines, penalties, lawsuits or legal fees, and certain fixed assets and program equipment.

428—3.14(216A,232) Redistribution of funds. The division reserves the right to recapture and redistribute awarded funds based upon projected expenditures if it appears that funds shall not be expended by a subgrantee according to the conditions of the subgrantee's contract. Recaptured funds may be granted by the administrator to other applicants or subgrantees for services and activities consistent with the purposes and goals of the program.

428—3.15(216A,232) Compliance with state and federal laws. In acceptance of a grant, the subgrantee shall agree to comply with all applicable state and federal rules and laws including, but not limited to, the JJDPA.

428—3.16(216A,232) Immunity of state and agencies. The subgrantee shall defend and hold harmless the state and any federal funding source for the state from liability arising from the subgrantee's performance or attempted performance of their contract, and the subgrantee's activities with subcontractors and all other third parties.

These rules are intended to implement Iowa Code chapter 17A, Iowa Code sections 216A.131 to 216A.136, and section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and Public Laws 93-415 and 105-119.

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DENTAL EXAMINERS BOARD[650]

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 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 27, "Principles of Professional Ethics," Iowa Administrative Code.

Item 1 changes the title of Chapter 27 to clarify that these rules also establish standards of practice in addition to principles of professional ethics.

In Item 2, information regarding patient records is stricken and is incorporated in new rule 650—27.11(153,272C) in Item 3. The new rule establishes standards for patient record keeping and clarifies the standards of practice for practitioners.

The Board has determined that these rules are not subject to waiver or variance in specific circumstances because the rules establish standards of practice necessary for the protection of patients.

Any interested person may make written comments or suggestions on the proposed amendments on or before June 6, 2000. Such written comments should be directed to Jennifer Hart, Agency Rules Administrator, Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on June 6, 2000, from 2 to 3 p.m. in the Conference Room, 400 S.W. 8th Street, Suite D, Des Moines, Iowa. 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 person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the April 20, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

The following amendments are proposed.

ITEM 1. Amend the title of **650—Chapter 27** as follows:

CHAPTER 27
STANDARDS OF PRACTICE AND
PRINCIPLES OF PROFESSIONAL ETHICS

ITEM 2. Amend rule 650—27.2(153) as follows:

650—27.2(153,*272C*) Patient acceptance ~~and records.~~

~~**27.2(1)**~~ Dentists, in serving the public, may exercise reasonable discretion in accepting patients in their practices; however, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, sex or national origin.

~~**27.2(2)** Dentists shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's new dentist, the dentist shall furnish, either gratuitously or for nominal cost, the dental records or copies or summaries of them, including dental radiographs or copies of them, as will be beneficial for the future treatment of that patient.~~

~~**27.2(3)** Patient records shall be maintained for a period of no less than five years following the last date of entry. Proper safeguards shall be provided to ensure safety of these records from destructive elements.~~

ITEM 3. Adopt the following **new** rule:

650—27.11(153,272C) Record keeping. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Records shall be permanent, timely, accurate, legible, and easily understandable.

27.11(1) Dental records. Dentists shall maintain dental records for each patient. The records shall contain all of the following:

a. Personal data.

(1) Name, date of birth, address and, if a minor, name of parent or guardian.

(2) Name and telephone number of person to contact in case of emergency.

b. Dental and medical history. Dental records shall include information from the patient or the patient's parent or guardian regarding the patient's dental and medical history. The information shall include sufficient data to support the recommended treatment plan.

c. Patient's reason for visit. When a patient presents with a chief complaint, dental records shall include the patient's stated oral health care reasons for visiting the dentist.

d. Clinical examination progress notes. Dental records shall include chronological dates and descriptions of the following:

(1) Clinical examination findings, tests conducted, and a summary of all pertinent diagnoses;

(2) Plan of intended treatment and treatment sequence;

(3) Services rendered and any treatment complications;

(4) All radiographs, study models, and periodontal charting if applicable;

(5) Name, quantity, and strength of all drugs dispensed, administered, or prescribed;

(6) Name of dentist, dental hygienist, or any other auxiliary, who performs any treatment or service or who may have contact with a patient regarding the patient's dental health.

e. Informed consent. Dental records shall include, at a minimum, documentation of informed consent that includes discussion of procedure(s), treatment options, potential complications and known risks, and patient's consent to proceed with treatment.

27.11(2) Retention of records. A dentist shall maintain a patient's dental record for a minimum of five years after the date of last examination, prescription, or treatment. Records for minors shall be maintained for a minimum of either (a) one year after the patient reaches the age of majority (18), or (b) five years, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements.

27.11(3) Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, a dentist shall keep either a duplicate hard copy record or use an unalterable electronic record.

27.11(4) Correction of records. Notations shall be legible, written in ink, and contain no erasures or white-outs. If incorrect information is placed in the record, it must be

DENTAL EXAMINERS BOARD[650](cont'd)

crossed out with a single nondeleting line and be initialed by a dental health care worker.

27.11(5) Confidentiality and transfer of records. Dentists shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's new dentist, the dentist shall furnish the dental records or copies or summaries of the records, including dental radiographs or copies of the radiographs, as will be beneficial for the future treatment of that patient. The dentist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees.

ITEM 4. Amend **650—Chapter 27**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 153.34(7), 153.34(9), 272C.3, ~~and~~ 272C.4(1f) *and 272C.4(6)*.

ARC 9820A

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 25, "Housing Fund," Iowa Administrative Code.

The proposed amendments (1) encourage, but do not require, participation in the multiagency HART review process and (2) establish the joint application and review process to be utilized when considering project applications for Housing Fund and Low-Income Housing Tax Credits (LIHTC) funding.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on June 6, 2000. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on June 6, 2000, at 11 a.m. at the above address in the Northeast Conference Room on the second floor. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on June 5, 2000, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

The following amendments are proposed.

ITEM 1. Amend rule 261—25.5(15), introductory paragraph, as follows:

261—25.5(15) Application procedure. All potential housing fund applicants ~~shall~~ *are encouraged, but not required, to* complete and submit a HART form describing the proposed housing activity. If~~, after HART review,~~ the proposal is determined *to be* appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail. The HART process ~~must~~, *if undertaken, should* be completed as early as possible in the application ~~procedure and within a minimum of 30 days prior to the application deadline~~ *process*.

ITEM 2. Adopt **new** subrule 25.5(5) as follows:

25.5(5) For applicants requesting funding from both the housing fund and low-income housing tax credit (LIHTC) programs, the applicant may request application forms and related material from the Iowa finance authority (IFA). IFA shall forward an application package to a potential applicant and make the application package available in electronic form either by diskette or on the Internet at http://www.ifahome.com. The applicant must submit the completed application, with required housing fund attachments, to IFA by the deadline established in the application package.

a. IDED and IFA shall appoint a joint review team to discuss and review applications for housing fund and LIHTC funds. Staff for each agency may communicate frequently regarding common projects. Information contained in each application may be shared with each agency.

b. The joint review team shall meet at least twice to compare and discuss each common project. The first meeting will be convened after IDED and IFA have completed the threshold review. The second meeting shall be convened after IDED and IFA have completed the next phase of each agency's review process. No additional points will be awarded to an applicant seeking both types of funding. Staff from each agency will make recommendations for funding to their respective decision makers after the second meeting. A decision by one agency does not bind the other agency to fund a project.

c. All applicants for the housing fund must meet the threshold requirements outlined in rules 25.4(15) and 25.6(15) and subrule 25.7(3) in order to be considered for award under this subrule.

ITEM 3. Rescind subrule **25.5(6)**.

ARC 9819A

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 28, "Local Housing Assistance Program," Iowa Administrative Code.

The proposed amendment clarifies the relationship between the HART (housing application review team) process and the preapplication process for LHAP funds. Applicants are encouraged, but not required, to submit a HART form prior to preparing a preapplication for LHAP funds.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on June 6, 2000. Interested persons may submit written or oral comments by contacting

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

Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendment will be held on June 6, 2000, at 10 a.m. at the above address in the Northeast Conference Room on the second floor. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on June 5, 2000, to be placed on the hearing agenda.

This amendment is intended to implement Iowa Code section 15.108(1)"a."

The following amendment is proposed.

Amend subrule 28.5(5) as follows:

28.5(5) Applicants whose preapplications best meet the preliminary review criteria, as determined by HART review and IDED staff review, shall be invited to submit full applications for funds. *Applicants are encouraged, but not required, to submit a HART form for review by the HART team prior to, or in conjunction with, submitting a preapplication for funding under LHAP.*

ARC 9828A

EMERGENCY MANAGEMENT DIVISION[605]

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 17A.3 and 29C.8, the Emergency Management Division gives Notice of Intended Action to amend Chapter 1, "Organization," Iowa Administrative Code.

These amendments result from an extensive rules review by the Emergency Management Division.

Consideration will be given to all written suggestions or comments on the proposed amendments on or before June 12, 2000. Such written materials should be sent to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319, or faxed to (515)281-7539.

There will be a public hearing on these proposed amendments on June 12, 2000, at 10 a.m., in the Emergency Management Division Conference Room, Hoover State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of these amendments.

These amendments are intended to implement Iowa Code chapters 29C, 30, and 34A.

The following amendments are proposed.

Amend 605—Chapter 1 as follows:

CHAPTER 1
ORGANIZATION

605—1.1(29C) Description. The emergency management division is a division within the department of public defense.

1.1(1) ~~Executive director~~ *Director.* The adjutant general, as ~~executive~~ *the* director of the department of public defense ~~and~~ under the direction and control of the governor, shall have supervisory direction and control of the emergency management division and shall be responsible to the governor for the carrying out of the provisions of Iowa Code chapter 29C. In the event of disaster beyond local control, the adjutant general may assume direct operational control over all or any part of the emergency management functions within this state.

1.1(2) Administrator. The emergency management division shall be under the management of an administrator appointed by the governor. The administrator shall be vested with the authority to administer emergency management affairs in this state and shall be responsible for preparing and executing the emergency management programs of this state subject to the direction of the adjutant general. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall: prepare a comprehensive plan and emergency management program for ~~the~~ disaster preparedness, response, mitigation, recovery, emergency ~~operations~~ *operation*, and emergency resource management of this state; make such studies and surveys of the industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof; provide technical assistance to any local emergency management commission or joint commission requiring such assistance in the development of an emergency management program; implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 *42 U.S.C. § 9601 et seq.*; the administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to ~~carry out~~ *administer* the purposes of Iowa Code chapters 29C ~~and~~, 30, *and 34A*.

605—1.2(29C) Definitions. The following definitions are applicable to emergency management division:

"Administrator" means the administrator of the emergency management division of the department of public defense.

~~"Comprehensive cooperative agreements" means the key instrument for determining whether a state or a local commission or joint commission will be granted eligibility to participate in Federal Emergency Management Agency assistance programs. It describes projected program activities to be accomplished during the next federal fiscal year, the number of staff and amount of funds needed to carry out these activities.~~

"Comprehensive countywide emergency operations plan" means documents which describe the actions to be taken *to lessen the effects of, prepare for, respond to and recover from* ~~in the event of an extraordinary emergency~~ *a disaster* by county and city ~~government resources~~ *governments*, quasi-government agencies, and private organizations which have ~~countywide~~ emergency operations ~~capabilities~~ *responsibility*. The plan is multihazard in scope (covers ~~a variety of~~

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

~~disasters)~~ *all hazards for the county)* and provides for *a* coordinated ~~response~~ *effort.* It references authority, assigns functional responsibilities, provides for direction and control, and the effective use of resources.

"Disaster" means man-made, *technological,* or natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health and safety of the people or which damage or destroy public or private property. The term includes *terrorism,* enemy attack, sabotage, or other hostile action *from without the state.*

"Division" means the emergency management division of the department of public defense.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action to protect life or property. Such actions are normally handled in a routine manner by law enforcement, fire protection, public works, utilities, and ~~health-medical~~ *emergency medical* services.

"Emergency management" means *lessening the effects of,* preparations for, operations during, and recovery from natural, *technological* or man-made disasters. These actions are broad in scope and include, but are not limited to: disaster plans, mitigation, preparedness, response, warning, emergency operations, training, exercising, research, rehabilitation, and recovery *activities.*

~~"Emergency management assistance funds"~~ *"Emergency management performance grant program"* means *a program by which* federal funds *are* utilized to pay ~~up to~~ *no more than* 50 percent of the salaries, benefits, travel, and office expenses incurred in the administration of the state and local emergency management program.

~~"Extraordinary emergency" means an emergency which requires the use of resources (personnel, equipment, facilities) and operational procedures beyond those normally available in the affected jurisdiction(s). An extraordinary emergency always requires direction and coordination of response.~~

"Joint commissions" means two or more local emergency management commissions ~~may act~~ *acting* as a joint commission for the ~~joint~~ coordination and administration of emergency management.

"Local commission" means the local emergency management commission.

"Mitigation" ~~refers to activities that either prevent emergencies or disasters from happening or at least reduce the damaging impact if they cannot be prevented.~~ *means any action taken to reduce or eliminate the long-term risk to human life and property from hazards.* Examples of mitigation activities ~~are~~ *include* building codes, ~~disaster insurance incentives,~~ land use management, *floodplain management, building of protective structures such as flood walls,* ~~litigation, monitoring or inspection,~~ public education, research, risk mapping, safety codes, *and* statutes and ordinances~~, and tax incentives~~.

"Preparedness" means *any activity taken in advance of an emergency or disaster that improves emergency readiness posture and develops or expands operational capabilities.* ~~planning how to respond in a coordinated manner when an emergency or disaster occurs and working to increase available resources to respond effectively. Preparing people to respond appropriately within a system of management when disasters occur saves lives and reduces property damage.~~ Examples of preparedness activities ~~are~~ *include, but are not limited to,* continuity of government, ~~plans and ordinances,~~ emergency ~~broadcast system~~ *alert and warning systems,* emergency communications, emergency operations centers, *comprehensive countywide* emergency operations plans, emergency public information materials, exercise of plans and systems, hazard analysis, mutual aid agreements, resource management, *and the* training ~~response~~ *and equipping of* personnel ~~including political leaders and governmental managers, and warning systems~~.

"Recovery" ~~is the process of returning the community to predisaster condition. Short-term recovery returns essential services to minimum operating standards. Long-term recovery continues until the public and private infrastructure is restored.~~ *means short-term activity to return vital life support systems to minimum operating standards and long-term activity designed to return the affected people and areas to their predisaster conditions.* Examples of recovery activity are crisis counseling, damage assessment, debris clearance, decontamination, ~~disaster application centers,~~ disaster insurance payments, disaster loans and grants, disaster unemployment assistance, public information, *community outreach,* temporary housing, and reconstruction.

"Response ~~activities~~" ~~are those actions taken to immediately confront the source or presented effects of the emergency or disaster event.~~ *means any action taken immediately before, during, or directly after an emergency or disaster occurs, which is intended to save lives, minimize injuries, lessen property and environmental damage and enhance the effectiveness of recovery.* ~~The responders aid in the determination of the magnitude of the event or its potential for escalation. If appropriate, the emergency operations center is activated.~~ Examples of response ~~activity are~~ *include rendering of assistance by emergency responders, activation of the emergency operations center,* emergency ~~broadcast~~ *alert* system activation, emergency instructions to the public, ~~emergency medical assistance,~~ emergency plan implementation, ~~manning the emergency operations center,~~ public official alerting, ~~reception and care, shelter and evacuation,~~ *evacuation, sheltering of victims,* search and rescue, resource mobilization, and warning system activation.

These rules are intended to implement Iowa Code ~~chapter~~ *chapters 29C, 30 and 34A.*

ARC 9827A

EMERGENCY MANAGEMENT DIVISION[605]

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 17A.3 and 29C.8, the Emergency Management Division hereby gives Notice of Intended Action to rescind Chapter 2, "Petitions for Rule Making," and adopt a new Chapter 2 with the same title; rescind Chapter 3, "Declaratory Rulings," and adopt a new Chapter 3, "Declaratory Orders"; rescind Chapter 4, "Agency Procedure for Rule Making," and adopt a new Chapter 4 with the same title; rescind Chapter 5, "Public Records and Fair Information Practices," and adopt a new Chapter 5, "Fair Information Practices"; rescind Chapter 6,

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

"Iowa Emergency Plan" and adopt a new Chapter 6, "Contested Cases"; and adopt a new Chapter 9, "Iowa Emergency Plan," Iowa Administrative Code.

By proposing new Chapters 2 through 6, the Emergency Management Division implements, as closely as is practicable for this Division, the Uniform Rules on Agency Procedure that comply with the amendments to Iowa Code chapter 17A in 1998 Iowa Acts, chapter 1202, effective July 1, 1999. By so doing, administrative practice before the Division will be facilitated and will be substantially the same in the areas addressed as with all other agencies of state government.

The Division also proposes to rescind current Chapter 6 and adopt new Chapter 9 regarding the Iowa Emergency Plan, which details the state government response to a wide range of natural, technological, and human-caused disasters.

Any interested person may make written comments or suggestions on these proposed amendments on or before June 12, 2000. Such written materials should be sent to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319, or faxed to (515)281-7539.

There will be a public hearing on these proposed amendments on June 12, 2000, at 10 a.m., in the Emergency Management Division Conference Room, Hoover State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of these amendments.

These rules are intended to implement Iowa Code chapters 17A, 29C, 30 and 34A.

The following amendments are proposed.

ITEM 1. Rescind 605—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
PETITIONS FOR RULE MAKING

605—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the division at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
3. A brief summary of the petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided by rule 2.4(17A).

2.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.1(2) The emergency management division may deny a petition because it does not substantially conform to the required form.

605—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The emergency management division may request a brief from the petitioner or from any other person concerning the substance of the petition.

605—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—2.4(17A) Consideration.

2.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the emergency management division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The emergency management division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the emergency management division by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the emergency management division must, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

2.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 2. Rescind 605—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
DECLARATORY ORDERS

605—3.1(17A) Petition for declaratory order. Any person may file a petition with the emergency management division for a declaratory order as to the applicability to specified cir-

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

cumstances of a statute, rule, or order within the primary jurisdiction of the division, at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

605—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the emergency management division shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

605—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the emergency management division.

3.3(3) A petition for intervention shall be filed at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

605—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The emergency management division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

605—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—3.6(17A) Service and filing of petitions and other papers.

3.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Emergency Management Division, Hoover State Office

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

Building, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

3.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 605—6.12(17A).

605—3.7(17A) Consideration. Upon request by petitioner, the emergency management division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division, a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

605—3.8(17A) Action on petition.

3.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 605—6.2(17A).

605—3.9(17A) Refusal to issue order.

3.9(1) The emergency management division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3 The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the emergency management division to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

605—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

605—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

605—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the emergency management division, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the emergency management division. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 3. Rescind 605—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

605—4.1(17A) Adoption by reference. The emergency management division hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)" insert "administrator".
2. In lieu of the words "(specify time period)" insert "one year".
3. In lieu of the words "(identify office and address)" insert "Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)" insert "the administrator at (515)281-3231".
5. In lieu of the words "(designate office)" insert "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)" insert "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)" insert "administrator".

These rules are intended to implement Iowa Code chapter 17A.

ITEM 4. Rescind 605—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
FAIR INFORMATION PRACTICES

605—5.1(17A) Adoption by reference. The emergency management division hereby adopts the fair information practices segment of the Uniform Rules on Agency Proce-

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dure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(official or body issuing these rules)" insert "Emergency Management Division".
2. In lieu of the words "(insert agency head)" insert "administrator".
3. In lieu of the words "(insert agency name and address)" insert "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert the words "at any time from 9 a.m. to 12 noon and from 1 to 4 p.m., Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time".
5. In lieu of the words "(specify time period)" insert the words "30 minutes".
6. In lieu of the words "(designate office)" insert the words "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
7. Delete the words "(and, where applicable, the time period during which the record may be disclosed)".
8. Delete the words "(Additional requirements may be necessary for special classes of records.)"
9. Insert at the end of rule 605—5.7(17A,22) the following new sentence: "For federal records maintained by the emergency management division, a subject will provide a Privacy Act release in accordance with the requirements of Title 5 United States Code, Section 552, in writing, and signed by the subject of the record."
10. Delete the words "(Each agency should revise its forms to provide this information.)"
11. Insert at the end of rule 605—5.8(17A,22) the following new sentence: "For federal records and forms, the United States government's determination of routine use and the consequences of failure to provide required or optional information as requested shall be provided to the supplier of the information."
12. Insert the following new rule:

605—5.9(17A,22) Federal records. Pursuant to Iowa Code section 22.9, the division finds that maintenance, use, or disclosure of federal records described in this rule, except as allowed by federal law and regulation, would result in denial of United States government funds, services and essential information that would otherwise definitely be available and that have been available to the division in the past. The division has authority to enter into agreements and contracts to obtain funds pursuant to Iowa Code chapter 29C. The division makes such agreements and contracts with the Federal Emergency Management Agency (FEMA) under the authority of Public Law 93-288 (the Robert T. Stafford Disaster Relief and Emergency Assistance Act) and an Emergency Management Performance Grant Agreement which specify categories of records and information that must be kept confidential. In addition, 44 CFR 5.71 specifies categories of records that are exempt from disclosure under 5 U.S.C. 552. These records include those containing personally identifiable information concerning applicants to individual assistance and mitigation assistance programs that are administered by the state under a presidentially declared disaster. Nuclear Regulatory Commission Title 10 CFR 73.21 relates to the physical protection of nuclear power plants and materials. This regulation requires that certain information contained in plans and documents on file with the division be kept confidential and include information concerning the physical protection at fixed sites; physical protection in transit; inspections, audits and evaluations; and correspondence insofar as it contains safeguards information.

ITEM 5. Rescind 605—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
CONTESTED CASES

605—6.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the emergency management division.

605—6.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrator of the emergency management division or the administrator's designee.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the administrator did not preside.

605—6.3(17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

605—6.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

605—6.5(17A) Notice of hearing.

6.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

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6.5(2) Contents. The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 6.6(17A), that the presiding officer be an administrative law judge.

605—6.6(17A) Presiding officer.

6.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency.

6.6(2) The agency may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

6.6(3) The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

6.6(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

6.6(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

605—6.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

605—6.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

605—6.9(17A) Disqualification.

6.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if

required by Iowa Code section 17A.17(3) and subrules 6.9(3) and 6.23(9).

6.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.9(4) If a party asserts disqualification on any appropriate grounds, including those listed in subrule 6.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 6.25(17A) and seek a stay under rule 6.29(17A).

605—6.10(17A) Consolidation—severance.

6.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

605—6.11(17A) Pleadings.

6.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

6.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

605—6.12(17A) Service and filing of pleadings and other papers.

6.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

6.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer as identified in the notice of hearing. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

6.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the emergency management division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

6.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

605—6.13(17A) Discovery.

6.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer,

time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

6.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 6.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

6.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

605—6.14(17A) Subpoenas.

6.14(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

605—6.15(17A) Motions.

6.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.15(3) The presiding officer may schedule oral argument on any motion.

6.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 6.28(17A) and appeal pursuant to 6.27(17A).

605—6.16(17A) Prehearing conference.

6.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

6.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

6.16(3) In addition to the requirements of subrule 6.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

6.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

605—6.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

6.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

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c. The likelihood of informal settlement;
d. The existence of an emergency;
e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

605—6.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

605—6.19(17A) Intervention.

6.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

6.19(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

6.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

605—6.20(17A) Hearing procedures.

6.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

6.20(2) All objections shall be timely made and stated on the record.

6.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

6.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

6.20(6) Witnesses may be sequestered during the hearing.

6.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
b. The parties shall be given an opportunity to present opening statements;
c. Parties shall present their cases in the sequence determined by the presiding officer;
d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

605—6.21(17A) Evidence.

6.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

6.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

6.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

605—6.22(17A) Default.

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6.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 6.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

6.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 6.25(17A).

6.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

6.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 6.29(17A).

605—6.23(17A) Ex parte communication.

6.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 6.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.23(1).

6.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 6.17(17A).

6.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to

such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

605—6.24(17A) Recording costs. Upon request, the emergency management division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

605—6.25(17A) Interlocutory appeals. Upon written request of a party or on the administrator's own motion, the administrator may review an interlocutory order of the presiding officer. In determining whether to do so, the administrator shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

605—6.26(17A) Final decision.

6.26(1) When the emergency management division administrator presides over the reception of evidence at the hearing, the administrator's decision is a final decision.

6.26(2) When the emergency management division administrator does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the emergency management division administrator within the time provided in rule 6.27(17A).

605—6.27(17A) Appeals and review.

6.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the emergency management division administrator within 30 days after issuance of the proposed decision.

6.27(2) Review. The administrator may initiate review of a proposed decision on the administrator's own motion at any time within 30 days following the issuance of such a decision.

6.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the emergency management division administrator. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

6.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The administrator may remand a case to the presiding officer for further hearing, or the administrator may preside at the taking of additional evidence.

6.27(5) Scheduling. The emergency management division administrator shall issue a schedule for consideration of the appeal.

6.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The administrator may resolve the appeal on the briefs or provide an opportunity for oral argument. The administrator may shorten or extend the briefing period as appropriate.

605—6.28(17A) Applications for rehearing.

6.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

6.28(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.27(4), the applicant requests an opportunity to submit additional evidence.

6.28(3) Time of filing. The application shall be filed with the emergency management division administrator within 20 days after issuance of the final decision.

6.28(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the emergency management division shall serve copies on all parties.

6.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

605—6.29(17A) Stays of agency actions.

6.29(1) When available.

a. Any party to a contested case proceeding may petition the emergency management division administrator for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

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b. Any party to a contested case proceeding may petition the emergency management division administrator for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.29(2) When granted. In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5)"c."

6.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the emergency management division or any other party.

605—6.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

605—6.31(17A) Emergency adjudicative proceedings.

6.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

6.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 6. Adopt the following **new** chapter:

CHAPTER 9
IOWA EMERGENCY PLAN

605—9.1(29C) State emergency plan. The Iowa emergency plan, as promulgated by governor's proclamation July 7, 1999, has been adopted and is published and maintained by the division. The plan details the state government response to, and recovery from, a wide range of natural and human-caused disasters.

1. The plan shall be distributed to state agencies and departments that have been assigned emergency functions and to all county sheriffs and emergency management coordinators.

2. The Iowa emergency plan serves as the state emergency response and recovery document.

3. The division updates the plan by amendments promulgated by rule according to Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list.

4. The plan shall be available for public view at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa.

EXCERPTS
BASIC PLAN
IOWA EMERGENCY PLAN

II. MISSION

To maximize survival and preservation of life, property, and environment in the event of any natural or human-caused disaster, or major accident affecting any city or rural areas by making the best use of available personnel, equipment, facilities, and supplies or other resources.

III. CONCEPT OF OPERATION

This plan is intended to facilitate a coordinated response to, and recovery from, disasters in Iowa. It addresses activities that should take place predisaster, in response to an emergency and for recovery from the emergency. Barring

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special circumstances of state or federal preemption, local government has primary responsibility to arrange for personnel and equipment for emergency response to, and recovery from, disasters. Local and state government is encouraged to use a structured approach and standard terminology to coordinate activities. Industry, as well as state and federal agencies, should be involved with local government in the local planning process. State involvement in disaster response and recovery will occur on request or may be self-initiated in those instances where the problem exceeds local capability.

Preparation for coping with a disaster requires cooperative efforts of numerous agencies (local, state, and federal) and the private sector. Each level of government and state agencies should prepare plans consistent with this plan, train its people, and take such other steps as are required to ensure that it can carry out its responsibilities during a disaster in an efficient and effective manner.

The state organization which will respond to a disaster is structured to alter its capabilities in response to the type of hazard which triggers activation. Thus, for a disaster the state would provide a multiagency response within the context of the emergency responsibilities assigned in Tab G to Enclosure #2, page 40. For local emergency situations, the state could respond with routine day-to-day emergency response actions of one or two state agencies.

The scale of the response, skills brought to bear on the problem, and agencies participating in the emergency organization will be geared to the nature of each specific incident or disaster. The organizational structure of state government designed to provide this flexibility is shown in this Basic Plan, page 23.

State response is in support of local government response. Coordination with the federal government will be accomplished through a state coordinating officer.

In relation to other plans, this Basic Plan is part of the Iowa Emergency Plan and is consistent with Iowa Code chapter 29C. This plan as Part I, Iowa Emergency Plan, is a generic plan and responsibilities as listed in this plan apply to most disaster situations. Other parts of the Iowa Emergency Plan augment Part I. The information in other parts of the Iowa Emergency Plan will pertain specifically to the hazard for which that plan has been developed and should provide appropriate actions in the event that disaster occurs.

IV. OPERATIONAL POLICIES

A. In any emergency or disaster, local governments will utilize all their resources first before requesting state assistance. If the scope of the disaster is beyond the obvious capabilities of local government resources, state resources may be immediately provided.

B. If local governments require state assistance, the various state departments/agencies will perform the necessary emergency functions as assigned by this plan and directed by the Governor.

C. The Governor will exercise direction and control of state emergency operations through the Director of Public Defense and the state Emergency Management Division Administrator.

D. The Governor will exercise direction and control of state emergency operations for civil disorders through the Commissioner of Public Safety and prison riots through the Director, Department of Corrections.

E. The Commissioner of Public Safety will coordinate the state's resources in any civil disorder emergency and the Director of Department of Corrections will coordinate state resources for prison riots or relocating and housing prisoners in an emergency.

F. The Director of Information Technology Services will coordinate the restoration of data systems and network services.

G. The state Emergency Management Division Administrator shall provide for coordination between all state departments to ensure efficient and maximum emergency function response to a natural or human-caused disaster, except for civil disorder or prison riots.

H. The state Emergency Management Division Administrator is responsible for preparing, distributing, and keeping the Iowa Emergency Plan up to date.

I. Interdepartmental coordination of disaster preparedness planning and operational matters will be effected by a designated agency coordinator for planning and operational matters.

J. Public information is generally provided to the news media by the respective department or agency head during normal operations. When this plan is activated, all emergency public information will be released by the Governor's Office or the Emergency Management Division Administrator acting for the Governor's Office. All news or public information contacts to state government personnel will be referred to the Governor's Office for action.

K. All state departments and agencies will retain their identities and autonomy throughout all levels of emergency coordination.

L. While evacuations will normally be the responsibility of the local government that is involved, the state Emergency Management Division Administrator may coordinate such movements. Decisions for evacuations will be made by the Governor or the local government involved. Except when immediate evacuation is imperative, or loss of life could result, the decision may be made by the local public official on scene.

M. Decisions for reentry of areas contaminated by hazardous substances will be made by the Incident Commander. When terrorist activities or biological contamination is suspected, supporting data and recommendations will be provided by the Department of Public Health, Department of Natural Resources, Emergency Management Division, University Hygienic Laboratory, nuclear facilities, or other responsible party, as appropriate.

N. Personnel monitoring and decontamination will be coordinated by the Incident Commander and supported by the state Department of Public Health. Contaminated clothing or other materials will be disposed of, if necessary, as directed by the Department of Natural Resources in coordination with nuclear facilities and the Nuclear Regulatory Commission. In a suspected biological terrorist incident, procedures for decontamination shall be coordinated with the Iowa Department of Public Health, Iowa National Guard, FBI and the CDC for transportation of cultures. Monitoring and decontamination will be coordinated by the Incident Command System.

O. Centralized coordination of support to local government and lead state agencies, as requested, of all phases of emergency operations will be effected through the state Emergency Operations Center (EOC).

P. Some situations may require the state to establish a forward command post in or near the disaster area. Once this decision is made, the Department of Public Safety, in cooperation with the Emergency Management Division, shall provide its mobile communication and command-post van and operations personnel. State departments and agencies

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with emergency responsibilities will send a liaison officer to operate from this location if necessary. Reports and information will be sent to the state EOC for evaluation and supportive actions. Established county or municipal EOCs may also be used for this purpose or other fixed facilities if available and properly equipped.

Q. State departments and agencies will coordinate and liaison will be established with their counterparts in the bordering states and supporting federal agencies to ensure effective responses and possible aid in emergencies.

R. State departments and agencies should enter into mutual aid and other written agreements with federal, state, local, and volunteer organizations, as appropriate, to provide for implementation of this plan.

V. RESPONSIBILITIES

A. The state Emergency Management Division Administrator, at the direction of the Governor, is responsible for:

1. Advising the Governor, state departments or agencies, and officials of local government of the nature, magnitude and effects of the emergency or disaster.

2. Coordinating all the elements of state government involved in an emergency operation.

3. Providing advice and assistance to state departments and agencies and local governments in developing and revising emergency operation plans.

4. Orienting and training the state emergency operations staff and conducting periodic exercises to test and evaluate this plan as required.

5. Coordinating with the Federal Emergency Management Agency, Region VII.

6. Maintaining a current list of state department and agency disaster coordinators.

7. Keeping this plan current and making distribution of the plan and changes thereto to appropriate state and federal departments and agencies and local governments.

8. Maintaining a file of Memorandums of Understanding.

9. Coordinating interstate emergency operations and planning.

10. Initiating such other actions deemed necessary to effectively implement this plan.

B. The head of each state department or agency with an assigned primary or support emergency function(s) as indicated in Tab F to Enclosure #2 to Basic Plan, page 39, shall:

1. Develop internal Emergency Operating Procedures (EOPs) for carrying out assigned primary and support functions on a current basis.

2. Review this plan annually and upgrade the department's or agency's EOP as necessary. One copy of the revised EOP shall be submitted to the state Emergency Management Division Administrator prior to the end of March of each year. During review, recommended plan revisions should be forwarded to the Emergency Management Division.

3. Assign and train operations personnel required to support agency assigned functions.

4. Designate appropriate personnel for the Emergency Operations Center staff as shown in this Basic Plan, pages 39 and 40, provide a list of names and position assignments to the state Emergency Management Division Administrator, and annually review the list in January and submit changes prior to the end of March.

5. Provide for procurement and management of resources necessary for emergency operations, except in a nuclear attack or terrorist incident. In exception, the Resources Priorities Board, under direction of the Governor, will manage resources in accordance with national policy.

6. Maintain a state agency contact for planning and operational matters who shall keep the agency aware of the current overall emergency management program of the state.

C. Assignment of emergency operation functional responsibilities. See Tab F to Enclosure #2, pages 39 and 40.

VI. EMERGENCY SUPPORT

A. National Guard services should be requested by the sheriff or local government chief executive through the Emergency Management Division to the Governor. Military assistance, when provided, will complement and not be a substitute for state, county, or local government participation in emergency operations. Military forces will remain under military command at all times.

B. Local governments should have intra- and intercounty mutual aid agreements for mutual assistance.

C. Volunteer agency support may be available through the state Emergency Management Division.

D. Fire Control

Department of Public Safety

State Fire Marshal coordinates the state's fire fighting resources under disaster conditions.

E. State Emergency Response Team (SERT)

1. Department of Public Defense

Provide personnel to serve as the Forward Coordinator of state response resources when requested by the Administrator, Emergency Management Division.

2. Department of Public Safety

Provide personnel to serve as the Forward Coordinator of state response resources when requested by the Administrator, Emergency Management Division.

3. All State Agencies

Provide operating personnel for state EOC and State Emergency Response Team as requested by the Administrator, Emergency Management Division.

605—9.2(29C) State resources management system. A resource management system shall be maintained by the division. The system contains an inventory of emergency-use resources from the private sector and state and local governments.

1. The division surveys private, state and local agencies for emergency-use resources.

2. In the event of a disaster or emergency, the division, upon request, provides information regarding the location and availability of needed resources.

605—9.3(29C) Cooperation with and support of the civil air patrol. The division shall cooperate with and support the civil air patrol in accordance with a memorandum of agreement between the division and the commander of the Iowa wing civil air patrol.

These rules are intended to implement Iowa Code chapter 29C.

ARC 9826A

EMERGENCY MANAGEMENT DIVISION[605]

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 17A.3 and 29C.8, the Emergency Management Division proposes to rescind Chapter 7, "Local Emergency Management," Iowa Administrative Code, and adopt a new Chapter 7 with the same title.

The adoption of the new chapter results from an extensive review of existing rules and implements a change in policy governing the state's participation in funding financial assistance programs in a presidentially declared disaster. This change is the result of emergency management legislation contained in 1999 Iowa Acts, chapter 86.

Any interested person may make written comments or suggestions on these proposed rules on or before June 12, 2000. Such written materials should be sent to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319, or faxed to (515) 281-7539.

There will be a public hearing on these proposed rules on June 12, 2000, at 10 a.m., in the Emergency Management Division Conference Room, Hoover State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of these rules.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 9824A**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code sections 29C.6 and 29C.8.

ARC 9825A

EMERGENCY MANAGEMENT DIVISION[605]

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 17A.3 and 29C.8, the Emergency Management Division gives Notice of Intended Action to rescind Chapter 8, "Criteria for Awards or Grants," Iowa Administrative Code, and adopt a new Chapter 8 with the same title.

By proposing this new chapter, the Emergency Management Division will implement policy ensuring equal access to and establishing the specific criteria for making awards and grants to eligible applicants.

Any interested person may make written comments or suggestions on the proposed rules on or before June 12, 2000. Such written materials should be sent to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319, or faxed to (515) 281-7539.

There will be a public hearing on the proposed rules on June 12, 2000, at 10 a.m., in the Emergency Management Division Conference Room, Hoover State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of these rules.

These rules are intended to implement Iowa Code sections 29C.8 and 29C.13.

The following rules are proposed.

Rescind 605—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
CRITERIA FOR AWARDS OR GRANTS

605—8.1(29C,17A) Purpose. The emergency management division receives and distributes funds to a variety of entities throughout the state for support of emergency management planning, training, and other initiatives. Unless otherwise prohibited by state or federal law, rule or regulation, the administrator may make such funds subject to competition. Where such funds are designated by the administrator to be competitive, the division shall ensure equal access, objective evaluation of applicantions for these funds, and that grant application material shall contain, at a minimum, specific content.

605—8.2(29C,17A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Administrator" means the administrator of the emergency management division within the Iowa department of public defense.

"Competitive grant" means the competitive grant application process to determine the grant award for a specified project period.

"Division" means the emergency management division of the Iowa department of public defense.

"Project" means the activity(ies) or program(s) funded by the division.

"Project period" means the period of time for which the division intends to support the project without requiring the recompetition of funds.

"Service delivery area" means the defined geographic area for delivery of project services.

605—8.3(29C,17A) Exceptions. The division considers funds subject to competition except in those cases where:

1. State or federal law, rule or regulation prohibits such competition.
2. The state, federal or private funding source specifies a sole source for the receipt of funds.
3. There is mutual agreement among the division and contract organizations.
4. The administrator designates such funds to be noncompetitive.

605—8.4(29C,17A) Public notice of available competitive grants. When making funds available through a competitive grant application process, the division shall, at least 60 days

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prior to the application due date, issue a public notice in the Iowa Administrative Bulletin that identifies the availability of funds and states how interested parties may request an application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas, and eligible applicants shall be described in the public notice.

If the receipt of a grantor's official notice of award to the division precludes a full 60-day notice in the Iowa Administrative Bulletin, the division shall nonetheless issue the public notice in the Iowa Administrative Bulletin at the earliest publication date.

In the event the publication date would not allow at least 30 days for interested parties to request and submit an application packet, the division shall notify current contractors and other interested parties of the availability of funds through press releases and other announcements.

605—8.5(29C,17A) Requirements. Where funds are designated as competitive, the following shall be included in all grant application materials made available by the division:

1. Funding source;
2. Project period;
3. Services to be delivered;
4. Service delivery area;
5. Funding purpose;
6. Funding restrictions;
7. Funding formula (if any);
8. Matching requirements (if any);
9. Reporting requirements;
10. Performance criteria;
11. Description of eligible applicants;
12. Need for letters of support or other materials (if applicable);
13. Application due date;
14. Anticipated date of award;
15. Eligibility guidelines for those receiving the service or product and the source of those guidelines, including fees or sliding fee scales (if applicable);
16. Target population to be served (if applicable); and
17. Appeal process in the event an application is denied.

605—8.6(29C,17A) Review process (competitive applications only). The review process to be followed in determining the amount of funds to be approved for award of a contract shall be described in the application material. The review criteria and point allocation for each element shall also be described in the grant application material.

The competitive grant application review committee shall be determined by the division bureau chief administering the grant or award, with oversight from the administrator. The review committee members shall apply points per the established review criteria in conducting the review.

In the event competitive applications for a project receive an equal number of points, a second review shall be conducted by the administrator and the bureau chief administering the grant or award.

605—8.7(29C,17A) Opportunity for review and comment. Program advisory committees or related task forces of the program may be provided with an opportunity to review and comment on the criteria and point allocation prior to implementation. Exceptions may occur when the funding source to the division has already included such criteria and point allocation within the award or the time frame allowed is insufficient for such review and comment.

605—8.8(29C,17A) Awards. Once applications have been scored and ranked, the division shall award all available funds to eligible applicants based on the ranking of their applications. Should there be more eligible applications than funds available, those remaining eligible applications shall be kept on file by the division.

In those cases in which applicants have received an award but actual project costs are less than anticipated or established in the application, remaining funds shall become deobligated funds. The division shall award deobligated funds to remaining eligible applications on file with the division. Should deobligated funds remain after satisfying all eligible applications, the division shall republish the availability of funds.

These rules are intended to implement Iowa Code chapters 17A and 29C.13.

ARC 9839A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code 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 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Under the provisions of the federal Clean Water Act, states are required to undertake a comprehensive review of their water quality standards every three years. During 1999, the Department of Natural Resources, Environmental Protection Division, solicited public input on existing standards to begin the comprehensive review process. Based on the public comments as well as Environmental Protection Agency (EPA) comments, the Department developed a list of issues identified as needing changes and began developing issue papers for discussion and consideration with a water quality standards Technical Advisory Committee (TAC). The amendments being proposed address some of the issues identified to date. As the remaining issues are addressed and resolved by Department staff and the TAC, additional changes will be proposed.

Additional information on Iowa's Water Quality Standards can be found on the Department's Web site at http://www.state.ia.us/government/dnr/organiza/epd/prgrmdsc/wtrqual/sum.htm.

The amendments now being proposed will, if adopted: (1) modify the ammonia nitrogen criteria for aquatic life protection; (2) modify the descriptive basis for the Class C criteria; (3) allow for consideration of total residual chlorine (TRC) demand in the mixing zone; (4) establish procedures for seasonal ammonia limits; (5) modify the critical low stream flows referenced in the standards; (6) modify the stream use designations for several waterbodies; and (7) modify the aquatic life criteria for aluminum, mercury, dieldrin, endrin, lindane, pentachlorophenol, silver and toxaphene.

In December 1999, the EPA finalized a new guidance document for ammonia. The new guidelines incorporate new toxicity data for various aquatic species and new procedures

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to implement the acute and chronic criteria. For Iowa, implementation of the ammonia criteria is proposed to include considerations for the time when sensitive versus nonsensitive life stages are present in the waterbodies. The months when sensitive life stages are present are specifically listed for each aquatic life use designation. Thus, the proposed amendment will rescind subrule 61.3(3), Tables 3a, 3b, and 3c, regarding criteria for ammonia nitrogen, and adopt new tables in lieu thereof to reflect the EPA's new national guidelines.

Amendments to items associated with the implementation of the Class C drinking water criteria are also proposed. First, paragraph 61.2(4)"c," regarding regulatory mixing zones, will be modified to state that the maximum contaminate level (MCL) will be met at the boundary of the allowed mixing zone. Second, subrule 61.3(3), Table 1, regarding criteria for chemical constituents, will be relabeled and amended to identify the basis of the Class C criteria, whether a criterion is based on the drinking water maximum contaminant level (MCL) or the consumption of fish or fish and water.

The rule-referenced document "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, as revised on March 20, 1990, is proposed to be modified to provide procedures for considering the total residual chlorine demand within the mixing zone. Additional guidance is being provided on establishing site-specific demand values. The guidance addresses the analytical procedure to establish the TRC demand, the number of tests to be performed, and seasonal and stream flow restrictions.

In addition, the rule-referenced document is proposed to be modified to allow the department to establish water quality-based ammonia nitrogen limits using a seasonal grouping of months or individual monthly limits, including the consideration of the presence or absence of sensitive aquatic life stages. The grouping of months in each season may vary with each wastewater treatment facility. This will provide permittees with greater flexibility in complying with their ammonia limits while still meeting water quality standards.

In subrule 61.2(5), amendments to various items associated with the critical low stream flows used in the implementation of the standards are proposed. Based on EPA guidance, the critical low flow conditions will be modified to reflect the same statistical basis for which the numerical criteria were established. Specifically, numerous citations in rules 567— 61.2(455B) and 61.3(455B) will be linked to a table referencing the four new critical low stream flow regimes to be used in the standards.

The designated uses in paragraph 61.3(5)"e," about surface water classification, are proposed to be modified for one stream, South Cedar Creek, tributary to the Turkey River, and add a warm water designation for three streams, Muchakinock Creek in Mahaska Co., Bear Creek in Benton/Buchanan Co., and Winnebago Creek in Allamakee Co., for four newly constructed state lakes and for three lakes inadvertently omitted from the 1990 rule modifications. The proposed modification to South Cedar Creek would replace the upper 1-mile reach of the Class B(CW) cold water designation with Class B(LR) limited resource warm water designation. This replacement reflects the aquatic life species found in this upper reach and the natural limitations of the creek but will not impact the Class B(CW) designation in the lower spring-fed reach. Muchakinock, Bear and Winnebago Creeks are recommended for Class B(LR) limited resource warm water designations to reflect the aquatic life species found in these reaches. The newly constructed lakes of Three Mile Lake, Beaver Lake, Lake Sugema, and Brushy Creek Lake are proposed to be designated as Class B(LW) lake/wetland waters along with the three omitted lakes of Mystic Reservoir, Littlefield Lake and Wiese Slough. In addition, several corrections are being made to current entries in paragraph 61.3(5)"e" where errors or omissions were noted.

In subrule 61.3(3), Table 1, the Aquatic Life Criteria for aluminum, mercury, dieldrin, endrin, lindane, pentachlorophenol, toxaphene, and silver are proposed to be modified. The existing numerical criteria do not reflect the current aquatic toxicity data or were incorrectly calculated in the revisions to rules from 1990 to 1994.

Any person may submit written suggestions or comments on the proposed amendments through June 30, 2000. Such written material should be submitted to Ralph Turkle, Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034, by fax (515)281-8895 or by E-mail at ralph.turkle@dnr.state.ia.us. Persons who have questions may contact Ralph Turkle at (515)281-7025.

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

June 8, 2000
10 a.m. — Iowa City Public Library, Meeting Room A, 123 S. Linn St., Iowa City
4 p.m. — Decorah City Hall Meeting Room, 400 Claiborne Drive, Decorah

June 12, 2000
11 a.m. — Cherokee Community Center, 530 W. Bluff St., Cherokee
7 p.m. — Clear Lake Community Meeting Room, 15 N. Sixth St., Clear Lake

June 15, 2000
11 a.m. — Municipal Utilities Conference Room, 15 W. Third St., Atlantic

June 16, 2000
1 p.m. — Wallace State Office Building, Fifth Floor Conference Room, West Half, 900 East Grand Ave., Des Moines

Copies of Environmental Protection Commission rules may be obtained from Cecilia Nelson, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrule **61.2(4)** as follows:

Amend paragraph **"a"** as follows:

a. Due to extreme variations in wastewater and receiving water characteristics, spatial dimensions of mixing zones shall be defined on a site-specific basis. These rules are not intended to define each individual mixing zone, but will set maximum limits which will satisfy most biological, chemical, physical and radiological considerations in defining a particular mixing zone. Additional details are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July1976, as revised on ~~March 20, 1990~~ *effective date of revised document*, for considering unusual site-specific features such as side channels and sand bars which may influence a mixing zone. Applications for operation permits under 567—subrule 64.3(1) may be required to

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provide specific information related to the mixing zone characteristics below their outfall so that mixing zone boundaries can be determined.

Amend paragraph **"b,"** introductory paragraph, as follows:

b. For parameters included in Table 1 only (which does not include ammonia nitrogen), the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document*, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

Further amend paragraph **"b,"** subparagraph **(1)**, as follows:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. Twenty-five percent of the ~~seven-day, ten-year~~ *design* low stream ~~flow~~ *flows noted in subrule 61.2(5)* for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

2. Ten percent of the ~~seven-day, ten-year~~ *design* low stream ~~flow~~ *flows noted in subrule 61.2(5)* for the Mississippi and Missouri Rivers.

3. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

Amend paragraph **"c"** as follows:

c. The stream flow used in determining wasteload allocations to ensure compliance with *the maximum contaminant level (MCL),* chronic and human health criteria of Table 1 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the following percentages of the ~~seven-day, ten-year~~ *design* low stream flow as measured at the point of discharge:

(1) Twenty-five percent for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

(2) Ten percent for the Mississippi and Missouri Rivers.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 1 may not exceed 10 percent of the calculated flow associated with the mixing zone.

Amend paragraph **"d,"** subparagraph **(4)**, as follows:

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi or Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," ~~(Iowa Department of Water, Air and Waste Management,~~ Chapter IV, July 1976, as revised on ~~March 20, 1990)~~ *effective date of revised document.*

Amend paragraph **"e,"** introductory paragraph, as follows:

e. For ammonia criteria noted in Table 3, the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document*, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

Further amend paragraph **"e,"** subparagraph **(1)**, as follows:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. One hundred percent of the ~~seven-day, ten-year~~ *design* low stream ~~flow~~ *flows noted in subrule 61.2(5)* for locations where the dilution ratio is less than or equal to 2:1.

2. Fifty percent of the ~~seven-day, ten-year~~ *design* low stream ~~flow~~ *flows noted in subrule 61.2(5)* for locations where the dilution ratio is greater than 2:1, but less than or equal to 5:1.

3. Twenty-five percent of the ~~seven-day, ten-year~~ *design* low stream ~~flow~~ *flows noted in subrule 61.2(5)* for locations where the dilution ratio is greater than 5:1.

4. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

Amend paragraph **"f"** as follows:

f. For ammonia criteria noted in Table 3, the stream flow used in determining wasteload allocations to ensure compliance with the chronic criteria of Table 3 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the percentages of the ~~seven-day, ten-year~~ *design* low stream flow noted in 61.2(4)"e"(1) as measured at the point of discharge.

The pH and temperature values at the boundary of the mixing zone used to select the chronic ammonia criteria of Table 3 will be from one of the following sources. The source of the pH and temperature data will follow the sequence listed below, if applicable data exists from the source.

(1) Specific pH and temperature data provided by the applicant gathered at their mixing zone boundary. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document.*

(2) Regional background pH and temperature data provided by the applicant gathered along the receiving stream and representative of the background conditions at the outfall. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document.*

(3) The statewide average background values presented in Table IV-5 of the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document.*

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 3 may not exceed 5 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of less than or equal to 2:1, and not exceed 10 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of greater than 2:1. The pH and temperature values at the boundary of the zone of initial dilution used to select the acute ammonia criteria of Table 3 will be from one of the following sources and follow the sequence listed below, if applicable data exists from the source.

1. Specific effluent pH and temperature data if the dilution ratio is less than or equal to 2:1.

2. If the dilution ratio is greater than 2:1, the logarithmic average pH of the effluent and the regional or statewide pH provided in 61.2(4)"f" will be used. In addition, the flow pro-

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portioned average temperature of the effluent and the regional or statewide temperature provided in 61.2(4)"f" will be used. The procedures for calculating these data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document.*

Amend paragraph **"g,"** subparagraph **(4)**, as follows:

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi and Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," ~~(Iowa Department of Water, Air and Waste Management,~~ Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document*~~)~~.

ITEM 2. Amend subrule 61.2(5), introductory paragraph, as follows:

61.2(5) Implementation strategy. Numerical criteria specified in these water quality standards shall be met when the flow of the receiving stream equals or exceeds the ~~seven-day, ten-year~~ *design* low ~~flow~~ *flows noted below.*

Type of Numerical Criteria	*Design Low Flow Regime*
Aquatic Life Protection (TOXICS)	
Acute	$1Q_{10}$
Chronic	$7Q_{10}$
Aquatic Life Protection (AMMONIA - N)	
Acute	$1Q_{10}$
Chronic	$30Q_{10}$
Human Health Protection & MCL	
Noncarcinogenic	$30Q_5$
Carcinogenic	*Harmonic mean*

Exceptions may be made for intermittent or low flow streams classified as significant resource warm waters or limited resource warm waters. For these waters, the department may waive the ~~seven-day, ten-year~~ *design* low flow requirement and establish a minimum flow in lieu thereof. Such waiver shall be granted only when it has been determined that the aquatic resources of the receiving waters are of no significance at flows less than the established minimum, and that the continued maintenance of the beneficial uses of the receiving waters will be ensured. In no event will toxic conditions be allowed to occur in the receiving waters outside of mixing zones established pursuant to subrule 61.2(4). The policy for granting waivers is described in the "Supporting Document for Iowa Water Quality Management Plans," ~~(Iowa Department of Water, Air and Waste Management,~~ Chapter IV, July 1976, as revised on ~~March 20, 1990~~ *effective date of revised document*~~)~~. (Copies are available upon request to the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319-0034. Copy also on file with the Iowa Administrative Rules Coordinator.)

ITEM 3. Amend subrule **61.3(3)**, paragraph **"b,"** subparagraph **(3)**, numbered paragraph **"2,"** as follows:

2. The chronic criteria represent the level of protection necessary to prevent chronic toxicity to aquatic life. Excursions above the chronic criteria will be allowed only inside of mixing zones or only for short-term periods outside of mixing zones; however, these excursions cannot exceed the acute criteria shown in Tables 1 and 3. The chronic criteria will be met as short-term average conditions at all times the flow equals or exceeds either the ~~seven-day, ten-year flow~~ *design flows noted in subrule 61.2(5)* or any site-specific low flow established under the provisions of subrule 61.2(5).

ITEM 4. Amend subrule **61.3(3)**, paragraph **"b,"** by adopting the following **new** subparagraph **(6)**:

(6) Early life stage for each use designation. The following seasons will be used in applying the early life stage present chronic criteria noted in Table 3b, "Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present."

1. For all Class B(CW) waters, the early life stage will be year-round.
2. For all Class B(WW) significant resource waters, the early life stage will begin in March and last through September except the following:

- For the following, the early life stage will begin in February and last through September:

—The entire length of the Mississippi and Missouri Rivers,

—The lower reach of the Des Moines River south of the Ottumwa dam, and

—The lower reach of the Iowa River below the Cedar River.

- For the following, the early life stage will begin in April and last through September:

—All Class B(WW) waters in the Southern Iowa River Basin,

—All of the Class B(WW) reach of the Skunk River, the North Skunk River and the South Skunk River south of Indian Creek (Jasper County), and the Class B(WW) tributaries to these reaches, and

—The entire Class B(WW) reach of the English River.

3. For all Class B(LR) waters, the early life stage will begin in April and last through September.
4. For all Class B(LW) lake and wetland waters, the early life stage will begin in March and last through September except for the Class B(LW) waters in the southern two tiers of Iowa counties which will have the early life stage of April through September.

ITEM 5. Amend subrule **61.3(3)**, Table 1, "Criteria For Chemical Constituents," as follows:

Table 1: Criteria For Chemical Constituents

(all values as micrograms per liter unless noted otherwise)

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health ~~criteria~~ *criterion*, the U.S. Environmental Protection Agency has not developed final national human health guideline values. For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters noted above. *For Class C waters where no EPA human health criteria were available, the EPA MCL value was selected.*

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Parameter		Use Designations B(CW)	B(WW)	B(LR)	B(LW)	C
Alachlor	~~Acute~~ *MCL*	—	—	—	—	2
Aluminum	Chronic	87	~~3290~~ *388*	~~3290~~ *773*	~~742~~ *748*	—
	Acute	~~1435~~ *1106*	~~9256~~ *4539*	~~9256~~ *9035*	~~1073~~ *983*	—
Antimony	~~Acute~~ *Human Health+ - F & W*	—	—	—	—	~~6~~ *14*
Arsenic (III)	Chronic	200	200	1000	200	—
	Acute	360	360	1800	360	~~50~~
	Human Health - *Fish*	50	50	—	50	—
	Human Health - F & W	—	—	—	—	*.18*
Asbestos	~~Acute~~ *Human Health - F & W*	—	—	—	—	7(a)
Atrazine	~~Acute~~ *MCL*	—	—	—	—	3
Barium	~~Acute~~ *Human Health+ - F & W*	—	—	—	—	~~2000~~ *1000*
Benzene	~~Acute~~ *Human Health - F & W*	—	—	—	—	~~5~~ *12*
	Human Health - *Fish*	712.8	712.8	—	712.8	—
Benzo(a)Pyrene	~~Acute~~ *Human Health - F & W*	—	—	—	—	~~.2~~ *.044*
Beryllium	~~Acute~~ *MCL*	—	—	—	—	4
Cadmium	Chronic	1	15	25	1	—
	Acute	4	75	100	4	~~5~~
	Human Health+ - *Fish*	168	168	—	168	—
	MCL	—	—	—	—	*5*
Carbofuran	~~Acute~~ *MCL*	—	—	—	—	40
Carbon Tetrachloride	~~Acute~~ *Human Health - F & W*	—	—	—	—	~~5~~ *2.5*
	Human Health - *Fish*	44.2	44.2	—	44.2	—
Chlordane	Chronic	.004	.004	.15	.004	—
	Acute	2.5	2.5	2.5	2.5	~~2~~
	Human Health - *Fish*	.006	.006	—	.006	—
	Human Health - F & W	—	—	—	—	*.021*
Chloride	~~Acute~~ *MCL*	—	—	—	—	250*
Chlorobenzene	Human Health+ - *Fish*	20	20	—	20	~~20~~
	Human Health+ - F & W	—	—	—	—	*680*

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Parameter		Use Designations B(CW)	B(WW)	B(LR)	B(LW)	C
Chloropyrifos	Chronic	.041	.041	.041	.041	—
	Acute	.083	.083	.083	.083	—
Chromium (VI)	Chronic	40	40	200	10	—
	Acute	60	60	300	15	~~100~~
	Human Health+ - Fish	3365	3365	—	3365	—
	MCL	—	—	—	—	*100*
Copper	Chronic	20	35	55	10	—
	Acute	30	60	90	20	~~1000~~
	Human Health+ - *Fish*	1000	1000	—	1000	—
	Human Health+ - F & W	—	—	—	—	*1300*
Cyanide	Chronic	5	10	10	10	—
	Acute	20	45	45	45	~~200~~(b)
	Human Health+ - F & W	—	—	—	—	*700*
Dalapon	~~Acute~~ *MCL*	—	—	—	—	200
Dibromochloropropane	~~Acute~~ *MCL*	—	—	—	—	.2
4,4-DDT ++	Chronic	.001	.001	.029	.001	—
	Acute	.9	.8	.95	.55	—
	Human Health - *Fish*	.0059	.0059	—	.0059	~~.0059~~
	Human Health - F & W	—	—	—	—	*.0059*
o-Dichlorobenzene	~~Acute~~ *MCL*	—	—	—	—	600
para-Dichlorobenzene	~~Acute~~	—	—	—	—	~~75~~
	Human Health+ - F & W					*400*
	Human Health+ - *Fish*	2.6*	2.6*	—	2.6*	—
3,3-Dichlorobenzidine	Human Health - *Fish*	.2	.2	—	.2	~~.1~~
	Human Health - F & W	—	—	—	—	*.4*
1,2-Dichloroethane	~~Acute~~	—	—	—	—	~~5~~
	Human Health - F & W					*3.8*
	Human Health - *Fish*	986	986	—	986	—
1,1-Dichloroethylene	~~Acute~~	—	—	—	—	~~7~~
	Human Health - F & W					*.57*
	Human Health - *Fish*	32	32	—	32	—
cis-1,2-Dichloroethylene	~~Acute~~ *MCL*	—	—	—	—	70
trans-1,2-Dichloroethylene	~~Acute~~	—	—	—	—	~~100~~
	Human Health+ - F & W					*700*
Dichloromethane	~~Acute~~ *MCL*	—	—	—	—	5
1,2-Dichloropropane	~~Acute~~	—	—	—	—	~~5~~
	Human Health - F & W					*5.2*

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Parameter		Use Designations B(CW)	B(WW)	B(LR)	B(LW)	C
Di(2-ethyhexyl)adipate	~~Acute~~ *MCL*	—	—	—	—	400
Di(2-ethyhexyl)phthalate	~~Acute~~	—	—	—	—	~~6~~
	Human Health - F & W					*18*
Dieldrin	Chronic	~~.0019~~	~~.0019~~	~~.50~~	~~.0019~~	—
		.056	*.056*	*.056*	*.056*	
	Acute	~~1.25~~	~~2.1~~	~~2.1~~	~~2.1~~	—
		.24	*.24*	*.24*	*.24*	
	Human Health - *Fish*	.0014	.0014	—	.0014	~~.0014~~
	Human Health - F & W	—	—	—	—	*.0014*
Dinoseb	~~Acute~~ *MCL*	—	—	—	—	7
2,3,7,8-TCDD (Dioxin)	~~Acute~~	—	—	—	—	~~.00003~~
	Human Health - F & W					*1.3^{-7}*
	Human Health - *Fish*	.00014†	.00014†	—	.00014†	—
Diquat	~~Acute~~ *MCL*	—	—	—	—	20
2,4-D	~~Acute~~	—	—	—	—	~~70~~
	Human Health+ - F & W					*100*
Endosulfan	Chronic	.056	.15	.15	.15	—
	Acute	.11	.3	.3	.3	—
	Human Health+ - *Fish*	2400	2400	—	2400	~~1100~~
	Human Health+ - F & W	—	—	—	—	*110*
Endothall	~~Acute~~ *MCL*	—	—	—	—	100
Endrin	Chronic	~~.0023~~	~~.0023~~	~~.09~~	~~.0023~~	—
		.05	*.036*	*.036*	*.036*	
	Acute	~~.18~~	~~.18~~	~~.18~~	~~.18~~	~~2~~
		.12	*.086*	*.086*	*.086*	
	Human Health+ - *Fish*	8.1	8.1	—	8.1	—
	Human Health+ - F & W	—	—	—	—	*.76*
Ethylbenzene	~~Acute~~	—	—	—	—	~~700~~
	Human Health+ - F & W					*3100*
Ethylene dibromide	~~Acute~~ *MCL*	—	—	—	—	.05
Fluoride	~~Acute~~ *MCL*	—	—	—	—	4000
Glyphosate	~~Acute~~ *MCL*	—	—	—	—	700
Heptachlor	Chronic	.0038	.0038	.01	.0038	—
	Acute	.38	.38	.38	.38	~~.4~~
	Human Health - *Fish*	.002	.002	—	.002	—
	Human Health - F & W	—	—	—	—	*.0021*
Heptachlor epoxide	~~Acute~~	—	—	—	—	~~.2~~
	Human Health - F & W					*.001*

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Parameter		Use Designations B(CW)	B(WW)	B(LR)	B(LW)	C
Hexachlorobenzene	~~Acute~~	—	—	—	—	~~1~~
	Human Health - F & W					*.0075*
y-Hexachloro-cyclohexane (Lindane)	Chronic	~~.25~~ *N/A*	~~.33~~ *N/A*	~~.33~~ *N/A*	~~.33~~ *N/A*	—
	Acute	~~3.2~~ *.95*	~~4.1~~ *.95*	~~4.1~~ *.95*	~~4.1~~ *.95*	~~.2~~
	Human Health - *Fish*	.63	.63	—	.63	—
	Human Health - F & W	—	—	—	—	*.19*
Hexachlorocyclopentadiene	~~Acute~~	—	—	—	—	~~50~~
	Human Health+- F & W					*240*
Lead	Chronic	3	30	80	3	—
	Acute	80	200	750	80	~~50~~
	MCL	—	—	—	—	*50*
Mercury (II)	Chronic	~~.05~~ *3.5*	~~.05~~ *2.1*	~~.25~~ *3.7*	~~.05~~ *.91*	—
	Acute	6.5	~~6.5~~ *4.0*	~~10~~ *6.9*	~~2.5~~ *1.7*	~~2~~
	Human Health+ - *Fish*	.15	.15	—	.15	—
	Human Health+ - F & W	—	—	—	—	*.05*
Methoxychlor	~~Acute~~	—	—	—	—	~~40~~
	Human Health+ - F & W					*100*
Monochlorobenzene	~~Acute~~ *MCL*	—	—	—	—	100
Nickel	Chronic	350	650	750	150	—
	Acute	3250	5800	7000	1400	—
	Human Health+ - *Fish*	4584	4584	—	4584	—
	Human Health+ - F & W	—	—	—	—	*610*
Nitrate as N	~~Acute~~ *MCL*	—	—	—	—	10*
Nitrate + Nitrite as N	~~Acute~~ *MCL*	—	—	—	—	10*
Nitrite as N	~~Acute~~ *MCL*	—	—	—	—	1*
Oxamyl (Vydate)	~~Acute~~ *MCL*	—	—	—	—	200
Parathion	Chronic	.013	.013	.013	.013	—
	Acute	.065	.065	.065	.065	—
Pentachlorophenol (PCP)	Chronic	(d)	(d)	(d)	(d)	—
	Acute	(d)	(d)	(d)	(d)	~~1~~
	Human Health - *Fish*	82	82	—	82	—
	Human Health - F & W	—	—	—	—	*.28*
Picloram	~~Acute~~ *MCL*	—	—	—	—	500

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations B(CW)	B(WW)	B(LR)	B(LW)	C
Polychlorinated Biphenyls (PCBs)	Chronic	.014	.014	1	.014	—
	Acute	2	2	2	2	~~.5~~
	Human Health - *Fish*	.0004	.0004	—	.0004	~~.0004~~
	Human Health - F & W	—	—	—	—	*.0017*
Polynuclear Aromatic Hydrocarbons (PAHs)**	Chronic	.03	.03	3	.03	—
	Acute	30	30	30	30	—
	Human Health - *Fish*	.3	.3	—	.3	~~.028~~
	Human Health - F & W	—	—	—	—	*.044*
Phenols	Chronic	50	50	50	50	—
	Acute	1000	2500	2500	1000	~~50~~
	Human Health+ - *Fish*	300	300	—	300	—
	Human Health+ - F & W	—	—	—	—	*21**
Selenium (VI)	Chronic	10	125	125	70	—
	Acute	15	175	175	100	~~50~~
	Human Health+ - F & W	—	—	—	—	*170*
Silver	Chronic	~~2.5~~ *N/A*	~~8.5~~ *N/A*	~~8.5~~ *N/A*	~~.35~~ *N/A*	—
	Acute	30	100	100	4	~~50~~
	MCL	—	—	—	—	*50*
2,4,5-TP (Silvex)	~~Acute~~ *MCL*	—	—	—	—	~~50~~ *10*
Simazine	~~Acute~~ *MCL*	—	—	—	—	4
Styrene	~~Acute~~ *MCL*	—	—	—	—	100
Tetrachloroethylene	~~Acute~~	—	—	—	—	~~5~~
	Human Health - F & W					*8*
Thallium	~~Acute~~	—	—	—	—	~~2~~
	Human Health+ - F & W					*1.7*
Toluene	Chronic	50	50	150	50	—
	Acute	2500	2500	7500	2500	~~1000~~
	Human Health+ - *Fish*	300*	300*	—	300*	—
	Human Health+ - F & W	—	—	—	—	*6800*
Total Residual Chlorine (TRC)	Chronic	10	20	25	10	—
	Acute	35	35	40	20	—
Toxaphene	Chronic	~~.0002~~ *.037*	~~.0002~~ *.037*	~~.019~~ *.037*	~~.0002~~ *.037*	—
	Acute	~~.81~~ *.73*	.73	~~.79~~ *.73*	.73	~~3~~
	Human Health - *Fish*	.0075	.0075	—	.0075	—
	Human Health - F & W	—	—	—	—	*.0073*

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations B(CW)	B(WW)	B(LR)	B(LW)	C
1,2,4-Trichlorobenzene	~~Acute~~ *MCL*	—	—	—	—	70
1,1,1-Trichloroethane	~~Acute~~ *MCL*	—	—	—	—	200
	Human Health+ - *Fish*	173*	173*	—	173*	—
1,1,2-Trichloroethane	~~Acute~~	—	—	—	—	~~5~~
	Human Health - F & W					*6*
Trichloroethylene (TCE)	Chronic	80	80	80	80	—
	Acute	4000	4000	4000	4000	~~5~~
	Human Health - *Fish*	807	807	—	807	—
	Human Health - F & W	—	—	—	—	*27*
Trihalomethanes (total)(c)	~~Acute~~ *MCL*	—	—	—	—	100
Vinyl Chloride	~~Acute~~	—	—	—	—	~~2~~
	Human Health - F & W					*20*
	Human Health - *Fish*	5250	5250	—	5250	—
Xylene (total)	~~Acute~~ *MCL*	—	—	—	—	10*
Zinc	Chronic	200	450	2000	100	—
	Acute	220	500	2200	110	~~1000~~
	Human Health+ - *Fish*	5000	5000	—	5000	—
	Human Health+ - F & W	—	—	—	—	*9100*

* units expressed as milligrams/liter
** to include the sum of known and suspected carcinogenic PAHs
† expressed as nanograms/liter
+ Represents the noncarcinogenic human health parameters
++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually shall not exceed the human health ~~criterion~~ *criteria*.
(a) units expressed as million fibers/liter (longer than 10 micrometers)
~~(b) measured as free cyanide~~
(c) total trihalomethanes includes the sum of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)
(d) Class B numerical criteria are *for pentachlorophenol* a function of pH using the equation:
Criterion (µg/l)=e $^{[1.005(pH)-x]}$, where e = 2.71828 and x varies according to the following table.

	B(CW)	B(WW)	B(LR)	B(LW)
Acute	~~3.65~~	~~4.83~~	~~3.34~~	~~4.83~~
	3.869	*4.869*	*4.869*	*4.869*
Chronic	~~4.11~~	~~5.29~~	~~3.80~~	~~5.29~~
	4.134	*5.134*	*5.134*	*5.134*

ITEM 6. Rescind subrule **61.3(3)**, Tables 3a, 3b, and 3c, "Criteria for Ammonia Nitrogen," and adopt the following **new** tables in lieu thereof:

Table 3a. Acute Criterion for Ammonia in Iowa Streams

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW), B(LR) & B(LW)	Class B(CW) Cold Water
6.5	48.8	32.6
6.6	46.8	31.3
6.7	44.6	29.8

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW), B(LR) & B(LW)	Class B(CW) Cold Water
6.8	42.0	28.0
6.9	39.1	26.1
7.0	36.1	24.1
7.1	32.8	21.9
7.2	29.5	19.7
7.3	26.2	17.5
7.4	23.0	15.3
7.5	19.9	13.3
7.6	17.0	11.4
7.7	14.4	9.64
7.8	12.1	8.11
7.9	10.1	6.77
8.0	8.40	5.62
8.1	6.95	4.64
8.2	5.72	3.83
8.3	4.71	3.15
8.4	3.88	2.59
8.5	3.20	2.14
8.6	2.65	1.77
8.7	2.20	1.47
8.8	1.84	1.23
8.9	1.56	1.04
9.0	1.32	0.885

Table 3b. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.8	2.8	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
8.6	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

Table 3c. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Absent

Chronic Criterion - Early Life Stages Absent, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0-7	8	9	10	11	12	13	14	15*	16*
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.99
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.9	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

*At 15°C and above, the criterion for fish early life stage (ELS) absent is the same as the criterion for fish ELS present.

ITEM 7. Amend subrule **61.3(5)**, paragraph **"e,"** as follows:
Amend streams or stream segments by location and reference number as follows:

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Western Iowa River Basins									
	Montgomery Cr.								
51.	Mouth (S3, T94N, R36W, Clay Co.) to confluence with an unnamed tributary (~~NW~~ *SE ¼*, S11, T94N, R36W, Clay Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
	Whiskey Cr.								
66.	Mouth (Plymouth Co.) to confluence with unnamed tributary (NW ¼, ~~S11~~ *S2*, ~~T93N~~ *T91N*, ~~R44W~~ *R43W*, Plymouth Co.)			X					
	Willow Cr.								
72.	Mouth (Plymouth Co.) to confluence with unnamed tributary (NE ¼, ~~S35~~ *S11*, ~~T94N~~ *T93N*, ~~R43W~~ *R44W*, Plymouth Co.)			X					
	Southern Iowa River Basins								
	Silver Cr.								
7.	~~Mouth (S31, T71N, R41W,~~ *Hwy. 41* (Mills Co.) to confluence with Little Silver Cr. (S34, T78N, R40W, Shelby Co.)			X					
	West Fork West Nishnabotna R.								
16.	Mouth (Shelby Co.) to confluence with ~~Maloney~~ *Malony* Branch (S29, T83N, R37W, Crawford Co.)			X					
	~~Nodaway R.~~								
~~35.~~	~~City of Clarinda Water Works intake~~						~~X~~		
	West Nodaway R.								
~~36.~~ *35.*	Mouth (S33, T71N, R36W, Montgomery Co.) to confluence with Threemile Cr. (S35, T74N, R36W, Cass Co.)		X						
	West Nodaway R.								
36.	*City of Clarinda Water Works intake*						*X*		
	Grand R. (aka Thompson ~~Cr.~~ *R.*)								
71.	Iowa-Missouri state line (Decatur Co.) to confluence with Long Cr. (SW ¼, S8, T69N, R26W, Decatur Co.)		X						
	Grand R. (aka Thomson ~~Cr.~~ *R.*)								
72.	Confluence with Long Cr. (SW ¼, S8, T69N, R26W, Decatur Co.) to confluence with Marvel Cr. (S8, T75N, R30W, Adair Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Des Moines River Basin									
	Muchakinock Cr.								
27.	*Mouth (Mahaska Co.)* ~~Confluence with Little Muchakinock Creek (S34, T75N, R16W Mahaska Co.)~~ to confluence with an unnamed tributary (NW ¼, SW ¼, S27, T76N, R17W, Mahaska Co.)			X					
	Middle R.								
43.	Mouth (Warren Co.) to confluence with ~~Fletcher Br. (Madison Co.)~~ *Bush Branch (S8, T75N, R29W, Madison Co.)*		X						
44.	~~Middle R.~~ ~~Confluence with Fletcher Branch (Madison Co.) to confluence with Bush Branch (S8, T75N, R29W, Madison Co.)~~		~~X~~						
47.	~~Clanton Cr.~~ ~~Confluence with Jones Cr. (Madison Co.) to confluence with the North Fork and South Fork Clanton Cr. (SW ¼, S10, T74N, R27W, Madison Co.)~~			~~X~~					
	Clanton Cr.								
48.	Mouth (N½, S28, T76N, R25W, Warren Co.) to confluence with North & South Fork Clanton Cr. *(SW ¼, S10, T74N, R27W, Madison Co.)*			X					
	North R.								
56.	Confluence with Badger Cr. (S33, T77N, R25W, Warren Co.) to confluence with North Branch North R. (S33, T77N, R27W, Madison Co.)			X					~~X~~
	Willow Cr.								
89.	Mouth (Guthrie Co.) to confluence with an unnamed tributary (~~SE ¼~~ *SW ¼*, S30, T83N, R32W, ~~Green~~ *Greene* Co.)			X					
	Brushy Creek								
94.	Mouth (Guthrie Co.) to ~~confluence with an unnamed tributary (S6, T82N, R34W, Carroll Co.)~~ *Guthrie-Audubon Co. line*		*X*	~~X~~					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
	Brushy Creek								
95.	Mouth (S22, T79N, R31W, Guthrie Co.) *Guthrie-Audubon Co. line* to confluence with an unnamed tributary (S26, T82N, R34W, Carroll Co.)			X					
	D.D. 94								
149.	Mouth (Wright Co.) to West line of S23, T90N, R26W, Wright Co.		~~X~~	*X*					
	Blue Earth R. (aka Middle Branch Blue Earth R.)								
187.	Iowa-Minnesota state line (S12, T100N, R28W, Kossuth Co.) to confluence with ~~an unnamed tributary~~ *Ditch #7* (S9, T99N, R27W, Kossuth Co.)			X					
Skunk River Basin									
	South Skunk R.								
35.	Ames Waterworks Dam (S36, T84N, R24W, Story Co.) to North line S6, T85N, R23W, Story Co.		X						*X*
	South Skunk R.								
36.	North line S6, T85N, R23W, Story Co. to confluence with D.D. No. 71 (S11, T86N, R24W, Hamilton Co.)		X						*X*
Iowa-Cedar River Basins									
	Iowa River								
26.	Hwy 149 to confluence with Asher Creek (Marshall County, Section 27, T84N, R18W) *excluding all waters within the boundaries of the Meskwaki Settlement of the Sac Fox Tribe of the Mississippi*	X	X						X
	Pike Run								
51.	Mouth (Muscatine Co.) to confluence with an unnamed tributary (~~NE ¼~~ *NW ¼*, ~~S8~~ *S9*, T77N, R3W, Muscatine Co.)		X						
	Pike Run								
52.	Confluence with an unnamed tributary (~~NE ¼~~ *NW ¼*, ~~S8~~ *S9*, T77N, R3W, Muscatine Co.) to the road crossing at (SW ¼, S34, T78N, R3W, Muscatine Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
	Rock Cr.								
58.	Confluence with unnamed tributary (SW ¼, S11, T80N, R3W, Cedar Co.) to the confluence with an unnamed tributary (~~SW ¼, Sec. 13, T80N, R16W, Poweshiek Co.~~ *center S1, T81N, R3W, Cedar Co.*)			X					
	~~Rock Cr.~~								
~~59.~~	~~Confluence with unnamed tributary (SW ¼, S11, T80N, R3W, Cedar Co.) to bridge crossing County Rd. F28 (S35, T81N, R3W, Cedar Co.)~~			~~X~~					
	Bear Cr.								
78a.	*Mouth (S21, T86N, R10W, Benton Co.) to confluence with an unnamed tributary (SW ¼, S34, T88N, R9W, Buchanan Co.)*			*X*					
	Miller Cr.								
87.	Mouth (S35, T88N, R12W, Blackhawk Co.) to confluence with an unnamed tributary (*NW ¼,* S7, T87N, R12W, Blackhawk Co.)			X					
	Spring Cr.								
125.	Beeds Lake Dam to W line of ~~S16~~ *S19*, T92N, R20W, Franklin Co.	X	X						
	~~Beaverdam Cr. (aka W. Fk. Cedar R.)~~								
~~132.~~	~~Confluence with Bailey Cr. (S19, T93N, R19W, Franklin Co.) to confluence with Beaverdam Cr. and E. Branch Beaverdam Cr. (S21, T94N, R20W, Cerro Gordo Co.)~~			~~X~~					
	Beaverdam Cr.								
133.	Mouth *(confluence with Bailey Cr., S19, T93N, R19W, Franklin Co.)* ~~(Cerro Gordo Co.)~~ to confluence with an unnamed tributary (S12, T95N, R22W, Cerro Gordo Co.)			X					
	Unnamed Cr. (aka D.D. 6)								
134.	Mouth (S29, T91N, R20W, Franklin Co.) to confluence with an unnamed tributary (~~S31~~ *S36*, T91N, R20W, Franklin Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
	Price Cr.								
165.	Mouth (~~S26~~ *S36*, T81N, R9W, Iowa Co.) to mouth of Mill Race (S26, T81N, R9W, Iowa Co.)		X						
	Mill Race								
167.	Upstream beginning (S27, T81N, R10W, Iowa Co.) to end (~~S36~~ *S26*, T81N, R9W, Iowa Co.)		X						
	Little Bear Cr.								
169.	Mouth (Poweshiek Co.) to confluence with an unnamed tributary (SW ¼, Sec. 13, T80N, ~~R10W, Buchanan Co.~~ *R16W, Poweshiek Co.*)			X					
	Salt Cr.								
172.	Mouth (S31, T82N, R12W, Benton Co.) to confluence with ~~East Salt Creek (S34, T84N, R13W, Tama Co.)~~ *unnamed tributary (S28, T85N, R14W, Tama Co.)*			X					
~~173.~~	~~Salt Cr.~~ ~~Mouth of East Salt Cr. (S34, T84N, R13W, Tama Co.) to confluence with an unnamed tributary (S28, T85N, R14W, Tama Co.)~~			~~X~~					
	Unnamed Cr. *(aka D.D. 32)*								
205.	Mouth (SE ¼, S30, T91N, R22W, Franklin Co.) to confluence with an unnamed tributary (NW ¼, S29, T91N, R22W, Franklin Co.)			X					
	E. ~~Branch~~ *Fork* Iowa R. *(aka East Branch Iowa R.)*								
210.	*Mouth (S19, T93N, R23W, Wright Co.)* ~~Confluence with Galls Creek (Hancock Co.)~~ to confluence with an unnamed tributary (S27, T97N, R24W, Hancock Co.)			X					
~~211.~~	~~East Fork Iowa River (aka East Branch Iowa R.)~~ ~~Mouth (S19, T93N, R23W, Wright Co.) to confluence with Galls Cr. (Hancock Co.)~~			~~X~~					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Northeastern Iowa River Basins									
	Mad Cr.								
5.	Mouth (S36, T77N, R1W, Muscatine Co.) to confluence with an unnamed tributary (SE ¼, S13, T77N, ~~R1W~~ *R2W*, Muscatine Co.)			X					
	Wapsipinicon R.								
12.	Snyder Access (Section ~~24~~ *34*, T93N, R12W, Bremer Co.) to confluence with Watsons Cr. (S25, T99N, R15W, Mitchell Co.)		X						
	East Branch Buffalo Cr.								
37.	Mouth (S35, T90N, R8W, Buchanan Co.) to confluence with an unnamed tributary (S34, T91N, R8W, ~~Buchanan~~ *Fayette* Co.)			X					
	Unnamed Cr. *(aka Deer Cr.)*								
67.	Mouth (S17, T82N, R7E, Clinton Co.) to confluence with an unnamed tributary (SW ¼, S18, T82N, R7E, Clinton Co.)			X					
	Deep Cr.								
81.	Confluence with Bear Cr. (S8, ~~T23N~~ *T83N*, R5E, Clinton Co.) to confluence with Williams Cr. (S33, T83N, R4E, Clinton Co.)			X					
	Whitewater Cr.								
103.	Confluence with Curran Branch to confluence with an unnamed tributary (~~S1~~ *S18*, ~~T85N~~ *T88N*, R1E, Dubuque Co.)			X					
	Coffins Cr.								
124.	Mouth (S19, T89N, R5W, Delaware Co.) to confluence with ~~an unnamed tributary~~ *Prairie Cr.* (S29, T89N, R6W, Delaware Co.)			X					
	Bruce Cr.								
131.	Mouth (S19/30, T91N, R6W, Clayton Co.) to confluence with an unnamed tributary (S27, T91N, *R7W, Fayette Co.*)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
	Unnamed Cr. (aka ~~Storybrook~~ *Storybook* Hollow)								
139.	Mouth (Section 1, T86N, R4E, Jackson Co.) to S. line of Section 12, T86N, R3E, Jackson Co.					X		X	
	Bloody Run Cr. (aka Grimes Hollow)								
181.	Mouth (S36, T91N, R3W, Clayton Co.) to spring source (~~S8~~ *S3*, T90N, ~~R2W~~ *R3W*, ~~Dubuque~~ *Delaware* Co.)					X			X
	Ram Hollow								
182.	Mouth (S11, T90N, R3W, Clayton Co.) to spring source (~~S8~~ *S10*, T90N, ~~R2W~~ *R3W*, ~~Dubuque~~ *Delaware* Co.)					X		X	
	S. Cedar Cr. (aka Cedar Cr.)								
186.	Mouth (S33, T92N, R3W, Clayton Co.) to S. line (S6, ~~T91N~~ *T92N*, R3W, Clayton Co.)			X				*X*	
	S. Cedar Cr. (aka Cedar Cr.)								
187.	N. line ~~if~~ *of* S7, T92N, R3W, Clayton Co. to ~~N. line of~~ *confluence with an unnamed tributary (SE ¼,* S30, T93N, R3W, Clayton Co.*)*					X			X
187a.	*S. Cedar Cr.* *(aka Cedar Cr.)* *Confluence with an unnamed tributary (SE ¼, S30, T93N, R3W, Clayton Co.) to confluence with an unnamed tributary (NW ¼, S30, T93N, R3W, Clayton Co.)*			*X*					*X*
	Volga R.								
204.	Confluence with L. Volga R. (S2, T92N, R9W, ~~Fayett~~ *Fayette* Co.) to confluence with an unnamed tributary (~~NE ¼~~ *SE ¼*, S24, T93N, R10W, Fayette Co.)			X					
	Grannis Cr.								
230.	Mouth (S30, T95N, R7W, Fayette Co.) to W. line Section 36, ~~T95N~~ *T93N*, R8W, Fayette Co.					X		X	

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
	Winnebago Cr.								
302a.	*Mouth (Section 11, T100N, R4W, Allamakee Co.) to state line (S11,T100N, R4W, Allamakee Co.)*			*X*					

Amend the table of lakes by adopting the following **new** entries in alphabetical order:

LAKES

County	Lake Name	Location R. T. S.	Water Uses A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Appanoose										
9a	Mystic Reservoir	18 69 8	X			X				
Audubon										
11a	Littlefield Lake	34 78 18				X				
Dallas										
76a	Beaver Lake	29 78 29	X			X				
Muscatine										
251a	Wiese Slough	2 78 19				X				
Union										
332a	Three Mile Lake	29 73 32				X		X		
Van Buren										
335a	Lake Sugema	10 68 14				X				
Webster										
351a	Brushy Creek Lake	27 88 34				X				

ARC 9832A

FAIR BOARD[371]

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 chapters 173 and 17A, the Fair Board hereby gives Notice of Intended Action to amend Chapter 8, "Admittance and Use of Fairgrounds," Iowa Administrative Code.

The amendment will impose restrictions regarding pets that are allowed on the fairgrounds during the annual fair and the pets that are allowed to stay in the campgrounds.

Interested parties may comment on the proposed amendment on or before June 6, 2000. Written materials should be directed to Joanne Giles, Iowa State Fair, 400 E. 14th Street, Des Moines, Iowa 50319-0198, telephone (515)262-3111, extension 232.

This amendment is intended to implement Iowa Code chapter 173.

The following amendment is proposed.

Amend rule 371—8.4(173) as follows:

371—8.4(173) Pets.

8.4(1) No privately owned animals or pets shall be allowed to run at large on the Iowa state fairgrounds or upon lands under the jurisdiction of the Iowa state fair board except by permission of the fair board.

a. Animals shall be deemed as running at large unless carried by owner or on a leash or chain or confined or tied to a vehicle.

b. Any animal found running at large will be subject to confinement and will be turned over to the animal shelter.

c. No animals, except ~~guide dogs~~ *animals providing disability assistive services*, may be taken into any building on

FAIR BOARD[371](cont'd)

the Iowa state fairgrounds that is posted stating such animals are not allowed in this building.

8.4(2) During the annual fair no pets shall be brought onto the Iowa state fairgrounds or upon lands under the jurisdiction of the Iowa state fair board except as follows:

a. Pets may be brought onto land designated as campgrounds by the Iowa state fair board. Pets brought onto state fair campgrounds are subject to campground rules and shall not be allowed to run at large.

b. Pets or other privately owned animals shall be permitted access to those portions of the Iowa state fairgrounds as is necessary for those animals to participate in competitions, exhibitions, or shows sanctioned or approved by the Iowa state fair board, provided such animals are not allowed to run at large.

c. Pets or other privately owned animals subject to contractual agreement with the Iowa state fair to provide entertainment services during the annual fair shall be permitted access to those portions of the Iowa state fairgrounds as is necessary to perform such services. Animals providing entertainment services shall not be left unattended on state fair lands.

8.4(3) Regardless of the preceding provisions, no restriction shall be placed upon the admission of any pet or animal that is providing guide or assistive services to a person who requires accommodation for a disability to the Iowa state fairgrounds or other lands under the jurisdiction of the Iowa state fair board.

8.4(4) Persons bringing pets onto the Iowa state fairgrounds or upon lands under the jurisdiction of the Iowa state fair board shall clean up and dispose of all animal waste attributable to their pets.

8.4(5) Persons failing to comply with the Iowa state fair board's pet policies may be denied admission to the Iowa state fairgrounds or may be barred from bringing their pets onto state fair lands.

ARC 9829A

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 218.4, the Department of Human Services proposes to amend Chapter 28, "Policies for All Institutions," appearing in the Iowa Administrative Code.

A county credit occurs when a county has paid a debt from an institution or an institutional program and it is later determined that all or part of the debt was not the county's responsibility. Current rules are silent on how such credits should be applied. This amendment clarifies how county institutional credits will be applied.

This amendment clarifies that a county credit cannot be used to offset existing or future debit balances unless the original debit balance has been paid. The procedure for applying credits is established. County institutional credits shall be applied in the following order until all credits are exhausted or refunded:

1. A credit shall first be applied to the patient's or resident's account at the same institution that generated the credit.
2. If any credit remains after application to the patient's or resident's account, the remaining credit shall be applied to any outstanding charges at the same institution that generated the credit.
3. Any remaining credit, after application to the patient's or resident's account and to the same institution that generated the credit, shall be applied to an outstanding balance at another state institution. If a credit generated by an institution or institutional program under net budgeting is to be applied to an institution or institutional program not under net budgeting, then a transfer of funds shall be made from the applicable institutional fund or institutional program under net budgeting to the state general fund. If a credit generated by an institution that is not under net budgeting is to be applied to an institution or institutional program under net budgeting, then a transfer will be made from the state general fund to the applicable net budgeting institutional fund. If a credit generated by an institution or institutional program under net budgeting is to be applied to another institution or institutional program under net budgeting, then the transfer of funds between the applicable net budgeting funds or programs shall be made through an accounting journal entry.
4. If any credit remains after applying credits as stated in paragraphs "1" to "3," the county with the remaining credit may seek a refund by filing a claim to the state appeal board pursuant to 543—Chapter 3, or the county may allow the credit to remain outstanding until such time as the county has an additional state institution or an institutional program debt.

Past practice has been that counties could apply credits (or overpayments) from one institution to another. This was an acceptable practice when all institution receipts were deposited to the same place, the state general fund. However, with the implementation of net budgeting, where individual institutions are more directly dependent upon their own receipts, the practice of transferring credits is no longer prudent or practical. Also, with the implementation of a new accounts receivable system, the process and order for applying credits needed to be clarified and articulated.

The current method of handling institution credits is outdated with the advent of net budgeting. Implementing policies and procedures for applying credits to the same institution that has generated the credit is a more fair and equitable practice for both the institutions and the counties. Clarifying the manner in which institutional credits will be handled will help alleviate confusion and difficulties in handling the application of credits. An additional benefit is that this rule provides a mechanism, which does not currently exist, for counties to receive a refund.

The Department worked with the Iowa State Association of Counties (ISAC) in developing this rule. The Department also worked with the Departments of Revenue and Finance and Management and the State Appeal Board's counsel from the Attorney General's Office.

This amendment does not provide for waivers in specified situations because these requirements are applicable to all 99 counties that use any Department of Human Services state institution or institutional program.

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 Build-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ing, Des Moines, Iowa 50319-0114, on or before June 7, 2000.

This amendment is intended to implement Iowa Code section 218.78.

The following amendment is proposed.

Amend 441—Chapter 28 by adopting the following new rule:

441—28.13(218) Applying county institutional credit balances.

28.13(1) Definition of balance. A county institutional credit balance occurs when a county has paid a debt from a state institution or an institutional program and it is later determined that all or part of the debt was not the county's responsibility. Only when an institutional debit balance has been paid by a county and all or part of the paid debit has been determined not to be the responsibility of the county can the resulting county credit be used to reduce existing or future institutional debit balances.

28.13(2) Order of application. County institutional credits shall be applied in the following order until all credits are exhausted or refunded:

a. A credit shall first be applied to the patient's or resident's account at the same institution that generated the credit.

b. If any credit remains after application to the patient's or resident's account, the remaining credit shall be applied to any outstanding charges at the same institution that generated the credit.

c. Any remaining credit, after application to the patient's or resident's account and to the same institution that generated the credit, shall be applied to an outstanding balance at another state institution. If a credit generated by an institution or institutional program under net budgeting is to be applied to an institution or institutional program not under net budgeting, then a transfer of funds shall be made from the applicable institutional fund or institutional program under net budgeting to the state general fund. If a credit generated by an institution that is not under net budgeting is to be applied to an institution or institutional program under net budgeting, then a transfer will be made from the state general fund to the applicable net budgeting institutional fund. If a credit generated by an institution or institutional program under net budgeting is to be applied to another institution or institutional program under net budgeting, then the transfer of funds between the applicable net budgeting funds or programs shall be made through an accounting journal entry.

d. If any credit remains after applying credits as stated in paragraphs "a" to "c," the county with the remaining credit may seek a refund by filing a claim to the state appeal board pursuant to 543—Chapter 3, or the county may allow the credit to remain outstanding until such time as the county has an additional state institution or an institutional program debt.

This rule is intended to implement Iowa Code section 218.78.

ARC 9830A

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 252B.7A, the Department of Human Services proposes to amend Chapter 99, "Support Establishment and Adjustment Services," appearing in the Iowa Administrative Code.

Iowa Code section 598.21(4) requires the Supreme Court to maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years. The Supreme Court guidelines provide the formula for calculating the amount of child support orders in Iowa. These amendments implement the following recent changes to Iowa's child support guidelines and criteria made by the Supreme Court:

- An extraordinary visitation adjustment is added which provides for a credit to the noncustodial parent's guideline amount of child support if the noncustodial parent's order for visitation exceeds 127 overnight stays per year for the child for whom support is sought.

The amendment clarifies that the noncustodial parent must provide the Child Support Recovery Unit (CSRU) with a file-stamped or certified copy of an existing order that meets the criteria for extraordinary visitation before the credit can be given. This existing order must be for the child for whom support is sought and can be a different order than a child support order. In interstate cases requiring a controlling order determination, this amendment allows CSRU to give the credit when a controlling child support order does not meet the criteria for extraordinary visitation but another order does.

- A deduction from gross income for the cost of the health insurance premium is allowed without the need for the insurance to be court-ordered.

This amendment clarifies that a parent providing the health insurance for a child is allowed the full cost of the health insurance premium as a deduction from income and allows the health insurance deduction if a parent's spouse is providing the coverage as long as the parent seeking the deduction provides verification.

- Policy is clarified that the $25 monthly deduction for unreimbursed medical expenses is for medical expenses of the parent.

The Supreme Court made additional changes related to the minimum amount of support from very low-income parents, the amount that can be deducted for additional dependent children, and the deduction for unreimbursed medical expenses. These changes do not require rule amendments, as they are self-executing and do not require further clarification.

These amendments do not provide for waivers in specified situations because the Supreme Court guidelines already provide for deviation from the guidelines as set forth in rule 441—99.5(234,252B).

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis,

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before June 7, 2000.

Oral presentations may be made by persons appearing at the following meetings. Written comments shall also be accepted at these times.

Cedar Rapids - June 8, 2000 Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third St. S.E. Cedar Rapids, Iowa 52401	10 a.m.
Council Bluffs - June 7, 2000 Child Support Recovery Unit 300 West Broadway, Suite 32 Council Bluffs, Iowa 51503	9 a.m.
Davenport - June 7, 2000 Davenport Area Office Bicentennial Building - Fifth Floor Large Conference Room 428 Western Avenue Davenport, Iowa 52801	10 a.m.
Des Moines - June 8, 2000 Bureau of Collections 400 S.W. 8th St. Des Moines, Iowa 50309	9 a.m.
Mason City - June 7, 2000 Mason City Area Office Mohawk Square, Liberty Room 22 North Georgia Avenue Mason City, Iowa 50401	10 a.m.
Ottumwa - June 9, 2000 Ottumwa Area Office Conference Room 3 120 East Main Ottumwa, Iowa 52501	9 a.m.
Sioux City - June 7, 2000 Sioux City Regional Office Conference Room B 520 Nebraska St., Suite 500 Sioux City, Iowa 51101	10 a.m.
Waterloo - June 8, 2000 Child Support Recovery Unit 510 Sycamore St., Suite 400 Waterloo, Iowa 50703	1:30 p.m.

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Office of Policy Analysis at (515) 281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code section 598.21(4).

The following amendments are proposed.

ITEM 1. Amend subrules 99.2(3) and 99.2(6) as follows:

99.2(3) ~~Health~~ *Full cost of health* insurance premiums *either* deducted from wages or paid ~~pursuant to a court or administrative order~~ *by a parent or a stepparent*, provided the health insurance coverage includes the dependents for whom support is being sought. ~~All dependent health insurance costs shall be verified before being allowed as a deduction.~~ *The parent claiming the deduction shall verify the health insurance premium before the deduction is allowed.* Any expected health insurance ~~expenses~~ *premiums* shall be allowed as a deduction if the parent provides verification of this anticipated expense.

99.2(6) ~~Unreimbursed individual health or hospitalization coverage or~~ *Parent's unreimbursed* medical ~~expense deductions~~ *expenses*, not to exceed $25 per month.

ITEM 2. Amend rule 441—99.4(234,252B) by adopting the following **new** subrule:

99.4(5) Extraordinary visitation adjustment. The extraordinary visitation adjustment is a credit to the guideline amount of child support as specified in the supreme court guidelines. The credit shall not reduce the child support amount below the minimum support amount required by the supreme court guidelines.

The extraordinary visitation adjustment credit shall be given if all of the following apply:

a. There is an existing order for the noncustodial parent that meets the criteria for extraordinary visitation in excess of 127 overnights per year on an annual basis for the child for whom support is sought. The order granting visitation can be a different order than the child support order. If a controlling order is determined pursuant to Iowa Code chapter 252K and that controlling support order does not meet the criteria for extraordinary visitation, there is another order that meets the criteria.

b. The noncustodial parent has provided CSRU with a file-stamped or certified copy of the order.

ARC 9831A

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 2000 Iowa Acts, Senate File 2435, section 4, subsection 4d(3)(b), the Department of Human Services proposes to adopt Chapter 100, "Child Support Parental Obligation Pilot Projects," Iowa Administrative Code.

The Seventy-eighth General Assembly has indicated its intent to develop programs to encourage the participation of both parents in the lives of their children. The legislature has directed the Department to develop community-level parental obligation pilot projects to help parents remove the barriers they encounter in supporting their children emotionally and financially. These projects will assist parents who are living apart in meeting their parental obligations and in supporting their children. The Department may also include families at risk of separation in project services.

Pilot projects are to maximize the use of existing community resources through partnering with other state agencies and community-based organizations. These partnerships will provide a broad base of services to families including family counseling, legal services, mediation, job training and job skills development, substance abuse treatment and prevention, health maintenance, and personal mentoring.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Local communities are encouraged to provide financial resources to support the pilot projects.

Pilot projects may be funded either by the Department or by other sources. Both funded and unfunded pilot projects may be able to offer child support incentives to participants, depending on the project plan or the extent of Child Support Recovery Unit (CSRU) involvement, as determined by the Chief of the Bureau of Collections.

Funded pilot projects are those initiated and funded in whole or in part by CSRU after a published request for plan proposals. Funded pilot projects must have an approved project plan and must report statistics and results quarterly to CSRU. The Department does not require unfunded pilot projects to have an approved project plan; however, unfunded pilot projects must report periodically to CSRU. The degree of participation by CSRU shall be determined by the Chief of the Bureau of Collections based upon needs and resources.

By combining the Department's efforts with other state agencies as well as assisting community-based collaboratives to develop projects, the Department will ensure a more comprehensive and coordinated effort to assist parents to remain involved in the lives of their children.

These rules establish criteria for the parental obligation pilot projects, outline how CSRU shall select the funded pilot projects, establish reporting requirements, and provide for termination of CSRU's involvement. Only empowerment or decategorization committees are eligible to apply as projects.

These rules also establish four possible child support incentives that may be available to parents to encourage their participation in these pilots. The incentives that may be available to parents to encourage their participation in these pilots are as follows:

1. Deviation from guidelines. If both parents agree to the deviation, support orders may be established or modified to an amount which is 25 percent less than, or more than, what would be required by the Supreme Court's child support guidelines.

2. Modification of support obligations. CSRU may modify support orders more frequently than the two-year review and adjustment otherwise allowed. This is to assist parents as their circumstances fluctuate while they are working with the pilot's programs. Subrule 100.2(2) provides for initial and subsequent modifications as follows:

- CSRU shall perform an initial, informal calculation for each participant in a pilot that offers this modification incentive. If that calculation indicates the support order may be too high, CSRU shall notify the participant and proceed with a review and adjustment if the participant requests the change and if the order should decrease by at least 10 percent (regardless of how long the parent has been at that income level). Current rules require at least a 20 percent change for CSRU to proceed, and the change must be due to circumstances that have lasted at least three months and can be expected to last another three months. Finally, if the obligor-participant is beginning new employment, the obligor may also waive the requirement for a three-month delay before the modification is made.
- CSRU may also initiate subsequent modifications if parents consent to a deviation, if a parent withdraws consent to an earlier deviation, or if a parent is no longer participating in the pilot project. Finally, CSRU may initiate a modification if a parent's income changes, but the change must be at least a 20 percent change in the amount of the order.

3. Lower income withholding. CSRU may notify an employer to withhold no more than 25 percent of an obligor participant's net income for support, rather than the usual 50 percent limit allowed under the income withholding rules. This incentive can be applied for 12 months.

4. Satisfaction of assigned support. CSRU shall partially satisfy (in other words, treat as paid) a portion of the support arrears assigned or due each month for a required number of months. For example, if the parent pays the support due each month for six months, CSRU shall satisfy 15 percent of assigned support arrears. If the parent pays regularly for 12 months, CSRU shall satisfy an additional 35 percent of assigned support arrears. Finally, if the parent pays regularly for 24 months, CSRU shall satisfy an additional 80 percent of the assigned support arrears. This shall not reduce the support due the custodial parent, but shall only reduce support that has been assigned to the state of Iowa because the child received public assistance.

These rules do not provide for waivers for project plans because each project's plan is individually approved and participation is voluntary. No waiver is provided for individuals because their participation is voluntary and each of these projects is a pilot project, through which the Department is trying to determine what works well and what does not.

Consideration shall 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 June 7, 2000.

Oral presentations may be made by persons appearing at the following meetings. Written comments shall also be accepted at these times.

Cedar Rapids - June 8, 2000 Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third St. S.E. Cedar Rapids, Iowa 52401	10 a.m.
Council Bluffs - June 7, 2000 Child Support Recovery Unit 300 West Broadway, Suite 32 Council Bluffs, Iowa 51503	9 a.m.
Davenport - June 7, 2000 Davenport Area Office Bicentennial Building - Fifth Floor Large Conference Room 428 Western Avenue Davenport, Iowa 52801	10 a.m.
Des Moines - June 8, 2000 Bureau of Collections 400 SW 8th St. Des Moines, Iowa 50309	9 a.m.
Mason City - June 7, 2000 Mason City Area Office Mohawk Square, Liberty Room 22 North Georgia Avenue Mason City, Iowa 50401	10 a.m.
Ottumwa - June 9, 2000 Ottumwa Area Office Conference Room 3 120 East Main Ottumwa, Iowa 52501	9 a.m.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Sioux City - June 7, 2000 10 a.m.
Sioux City Regional Office
Conference Room B
520 Nebraska St., Suite 500
Sioux City, Iowa 51101

Waterloo - June 8, 2000 1:30 p.m.
Child Support Recovery Unit
510 Sycamore St., Suite 400
Waterloo, Iowa 50703

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Office of Policy Analysis at (515) 281-8440 and advise of special needs.

These rules are intended to implement 2000 Iowa Acts, Senate File 2435, section 4, subsection 4d(3).

The following amendment is proposed.

Adopt the following **new** Chapter 100 to appear in Title X, Support Recovery:

CHAPTER 100
CHILD SUPPORT PARENTAL OBLIGATION PILOT PROJECTS

PREAMBLE

This chapter describes the parental obligation pilot projects participated in or developed by the department of human services child support recovery unit (CSRU). The purpose of these pilot projects is to develop new ways to assist parents in overcoming the barriers which interfere with their fulfilling their obligations to their children. For the purpose of these rules, parental obligations include emotional and personal involvement of the parents, beyond simply meeting their financial obligations. In order to encourage participation by parents, CSRU may offer various incentives for participation. These incentives may be offered through projects whose plans have been approved by the bureau chief or through projects in which CSRU participates and for which the bureau chief approves of CSRU's offering any or all of the incentives.

441—100.1(78GA,SF2435) Definitions.

"Assigned support arrearages" means support arrearages for which all rights have been and shall remain assigned to the state of Iowa.

"Bureau chief" means the chief of the bureau of collections of the department of human services or the bureau chief's designee.

"Child support recovery unit (CSRU)" means any person, unit, or other agency which is charged with responsibility for providing or assisting in the provision of child support enforcement services pursuant to Title IV-D of the Social Security Act.

"Director" means the director of the department of human services or designee.

"Funded pilot project" means any of the pilot projects funded in whole or in part by CSRU and approved by the bureau chief to assist parents in overcoming the barriers which interfere with their fulfilling obligations to their children. Each funded pilot project shall have a project plan approved by the bureau chief.

"Guidelines" means the mandatory child support guidelines established by the Iowa Supreme Court pursuant to Iowa Code section 598.21(4).

"Incentives" means, but is not limited to, establishment or modification of support obligations that deviate from guidelines and other encouragements to participate in pilot projects.

"Obligor" means a noncustodial parent or other natural person legally responsible for the support of a dependent.

"Participant" means a person who receives services or incentives through a pilot project.

"Periodic support payment" means the total support payment due in each time period in accordance with the established support obligation. If no current support is due, the periodic support payment is equivalent to the last current support amount as would be ordered under 441—Chapter 98, Division II.

"Project plan" means the written policies, procedures, eligibility criteria and other components, as described at subrule 100.3(2).

"Services" means, but is not limited to, mediation services, job skills training, neutral drop-off and pick-up sites, except as "services" is used in subparagraph 100.2(1)"a"(3), and does not include incentives.

"Unfunded pilot project" means any project in which CSRU participates which is funded totally by an entity or entities other than CSRU. The bureau chief may approve CSRU's participation in an unfunded pilot project in order to use the incentives offered through this chapter. Unfunded pilot projects are not required to submit a project plan, as described in subrule 100.3(2), for approval of the bureau chief.

441—100.2(78GA,SF2435) Incentives. CSRU may offer incentives to participants in funded and unfunded pilot projects to encourage their involvement in the projects. No obligation established or modified under this rule may be less than the minimum amount allowed under guidelines. The available incentives include, but are not limited to, the following:

100.2(1) Deviation from guidelines.

a. CSRU may establish or modify a child support order which deviates from the guidelines amount when all of the following conditions exist:

(1) Both parents consent to the deviation.

(2) The child resides with either parent.

(3) Either parent is a participant receiving services from CSRU under Iowa Code chapter 252B and Title IV-D of the Social Security Act.

(4) The percentage of the deviation from the guideline amount of support does not change from any percentage of deviation that is currently ordered.

(5) Neither parent has previously withdrawn consent to a deviated order entered under this subrule.

b. The child support order may not deviate from the guidelines amount by more than 25 percent. This order is not effective until approved by and filed with the court.

100.2(2) Modification of support obligations. CSRU may modify a support obligation of a participant through the procedures described in 441—Chapter 99, Division IV, without regard to the two-year criteria as specified in 441—subrule 99.62(2).

a. Initial modifications. CSRU shall perform an initial, informal calculation of the support obligation for each participant. If the initial, informal calculation indicates that the present child support obligation is at least 10 percent higher than the Iowa Supreme Court mandatory child support guidelines, CSRU may proceed to modify the support order, upon application of the participant, through proceedings established by 441—Chapter 99, Division IV, or through any other procedure allowed by law, notwithstanding the provisions of 441—subrule 99.62(3). If beginning new employment, the obligor may waive the application of the rule re-

quiring that the obligor's income has lasted for three months and will be expected to last an additional three months.

b. Subsequent modifications.

(1) Subsequent modifications may be initiated only by CSRU without regard to the requirement that the variance from the guidelines amount be more than 20 percent when any of the following occurs:

1. Both parents give consent to deviate from the guidelines as provided in subrule 100.2(1).

2. Either parent withdraws consent to deviate from guidelines in setting an obligation.

3. Participant involvement in the pilot project terminates.

(2) Subsequent modifications may also be initiated by CSRU when the participant's income changes.

c. This subrule does not limit the ability or right of a parent or caretaker or CSRU to file or request a modification under any other statute or available proceeding.

100.2(3) Income withholding orders. CSRU may direct an employer or other income provider to withhold no more than 25 percent of the nonexempt disposable income of the participant for a period not to exceed 12 consecutive months from the date of the direction to the first employer under this subrule.

100.2(4) Satisfaction of the assigned support.

a. A participant shall be granted a partial satisfaction of the support arrearages which are and which will remain owed by that participant to the state when that participant pays the entire amount of all that participant's periodic support payments. Satisfactions granted under this subrule shall apply only to those cases for which the entire periodic support payment is credited.

b. Each satisfaction shall be an amount equal to a percentage of that participant's support arrearages, which are and which will remain owed to the state, according to the following schedule:

(1) A one-time satisfaction of 15 percent of the amount when a participant pays the entire periodic support payment due in each of 6 consecutive calendar months.

(2) A one-time satisfaction of 35 percent of the amount when a participant pays the entire periodic support payment due in each of 12 consecutive calendar months.

(3) A one-time satisfaction of 80 percent of the amount when a participant pays the entire periodic support payment due in each of 24 consecutive calendar months.

c. A participant subject to an income withholding order shall be eligible for the satisfaction in this subrule if the sole reason for ineligibility is a disparity between the schedules of the participant's pay date and the scheduled date the payment is due.

d. A participant shall be eligible for a satisfaction under this subrule if the participant is no longer a participant, but has continued to pay the entire amount of that participant's periodic support payment without interruption.

441—100.3(78GA,SF2435) Application to be a funded pilot project. CSRU shall publish a request for project plans when it decides to initiate a pilot project and requests for grants exceed available funding. All applicants must be empowerment or decategorization groups.

100.3(1) Contents of request for project plans. The request for project plans shall contain the requirements for contents of the project plan, the stated goals of the project, the number of projects for which funding exists and any other parameter for the specific pilot project being advertised. The request shall also contain a deadline by which project plans must be submitted to the bureau chief.

100.3(2) Contents of project plans. Each funded pilot project shall have and maintain a project plan. At a minimum, the project plan shall contain or address the following:

a. Applicant's experience and success at establishing collaborations that include partners essential to the project.

b. The geographic area to be served and community need for project services.

c. The population targeted for participation and the criteria to be used for the selection and termination of participants.

d. The means by which potential participants will be notified about project information including, but not limited to, the project services and incentives.

e. The types of services or incentives to be provided and the strategies directed to securing the emotional and financial support of children.

f. A clear statement of outcomes expected for project participants, benchmarks to indicate these outcomes are being attained and performance measures and reporting requirements.

g. The cost of the proposal, the significant level of community resources directed to the pilot, plans for continued funding after the end of the grant period and costs, if any, for project participants.

h. Strategies to increase public awareness of fatherhood issues.

i. Project duration, not to exceed three years from October 1, 2000.

100.3(3) Amendments to project plan. Projects may submit proposed amendments to their project plan in writing to the bureau chief. The bureau chief shall have the option, after review, of approving or disapproving all proposed amendments to the project plan.

441—100.4(78GA,SF2435) Selection of projects.

100.4(1) Funded pilot projects. The bureau chief shall have sole authority to select funded pilot projects. The bureau chief shall also have sole authority to grant exceptions to allow participation by individuals outside the geographical area specified in the contents of the project plan.

When funds are not available for all interested parties, the bureau chief shall select which of the project plans received on or before the deadline date shall be granted the status of funded pilot project. This selection of pilot projects shall be based upon the following criteria:

a. Demonstrated experience with establishing effective collaborations.

b. Geographic area selected and community need for the project.

c. Population to be targeted and criteria to be used to select and terminate participants.

d. Types of services and incentives to be offered and participant requirements to receive them.

e. Statement of project goals, outcomes for participants, benchmarks and performance measures.

f. Project monitoring and evaluation plan.

g. Public awareness campaign directed to community and potential participants.

h. Project budget and community financial participation.

100.4(2) Unfunded pilot projects. The bureau chief shall have sole authority to determine the extent of CSRU involvement in unfunded pilot projects based upon current needs and resources of CSRU. Unfunded pilot projects shall

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submit periodic reports for the purpose of monitoring and evaluating the project.

441—100.5(78GA,SF2435) Termination of pilot projects. The bureau chief may immediately terminate CSRU's participation in a funded pilot project or an unfunded pilot project if:

1. The funded pilot project is not fulfilling the terms of its project plan or the unfunded pilot project is not fulfilling the terms for CSRU's participation in the pilot project; or
2. Funding is reduced, exhausted, eliminated or otherwise made unavailable.

441—100.6(78GA,SF2435) Reports and records.

100.6(1) Reports.

a. Funded pilot projects established under these rules shall report to CSRU at least quarterly, unless otherwise required by the project plan. The first report shall be due in the office of CSRU 30 days after the end of the first complete calendar quarter after the plan is approved. These reports shall include, but not be limited to, the following:

(1) Number of participants served.
(2) Services provided.
(3) Funds expended.
(4) Progress towards meeting individual participant outcomes.
(5) Progress towards meeting project outcomes.
(6) Progress towards meeting funding goals.
(7) Other information as specified in the project plan.

b. Unfunded pilot projects may vary from the requirements in paragraph "a" in their reporting and shall report as agreed upon by the project managers and the bureau chief.

100.6(2) Records retention. Funded and unfunded pilot projects established under these rules shall retain all records as necessary to meet the audit requirements of the sources of the project's funding.

441—100.7(78GA,SF2435) Appeals. Applicants dissatisfied with the grant selection decision of the bureau chief may file an appeal with the director. The letter of appeal must be received within ten working days of the date of the notice of decision and must include a request for the director to review the decision and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal, the director shall review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of ten calendar days following the notice of decision. If an appeal is filed within the ten days, all disbursements shall be held pending a final decision on the appeal. All applicants involved shall be notified if an appeal is filed.

441—100.8(78GA,SF2435) Continued application of rules and sunset provisions. Except as provided in subrule 100.8(2), these rules shall terminate the earlier of October 1, 2003, or when legislative authority is discontinued.

100.8(1) CSRU's participation in pilot projects. If CSRU's participation has not terminated earlier, CSRU's participation in funded and unfunded pilot projects terminates at the same time as the termination of these rules.

100.8(2) Receipt of incentives. Participants receiving incentives under these rules may continue to receive the incentives after the termination of these rules or after they are no longer participants only as follows:

a. For subrule 100.2(1), deviation from guidelines. If service of process has been accomplished upon all parties before the earlier of termination of these rules or termination of participation, but an order disposing of the establishment or modification action has not been entered before that date, then the process may continue until entry of an order or other disposition.

b. For subrule 100.2(2), modification of support obligations. If service of process has been accomplished upon all parties before the earlier of termination of these rules or termination of participation, but an order disposing of the modification action has not been entered before that date, then the process may continue until entry of an order or other disposition.

c. For subrule 100.2(2)"b"(1)"2," either parent withdraws consent to deviate from the guidelines. If a parent withdraws consent to deviate from the guidelines in setting an obligation, CSRU may initiate a subsequent modification as provided in 100.2(2)"b"(1)"2."

d. For subrule 100.2(2)"b"(1)"3," modification of support obligations. Any obligations set at an amount which deviates from the guidelines under this chapter shall continue only until the obligation is modified or reviewed under existing rules, at which time consent of the parents is not a sufficient basis for continuing the deviation.

e. For subrule 100.2(3), income withholding orders. This subrule shall apply to a participant or former participant for the full time period allowed in the subrule.

f. For subrule 100.2(4), satisfaction of the assigned support. This subrule shall apply to a participant or former participant for the full time period allowed in the subrule.

These rules are intended to implement 2000 Iowa Acts, Senate File 2435, section 4, subsection 4d(3).

ARC 9833A

LABOR SERVICES DIVISION[875]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 91.6, the Labor Commissioner hereby amends the Notice of Intended Action published in the Iowa Administrative Bulletin on March 22, 2000, as **ARC 9741A** to extend the deadline for submission of written data, views, or arguments to May 31, 2000. The Notice proposed to rescind Chapter 81, "Asbestos Control Procedures," and Chapter 82, "Licensing of Business Entities, Licensing of Training Courses, and Worker Certification," and adopt new Chapter 155, "Asbestos Removal and Encapsulation," Iowa Administrative Code.

ARC 9834A

PROFESSIONAL LICENSURE DIVISION[645]

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 154A.4, the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers hereby gives Notice of Intended Action to amend Chapter 120, "Board of Examiners for the Licens-

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ing and Examination of Hearing Aid Dealers," and adopt new Chapter 121, "Continuing Education for Hearing Aid Dealers," Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rule regarding licenses and supervision requirements; adopt by reference a code of ethics; and amend cross references to rules that are no longer in use.

Any interested person may make written comments on the proposed amendments no later than June 7, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division revised these rules in accordance with Executive Order Number Eight. The Division sent four letters to the public for comment, and one letter was received in return. Division staff also had input on these rules. The comments received were discussed by the Board and decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on June 7, 2000, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas 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 proposed amendments.

These amendments are intended to implement Iowa Code section 154A.4 and chapter 272C.

The following amendments are proposed.

ITEM 1. Adopt **new** subrule 120.1(5) as follows:

120.1(5) The board hereby adopts by reference the Code of Ethics of the International Hearing Society as published by the International Hearing Society, 20361 Middlebelt Road, Livonia, Michigan 48152, revised October 1996.

ITEM 2. Rescind rules **645—120.6(154A)** to **645—120.9(154A)**.

ITEM 3. Renumber rules **645—120.10(154A)** through **645—120.14(154A)** as **645—120.6(154A)** through **645—120.10(154A)**.

ITEM 4. Renumber rule **645—120.212(272C)** as **645—120.11(272C)**.

ITEM 5. Amend renumbered subrule 120.11(16) as follows:

120.11(16) Failure to report to the board as provided in ~~rule 645—120.201(272C)~~ *645—Chapter 9* any violation by another licensee of the reasons for disciplinary action as listed in this rule.

ITEM 6. Adopt **new** 645—Chapter 121 as follows:

CHAPTER 121
CONTINUING EDUCATION
FOR HEARING AID DEALERS

645—121.1(154A) Definitions. For the purpose of these rules the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of examiners for hearing aid dealers.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person shall be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing provider requirements during a specified time period.

"Board" means the board of examiners for hearing aid dealers.

"Continuing education" means planned, organized learning acts acquired during initial licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as a hearing aid dealer in the state of Iowa.

645—121.2(154A) Continuing education requirements.

121.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a hearing aid dealer in this state shall be required to complete a minimum of 32 hours of continuing education approved by the board.

121.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 32 hours of continuing education per biennium for each subsequent license renewal.

121.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

121.2(4) No hours of continuing education shall be carried over into the next biennium.

121.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—121.3(154A) Standards for approval.

121.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

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a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. An application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of the presenters.

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, place, course title, presenter(s);

(2) Numbers of program contact hours (One contact hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

121.3(2) Specific criteria.

a. Continuing education hours of credit may be obtained by completing the following:

(1) Academic coursework if the coursework is offered by an accredited postsecondary educational institution;

(2) Self-study telnet courses only when an on-site monitor is present;

(3) Continuing education activities of an approved sponsor;

(4) Continuing education activities that have prior approval;

b. The maximum number of continuing education hours of credit for specific areas per biennium is:

(1) Twelve hours of credit for academic coursework:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(2) Eight hours of credit for participation in technical, business, or professional seminars, workshops or symposiums which enhance a licensee's ability to provide quality hearing health care services.

(3) Four hours of credit for telnet courses.

645—121.4(154A) Approval of sponsors, programs, and activities for continuing education.

121.4(1) Approval of sponsors. An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include the following:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors, including résumé or vitae; and

(4) Evaluation form;

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Program date(s);

(2) Course title and presenter;

(3) Location;

(4) Number of clock hours attended and continuing education hours earned;

(5) Name of sponsor and sponsor number;

(6) Licensee's name; and

(7) Method of presentation.

d. All approved, accredited sponsors shall maintain a copy of the following:

(1) The continuing education activity;

(2) List of enrolled licensees' names and license numbers; and

(3) Number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall also include a summary of the evaluations completed by the licensees.

121.4(2) Prior approval of programs/activities. An organization or person other than an approved sponsor that desires prior approval of a course, program or other education activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

a. The date(s);

b. Course(s) offered;

c. Course outline;

d. Total hours of instruction; and

e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

121.4(3) Review of programs. Sponsors shall report continuing education programs every year at a time designated by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

121.4(4) Postapproval of activities. A licensee seeking credit for attendance and participation in an education activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

a. The date(s);

b. Course(s) offered;

c. Course outline;

d. Total hours of instruction and credit hours requested;

e. Names and qualifications of speakers and other pertinent information;

f. Request for credit which includes a brief summary of the activity; and

g. Certificate of attendance or verification.

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Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

121.4(5) Voluntary relinquishment. The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—121.5(154A) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

121.5(1) The information included on the form shall include:

a. Title of continuing education activity;
b. Date(s);
c. Sponsor of the activity;
d. Board-approved sponsor number; and
e. Number of continuing education hours earned.

121.5(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information:

(1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;

(2) Number of contact hours for program attended;

(3) Certificate of attendance or verification indicating successful completion of course; and

(4) Copy of official transcript of college courses.

(5) For activities not provided by an approved sponsor, the licensee shall submit a description of the program content which indicates that the content is integrally related to the practice and contributes directly to the provision of services to the public.

c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—121.6(154A) Reinstatement of lapsed license. Failure of the licensee to renew a license within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse may apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;

2. Pays all of the renewal fees then due, up to a maximum of five bienniums;

3. Pays all penalty fees which have been assessed by the board for failure to renew;

4. Pays reinstatement fees;

5. Provides evidence of satisfactory completion of Iowa continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 32 by the number of bienniums since the license lapsed. If the license has lapsed for three bienniums or less, the applicant for reinstatement may, in lieu of submitting the required continuing education, furnish evidence of successful completion, with a passing grade, of the Iowa license examinations conducted within one year immediately prior to the submission of the application for reinstatement. If the license has lapsed for more than three bienniums, the applicant shall complete 96 hours of approved continuing education.

6. If the applicant for reinstatement holds a current valid hearing aid dealers license in another state whose requirements meet or exceed the requirements of Iowa, the applicant shall submit:

- A written application on a form provided by the state board;
- Proof of current valid hearing aid dealers license;
- The current renewal fee;
- The fee for failure to renew; and
- Proof of continuing education hours obtained equivalent to continuing education required in Iowa.

645—121.7(154A,272C) Continuing education waiver for active practitioners. A hearing aid dealer licensed to practice shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing hearing aid dealer.

645—121.8(154A,272C) Continuing education waiver for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa and who is residing within or without the state of Iowa may be granted a waiver of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of hearing aid dealer in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board.

645—121.9(154A,272C) Continuing education waiver for physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain

portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—121.10(154A,272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of hearing aid dealer in the state of Iowa, satisfy the following requirements for reinstatement:

121.10(1) Submit written application for reinstatement to the board upon forms provided by the board with appropriate reinstatement fee and the current renewal fee.

121.10(2) Furnish evidence of completion of 32 hours of approved continuing education per biennium up to a maximum of 64 hours of continuing education. The continuing education hours must be completed within the prior two bienniums of date of application for reinstatement.

121.10(3) Furnish in the application evidence of one of the following:

a. Proof of current valid hearing aid dealer license in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Proof of successful completion, with a passing grade, of the Iowa state license examination conducted within one year immediately prior to the submission of the application for reinstatement.

645—121.11(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 154A.

ARC 9840A

PUBLIC SAFETY DEPARTMENT[661]

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 321L.8, subsection 2, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 18, "Handicapped Parking," Iowa Administrative Code.

The amendments proposed here update provisions of the rules regulating the provision of parking spaces for persons with disabilities in Iowa to reflect changes to Iowa Code chapter 321L made by the General Assembly in 1998 and 1999, including substitution of the term "persons with disabilities" for "handicapped." A provision is also added specifying the required minimum and maximum heights of parking signs for persons with disabilities.

A public hearing on these proposed amendments will be held on June 7, 2000, at 9:30 a.m., in the third floor conference room of the Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code chapter 321L.

The following amendments are proposed.

Amend 661—Chapter 18 as follows:

CHAPTER 18
~~HANDICAPPED~~ PARKING
FOR PERSONS WITH DISABILITIES

661—18.1(321L) Scope. These rules shall apply to all public and private parking facilities, temporary or permanent, used by the general public.

661—18.2(321L) Location. Parking spaces designated for ~~physically handicapped people~~ *persons with disabilities* and accessible passenger loading zones that serve a particular building shall be located on the shortest possible accessible circulation route to an accessible entrance of the building. In separate parking structures or lots that do not serve a particular building, parking spaces for ~~physically handicapped people~~ *persons with disabilities* shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility. When ~~handicapped~~ parking spaces *for persons with disabilities* are required for buildings with more than one accessible entrance, the spaces shall be distributed so that each accessible entrance shall have at least one ~~handicapped~~ parking space *for persons with disabilities* located on the shortest accessible route to that entrance.

EXCEPTION: If the required number of spaces is less than the number of accessible entrances, the spaces shall be distributed so that as many entrances as possible are served by at least one ~~handicapped~~ parking space *for persons with disabilities* located on the shortest accessible route to those entrances.

661—18.3(321L) Dimensions.

18.3(1) Single space. Parking spaces for ~~physically handicapped people~~ *persons with disabilities* shall be at least 96 inches wide and shall have an adjacent access aisle 60 inches wide minimum (see Figure 1). Parking vehicle overhangs shall not reduce the clear width of an accessible circulation route. Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.

18.3(2) Multiple spaces. Two accessible parking spaces may share a common access aisle (see Figure 1).

PUBLIC SAFETY DEPARTMENT[661](cont'd)

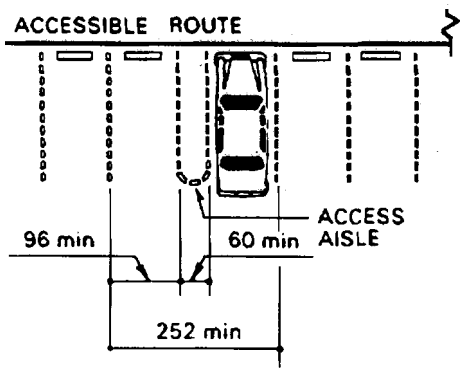

Figure 1
Dimensions of Parking Spaces

18.3(3) The requirements of subrules 18.3(1) and 18.3(2) do not apply to parallel on-street parking spaces.

18.3(4) Van-accessible spaces. The first ~~handicapped~~ parking space *for persons with disabilities* provided in a parking lot or parking structure, and every eighth ~~handicapped~~ parking space *for persons with disabilities* provided thereafter, shall be a van-accessible space. A "van-accessible" space shall be 96 inches wide with an adjacent access aisle at least 96 inches wide (see Figure 3). Two adjacent van-accessible spaces may share a common access aisle.

EXCEPTION: Entities providing ~~handicapped~~ parking spaces *for persons with disabilities* are not required to provide van-accessible spaces if all of the ~~handicapped~~ parking spaces *for persons with disabilities* provided in a parking lot or structure are "universally accessible." A "universally accessible" space is at least 132 inches wide with an adjacent 60-inch wide access aisle. Two adjacent universally accessible spaces may share a common access aisle (see Figure 4).

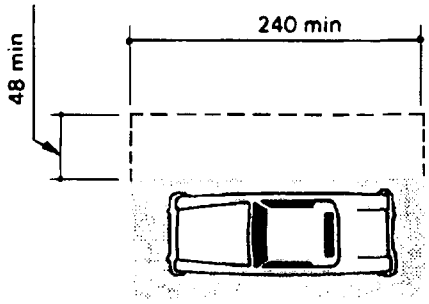

Figure 2
Access Aisle at Passenger Loading Zones

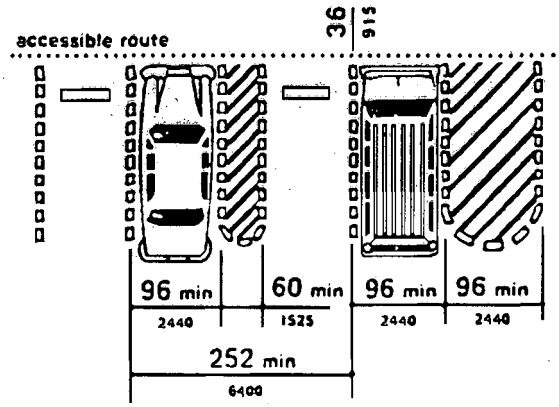

Figure 3
Van-Accessible Space at End of Row

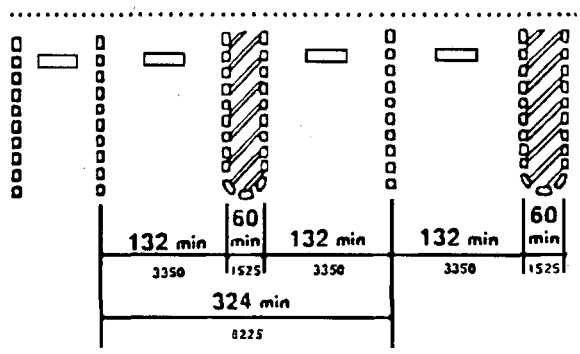

Figure 4
"Universal" Accessible Parking Spaces

661—18.4(321L) Access aisles and loading zones.

18.4(1) Passenger loading zones shall provide an access aisle at least 48 inches wide and 20 feet long adjacent and parallel to the vehicle pull-up space (see Figure 2). Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.

NOTE: Projects which are required to comply with the Uniform Federal Accessibility Standards shall provide a width of 60 inches for the access aisle.

18.4(2) A minimum vertical clearance of 108 inches shall be provided at accessible passenger loading zones and along vehicle access routes to such areas from site entrances.

NOTE: Uniform Federal Accessibility Standard requires 114 inches of vertical clearance.

18.4(3) If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with Iowa Code section ~~601D.9~~ *216C.9* shall be provided.

661—18.5(321L) Designation. Each ~~handicapped~~ parking space *for persons with disabilities* shall be designated as reserved for ~~physically handicapped~~ persons *with disabilities* by a sign meeting the following requirements established in Iowa Code section 321L.6:

18.5(1) Each ~~handicapped~~ *persons with disabilities* parking sign shall have the international symbol of accessibility in white on a blue background.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

18.5(2) Each ~~handicapped~~ *persons with disabilities* parking sign shall be affixed vertically to another object so that it is readily visible to the driver of a vehicle approaching the ~~handicapped~~ parking space *for persons with disabilities. Signs shall be mounted so that the bottom of the sign is no less than five feet nor more than seven feet from the surface level of the parking space.*

EXCEPTION 1. Signs in use prior to [effective date of rule will be inserted when the final amendment is adopted], which are readily visible to the driver of a vehicle approaching the parking space, may continue to be used until replaced.

EXCEPTION 2. Signs marking parking spaces for persons with disabilities which are affixed to other approved parking signs and devices are not required to meet the minimum or maximum height requirements of this rule, provided that the signs are clearly visible to the drivers of vehicles approaching the spaces which they mark.

NOTE: The pavement in a ~~handicapped~~ *persons with disabilities* parking space may be marked with the international symbol of accessibility, but such marking does not meet the requirements of this subrule.

18.5(3) Each ~~handicapped~~ *persons with disabilities* parking sign ~~shall~~ *may* include language stating the amount of the fine for improperly using the ~~handicapped~~ *persons with disabilities* parking space. *If a persons with disabilities parking sign includes language stating the amount of the fine, it shall reflect the current specified amount of the fine.*

661—18.6(321L) Numbers of ~~handicapped~~ parking spaces *for persons with disabilities* required in off-street parking facilities.

18.6(1) At least 2 percent of the total parking spaces in any off-street nonresidential parking facility available to the public shall be designated as ~~handicapped~~ spaces *for persons with disabilities*, rounded to the nearest whole number of ~~handicapped~~ parking spaces *for persons with disabilities*~~, in compliance with the provisions of rules 661—18.3(321L) and 661—18.5(321L)~~. There shall be at least one ~~handicapped~~ parking space *for persons with disabilities* in any off-street nonresidential parking facility available to the public which has a total of ten or more parking spaces.

18.6(2) All off-street parking facilities on which construction is completed on or after July 1, 1991, which provide parking to the general public and which provide ten or more parking spaces, shall designate ~~handicapped~~ parking spaces *for persons with disabilities* in accordance with the following table:

Total Parking Spaces in Lot	Required Minimum Number of ~~Handicapped~~ Parking Spaces *for Persons with Disabilities*
10 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	*
1,001 and over	**

*2 percent of total

**20 spaces plus 1 for each 100 over 1,000

NOTE: Projects which are required to comply with the Uniform Federal Accessibility Standards shall provide a minimum of one ~~handicapped~~ parking space *for persons with disabilities.*

661—18.7(321L) ~~Handicapped~~ *Persons with disabilities* parking at residential facilities. All public and private buildings and facilities, temporary and permanent, which are residences and which provide ten or more tenant parking spaces, excluding extended health care facilities, shall designate at least one ~~handicapped~~ parking space *for persons with disabilities* as needed for each individual dwelling unit in which a ~~handicapped~~ person *with a disability* resides. Residential buildings and facilities which provide public visitor parking of ten or more spaces shall designate ~~handicapped~~ parking spaces *for persons with disabilities* in the visitors' parking area in accordance with the table contained in rule 661—18.6(321L).

661—18.8(321L) On-street parking. Provisions for *parking spaces for persons with disabilities in* on-street parking *areas* within city business districts shall be as required by Iowa Code section 321L.5~~, subsection 4, as amended by 1990 Iowa Acts, Senate File 2244, section 7~~.

These rules are intended to implement Iowa Code chapter 321L.

ARC 9838A

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 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 20, "Foods for Human Consumption, Prescription Drugs, Insulin, Hypodermic Syringes, Diabetic Testing Materials, Prosthetic, Orthotic or Orthopedic Devices," Iowa Administrative Code.

Amendments to the Department rules explaining taxation and exemption of prescription and nonprescription drugs and devices intended for human use are proposed. Obsolete language is removed; other language is amended to reflect the existence of a new exemption excluding from tax all purchases by nonprofit hospitals for use in their operations. Another amendment exempts from tax sales of prescription drugs and devices lawfully dispensed by nonprofessionals and sales of medical devices lawfully prescribed by chiropractors.

In addition, the term "interocular lens" is changed to "intraocular lens" to be consistent with existing statutory language. Lists of prosthetic and orthopedic devices and medical equipment and supplies are updated.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

There are no waiver provisions reflected in these rules because the Department lacks the statutory authority to grant waivers where rules are mainly an interpretation of statutes.

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 June 19, 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 each 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 June 16, 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 June 9, 2000.

These amendments are intended to implement Iowa Code section 422.45, subsection 13.

The following amendments are proposed.

ITEM 1. Amend rule 701—20.7(422,423) as follows:

701—20.7(422,423) Prescription drugs and devices. Sales of prescription drugs and devices as defined in 20.7(1) and dispensed for human use or consumption in accordance with 20.7(2) and 20.7(3) shall be exempt from sales tax. On and after July 1, 1992, rentals of prescription devices as defined in subrule 20.7(1) below are exempt from service tax. Gross receipts from the sales of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption are exempt from tax. On and after July 1, 1992, gross receipts from the sales of any oxygen purchased for human use or consumption (whether prescribed or not) are exempt from tax.

20.7(1) Definitions of "prescription drug" for ~~three separate~~ *two* periods of time.

~~a. Prior to July 1, 1987, a prescription drug means any of the following:~~

~~(1) Any drug or medicine the label of which is required by federal law to bear the statement: "Caution: Federal law prohibits dispensing without a prescription", or~~

~~(2) Any drug or medicine which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine, or~~

~~(3) A new drug or medicine which is limited under state law to use under the professional supervision of a practitioner licensed by law to prescribe, administer, or dispense drugs or medicine.~~

~~b~~ *a.* For sales occurring between July 1, 1987, and June 30, 1993, a "prescription drug" is any of the following:

(1) to (3) No change.

~~c~~ *b.* For sales or rentals occurring on and after July 1, 1993, a "prescription drug" and "medical device" are defined as follows:

(1) to (3) No change.

On and after July 1, 1993, the sale or rental of a medical device or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user's body.

EXAMPLE A: ~~Hospital X~~ *A sports medicine clinic* purchases a new type of device which scans the inside of the human body to ~~uncover diseased organs~~ *disclose injured soft tissue*. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its sale is not exempt from tax. ~~However, see rule 701—18.59(422, 423) for a description of an exemption applicable to all purchases made on or after July 1, 1998, by nonprofit hospitals licensed under Iowa Code chapter 135B.~~

EXAMPLE B: ~~A patient enters Hospital Y and pursuant~~ *Pursuant* to a practitioner's prescription, a pacemaker is inserted in ~~the~~ *a* patient's body. The pacemaker is dispensed to an ultimate user and its sale is exempt from tax.

EXAMPLE C: No change.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption~~,~~ shall be deemed a device or drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLES A and B: No change.

See rules 20.8(422,423), 20.9(422,423) and 20.10(422, 423) for examples of medical devices sold without a prescription but exempt from tax.

20.7(2) ~~Licensed persons qualified for dispensing of~~ *Persons authorized to dispense* prescription drugs or prescription devices. In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. to g. No change.

h. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when lawfully dispensing prescription devices.

~~h~~ *i.* Any other person authorized under Iowa law to dispense prescription drugs or devices ~~in the course of professional practice~~ in this state.

~~i~~ *j.* Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

20.7(3) and **20.7(4)** No change.

20.7(5) Prescription drugs and devices purchased by hospitals for resale. *This subrule is applicable to both nonprofit and for-profit hospitals for periods prior to July 1, 1998. On and after that date the subrule applies to for-profit hospitals only.* Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug or device is actually transferred to the patient; (2) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital

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

and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. See rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also see rule 701—18.59(422,423) for ~~an~~ *the* exemption applicable to all purchases of goods and services purchased on or after July 1, 1998, by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLES A and B: No change.

A hospital's purchase of a prescription drug or device for purposes other than resale will still be exempt from tax if a device or drug is intended to be prescribed to an ultimate user and the hospital's use of the drug or device is otherwise exempt under 20.7(1).

This rule is intended to implement Iowa Code section 422.45.

ITEM 2. Amend rule **701—20.8(422,423)**, definition of "interocular lens," as follows:

"~~Interocular~~ *Intraocular* lens" means a lens located inside the eye.

ITEM 3. Amend paragraph **20.8(2)"c"** as follows:

c. Effective July 1, 1994, and retroactive to July 1, 1993, sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, ~~interocular~~ *intraocular* lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets are no longer taxable. ~~A consumer or user who has paid the tax can then file a refund claim for the tax paid. Claims for refund of tax, interest, or penalty paid for the period of July 1, 1993, to June 30, 1994, must be limited to $5,000 in the aggregate and will not be allowed unless filed prior to June 30, 1995. If the amount of claims for the period totals more than $5,000, the department will prorate the $5,000 among all the claims.~~

ITEM 4. Amend subrule 20.8(3) as follows:

20.8(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, the sale of a biopsy needle or an invasive catheter would be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, sales of *catheter introducers,* disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

ITEM 5. Amend subrule **20.9(3)** as follows:

Amend paragraph **"a,"** introductory paragraph, as follows:

a. "Prosthetic device" means a piece of special equipment designed to be a replacement or artificial substitute for an absent or missing part of the human body and intended to be dispensed with or without a prescription to an ultimate user. See subrule 20.7(1), paragraph "~~c~~ *b*," for a definition and examples of the term "ultimate user." The term "prosthetic device" includes ostomy, urological, and tracheostomy devices and supplies.

Further amend paragraph **"a,"** nonexclusive list of prosthetic devices, by adopting the term "dental bridges and implants" in alphabetical order.

Amend paragraph **"c,"** introductory paragraph, as follows:

c. "Orthopedic device" means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. *A hot tub or spa is not an orthopedic device.*

Further amend paragraph **"c,"** nonexclusive list of orthopedic devices, by rescinding the term "water beds."

Amend paragraph **"e,"** nonexclusive list of medical equipment or supplies, by adopting the terms "diagnostic kits" and "staples" in alphabetical order, by rescinding the term "pacemaker equipment," and by amending the following term:

Prescribed device repair kits *and batteries*

Further amend paragraph **"e,"** footnote, as follows:

*Sales of these medical devices are exempt as of July 1, 1993. ~~However, see subrule 20.8(2) for an explanation of the unusual circumstances of the first year for which this exemption is in effect.~~

ITEM 6. Amend subrule 20.9(4) as follows:

20.9(4) "Prescribed" shall mean a written prescription or an oral prescription, later reduced to writing, issued by:

a. to f. No change.

g. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when lawfully dispensing prescription devices.

~~g~~ *h.* Any other person authorized under Iowa law to dispense prescription drugs or medical devices requiring a prescription ~~in the course of professional practice in this state~~.

~~h~~ *i.* Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

ITEM 7. Amend subrule 20.9(5) as follows:

20.9(5) Power devices. Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. *This exemption does not include batteries which can be used to operate a number of devices.*

ARC 9837A

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 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 54, "Allocation and Apportionment," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Items 1 and 2 amend rule 701—54.3(422) to bring the Department's rule into accordance with the United States Su-

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

preme Court's decision in Hunt-Wesson, Inc. v. Franchise Tax Board of California No. 98-2043 (U.S. Sup. Ct., filed February 22, 2000).

Items 3 and 4 strike references to a Department rule that has not been officially adopted.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Taxpayers that believe that the amended rule 701—54.3(422) is inequitable as applied to them should see rule 701—54.9(422) for possible relief.

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 June 19, 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 each 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 June 16, 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 June 9, 2000.

These amendments are intended to implement Iowa Code chapter 422.

The following amendments are proposed.

ITEM 1. Amend rule 701—54.3(422), introductory paragraph, as follows:

701—54.3(422) Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978. Rule 54.2(422) deals with the separation of "net" income; therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related, including related federal income taxes. Allphin v. Joseph E. Seagram & Sons, 204 S.W. 2d 515 (Ky. 1956). *For tax periods beginning on or after January 1, 2000, related expense includes both directly related expense and indirectly related interest expense. The portion of interest expense indirectly related to allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties shall be determined by multiplying the net amount of interest expense, after deducting interest directly related to an item of income, by a ratio. The numerator of the ratio is the average value of investments which produce or are held for the production of allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties. The denominator is the average value of all assets of the taxpayer, less securities of states and their political subdivisions. (Hunt-Wesson, Inc. v. Franchise Tax Board of California, No. 98-2043 (U.S. Sup. Ct., filed February 22, 2000)).*

ITEM 2. Amend rule **701—54.3(422)**, second unnumbered paragraph, as follows:

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of such facts and circumstances are not present in substance. Any expense directly *or indirectly* attributable to allocable interest, dividends, rents and royalties shall be deducted from such income to arrive at net allocable income.

ITEM 3. Amend rule **701—54.9(422)** by striking the first unnumbered paragraph:

~~This rule takes precedence over rule 701—7.60(17A) which implements the uniform waiver rule found in Executive Order Number Eleven issued by the governor.~~

ITEM 4. Amend rule **701—59.29(422)** by striking the first unnumbered paragraph:

~~This rule takes precedence over rule 701—7.60(17A) which implements the uniform waiver rule found in Executive Order Number Eleven issued by the governor.~~

ARC 9836A

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 84, "Unfair Cigarette Sales," Iowa Administrative Code.

Item 1 establishes a procedure for a permit holder to receive approval from the Department to sell cigarettes below a specific price and lists various costs that may be included in the permit holder's cost of doing business.

Item 2 clarifies that any discount given to a wholesaler or retailer must be shown on the invoice to reduce the basic cost of cigarettes.

Item 3 provides that any discount given by a manufacturer to a consumer does not affect the minimum price of the cigarettes.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

These rules are discretionary and, therefore, are subject to the uniform waiver provisions.

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 if a written request is filed by delivery or by mailing postmarked no later than June 19, 2000, to the Policy Section, Compliance Division, Depart-

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

ment 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 June 16, 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 orally convey their views 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 June 9, 2000.

These amendments are intended to implement Iowa Code chapter 421B.

The following amendments are proposed.

ITEM 1. Amend rule 701—84.2(421B), introductory paragraph, as follows:

701—84.2(421B) Minimum price. The formula for determining the "cost ~~of cigarettes~~" to a wholesaler or retailer as ~~determined~~ *defined* in Iowa Code section 421B.2 is not conclusive. The retailer, wholesaler or the department may prove that the "cost ~~of cigarettes~~" is either higher or lower.

Any wholesaler or retailer who desires to prove that their cost is less than the statutory presumptive cost computed according to the Iowa Unfair Cigarette Sales Act, Iowa Code chapter 421B, shall submit a request for approval of a lower cost along with actual cost data to the department of revenue and finance. The statutory presumptive cost must be used in determining minimum price until approval has been granted by the department. If the requestor continues to sell cigarettes at less than the presumptive cost, the department may revoke the requestor's permit or seek an injunction pursuant to Iowa Code section 427B.10 to prevent such action.

Any requestor making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requestor making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition. The department shall notify the wholesaler or retailer of the acceptance or rejection of the request. If the requestor disagrees with the department's determination, the requestor may file a protest within 60 days of the department's decision in accordance with rule 701—7.41(17A).

Costs of doing business shall include, but are not limited to, freight charges, labor and equipment costs to affix stamps, ink, glue, permit fees, management fees, labor costs (including salaries of officers), rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs, taxes, insurance, advertising expenses, and any other operational and administrative costs. The requestor shall set forth the basis for allocated costs. When the computed ~~price~~ *cost* amounts to any fractional part of a cent, the ~~price~~ *cost* must not be less than the next higher cent. However, sales made between wholesalers as provided for in Iowa Code section 421B.5, sales described in Iowa Code section 421B.6, and sales outside of the ordinary channels of trade as provided in Iowa Code section 421B.9 shall not be required to adhere to the minimum pricing requirements set forth in Iowa Code section 421B.3 and this rule. See rule 84.5(421B).

ITEM 2. Amend rule **701—84.2(421B)**, first unnumbered paragraph, as follows:

For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken. *The discount taken or available must be clearly specified on the invoice or it will not be allowed as a reduction in the basic cost of cigarettes. Any financial incentive given to a wholesaler or retailer by a manufacturer at a later date will not reduce the basic cost of cigarettes.*

ITEM 3. Amend rule 701—84.4(421B) as follows:

701—84.4(421B) Retail redemption of coupons. The redemption of coupons by retailers, which coupons were supplied to consumers by manufacturers and will be redeemed from the retailers by the manufacturers, does not affect the minimum sales price of cigarettes. The retailer is still receiving the statutory minimum price even though that price is paid by two different persons, the consumer and the manufacturer. (See 1986 O.A.G. 68.). *Manufacturer incentives to the consumer in lieu of a coupon which reduce the cost of the cigarettes to the consumer do not affect the minimum sales price of cigarettes when the manufacturer absorbs the loss for the incentive.*

This rule is intended to implement Iowa Code section 421B.3.

ARC 9817A

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 150, "Improvements and Maintenance on Primary Road Extensions," Iowa Administrative Code.

Subrule 150.2(3) addresses the responsibilities and warrants for the lighting of primary road extensions that are freeways. Subrule 150.2(3) is being amended to define "freeway," for the purpose of highway lighting, as a roadway constructed with Priority I access control for a length of five miles or greater. Priority I access control allows access only at interchange locations. The effect of this amendment is that the Department will pay for the lighting of interchanges on these roadway segments in accordance with the provisions of subrule 150.2(3). Cities would no longer be required to pay for this lighting.

A waiver is not provided because this amendment confers a benefit on cities.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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 amendment, 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 June 6, 2000.

A meeting to hear requested oral presentations is scheduled for Thursday, June 8, 2000, at 10 a.m. in the Commission Conference Room of the Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

This amendment is intended to implement Iowa Code chapters 313 and 314 and Iowa Code section 306.4.

Proposed rule-making action:

Amend subrule 150.2(3) as follows:

150.2(3) Lighting.

a. For the purpose of highway lighting, "freeway" means a roadway constructed with Priority I access control for a length of five miles or greater.

~~a~~ *b.* The department shall be responsible for the cost of installation of lighting on the main-traveled-way lanes and the on and off ramps including the terminals with cross streets when the department determines that lighting is required under established warrants.

~~b~~ *c.* The department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes.

~~c~~ *d.* The department shall be responsible for the energy and maintenance costs of lighting through interchange areas and ramps thereto at interchanges between freeways which do not provide service to local streets.

~~d~~ *e.* The department shall be responsible for the energy and maintenance costs of lighting in interchange areas at interchanges between freeways and primary roads which are on corporate lines.

~~e~~ *f.* At interchanges with city cross streets, the department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes, on and off ramps, ramp terminals, and, when the department determines full interchange lighting is required, the cross street between the outermost ramp terminals.

~~f~~ *g.* The department shall not be responsible for the installation, energy, and maintenance costs of any lighting on cross streets in advance of interchanges and between the outermost ramp terminals at interchanges where the department determines partial interchange lighting or no lighting is required.

~~g~~ *h.* Warrants for the lighting of freeways shall be according to the 1984 "AASHTO Information Guide for Roadway Lighting."

ARC 9824A

EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Emergency Management Division hereby rescinds Chapter 7, "Local Emergency Management," Iowa Administrative Code, and adopts a new Chapter 7 with the same title.

The adoption of the new chapter results from an extensive review of existing rules and implements a change in policy governing the state's participation in funding financial assistance programs in a presidentially declared disaster. This change is the result of emergency management legislation contained in 1999 Iowa Acts, chapter 86.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable because of the immediate need to implement new provisions of law.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and the rules should be made effective upon publication on May 17, 2000, as they confer a benefit upon local and joint emergency management commissions and other governmental subdivisions of the state.

These rules are also published herein under Notice of Intended Action as **ARC 9826A** to allow public comment. This emergency filing permits the Division to implement new provisions of the law.

These rules are intended to implement Iowa Code sections 29C.6 and 29C.8.

These rules became effective May 17, 2000.

The following amendment is adopted.

Rescind Chapter 7 and adopt the following **new** chapter:

CHAPTER 7
LOCAL EMERGENCY MANAGEMENT

605—7.1(29C) Scope and purpose. These rules apply to each local emergency management commission as provided for in Iowa Code section 29C.9. These rules are intended to establish standards for emergency management and to provide local emergency management commissions with the criteria to assess and measure their capability to mitigate against, prepare for, respond to, and recover from emergencies or disasters.

605—7.2(29C) Local emergency management commission.

7.2(1) The county board of supervisors, city councils, and school district boards of directors in each county shall cooperate with the emergency management division to establish a local emergency management commission to carry out the provisions of Iowa Code chapter 29C.

a. The local commission shall be named the (county name) county emergency management commission.

b. The commission shall be comprised of the following members:

(1) A member of the county board of supervisors or its appointed representative.

(2) The county sheriff or the sheriff's appointed representative.

(3) The mayor or the mayor's appointed representative from each city within the county.

c. The commission is a municipality as defined in Iowa Code section 670.1.

7.2(2) Local commission bylaws. The commission shall develop bylaws to specify, at a minimum, the following information:

a. The name of the commission.
b. The list of members.
c. The date for the commencement of operations.
d. The commission's mission.
e. The commission's powers and duties.
f. The manner for financing the commission and its activities and maintaining a budget therefor.
g. The manner for acquiring, holding and disposing of property.
h. The manner for electing or appointing officers and the terms of office.
i. The manner by which members may vote.
j. The manner for appointing, hiring, disciplining and terminating employees.
k. The rules for conducting meetings of the commission.
l. Any other necessary and proper rules or procedures.

The bylaws, as adopted, shall be signed by each member of the commission. The commission shall record the signed bylaws with the county recorder and shall forward a copy of the bylaws to the administrator of the state emergency management division.

7.2(3) Commission business. Commission business shall be conducted in compliance with Iowa Code chapter 21, "Official Meetings Open to Public," and Iowa Code chapter 22, "Examination of Public Records."

7.2(4) The commission shall have the following minimum duties and responsibilities:

a. Administration and finance.

(1) Establish and maintain an agency responsible for the local emergency management program. The primary responsibility of this agency is to develop and maintain a comprehensive emergency management capability in cooperation with other governmental agencies, volunteer organizations, and private sector organizations. The name of this agency shall be the (county name) county emergency management agency.

(2) Determine the mission of the agency and its program.

(3) Develop and adopt a budget in accordance with the provisions of Iowa Code chapter 24 and Iowa Code section 29C.17 in support of the commission and its programs. The commission shall be the fiscal authority and the chairperson or vice chairperson shall be the certifying official for the budget.

(4) Appoint an emergency management coordinator who meets the qualifications established in subrule 7.3(3).

(5) Develop and adopt policies defining the rights and liabilities of commission employees, emergency workers and volunteers.

(6) Provide direction for the delivery of the emergency management services of planning, administration, coordination, training, exercising, and support for local governments and their departments.

(7) Coordinate emergency management activities and services among county and city governments and the private sector agencies within the county.

b. Hazard identification, risk assessment, and capability assessment.

(1) The commission shall continually identify credible hazards that may affect their jurisdiction, the likelihood of occurrence, and the vulnerability of the jurisdiction to such

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

hazards. Hazards to be considered shall include natural, technological, and human-caused.

(2) The commission shall conduct an analysis to determine the consequences and impact of identified hazards on the health and safety of the public, the health and safety of responders, property and infrastructure, critical and essential facilities, public services, the environment, the economy of the jurisdiction, and government operations and obligations.

(3) The hazard analysis shall include identification of vital personnel, systems, operations, equipment, and facilities at risk.

(4) The commission shall identify mitigation and preparedness considerations based upon the hazard analysis.

(5) A comprehensive assessment of the emergency management program elements shall be conducted periodically to determine the operational capability and readiness of the jurisdiction to address the identified hazards and risks.

c. Resource management.

(1) The commission shall develop the capability to effectively identify, acquire, distribute, account for, and utilize resources essential to emergency functions.

(2) The commission shall identify resource capability shortfalls and the steps necessary to overcome such shortfalls.

(3) The commission shall, in collaboration with other public and private agencies within this state, develop written mutual aid agreements. Such agreements shall provide reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with by the jurisdiction unassisted. Mutual aid agreements shall be in compliance with the appropriate requirements contained in Iowa Code chapter 28E.

d. Planning.

(1) The commission shall develop comprehensive countywide emergency operations plans which are multihazard and multifunctional in nature and which shall include, but not be limited to, a part "A" operations plan, part "B" mitigation plan, and part "C" recovery plan that may be contained in a single document or multiple documents.

1. An operations plan assigns responsibilities to organizations and individuals for carrying out specific actions at projected times and places in an emergency or disaster.

2. The mitigation plan shall establish interim and long-term strategies to eliminate hazards or to reduce the impact of those hazards that cannot be eliminated. This requirement notwithstanding, to qualify for federal funding for mitigation assistance, the eligible applicant must comply with the mitigation planning requirements set forth in 44 CFR 206, Subpart M, and the Iowa Hazard Mitigation Grant Program Administrative Plan, as appropriate.

3. A recovery plan shall identify the short-term and long-term strategic priorities, processes, vital resources, and acceptable timeframes and procedures for restoration.

(2) Plans shall contain the following common elements.

1. The functional roles and responsibilities of internal and external agencies, organizations, departments, and individuals during mitigation, preparedness, response and recovery shall be identified.

2. Lines of authority for those agencies, organizations, departments, and individuals shall be established and identified.

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with schedules established by the commission, to include at a minimum:

1. A complete review, and amendment as appropriate, of the operations plan at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion of the plan shall be conducted on a yearly basis.

2. A complete review, and amendment as appropriate, of the mitigation plan at a minimum of every five years and in conjunction with any presidentially declared disaster for which mitigation assistance is requested.

3. A complete review, and amendment as appropriate, of the recovery plan at a minimum of every five years and in conjunction with any presidentially declared disaster for which individual or public assistance is requested.

(4) In addition to the standards heretofore established in 7.2(4)"d," the operations plan shall include provisions for damage assessment.

(5) Hazardous materials plans shall meet the minimum requirements of federal law, 42 U.S.C. Sec. 11003.

(6) Counties designated as risk or host counties for a nuclear facility emergency planning zone shall meet the standards and requirements as published by the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency in NUREG-0654, FEMA-REP-1, Rev. 1, March 1987.

(7) Required plans, submitted for approval to the division by a local or joint emergency management commission, shall be reviewed within 60 calendar days from the receipt of the plan. The division shall notify the local emergency management coordinator in writing of the approval or nonapproval of the plan. If the plan is not approved, the division shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(8) A comprehensive countywide emergency operations plan shall not be considered approved by the emergency management division as required in Iowa Code subsection 29C.9(8), unless such plan adheres to and meets the minimum standards as established in subrule 7.2(4), paragraph "d."

(9) Iowa Code section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the local government's having on file a state-approved, comprehensive, countywide plan as provided in Iowa Code subsection 29C.9(8). Required plans must be received and approved by the division by the time the first public or private, nonprofit entity within the county otherwise becomes eligible to receive state assistance or within one year from the date of presidential declaration, whichever is earlier.

e. Direction, control and coordination.

(1) The commission shall execute and enforce the orders or rules made by the governor, or under the governor's authority.

(2) The commission shall establish and maintain the capability to effectively direct, control and coordinate emergency and disaster response and recovery efforts.

(3) The commission shall establish a means of interfacing on-scene management with direction and control personnel and facilities.

(4) The commission shall actively support use of the Incident Command System (ICS) model by all emergency and disaster response agencies within the jurisdiction.

f. Damage assessment.

(1) The commission shall develop and maintain a damage assessment capability consistent with local, state and federal requirements and shall designate individuals responsible for the function of damage assessment.

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(2) Individuals identified by the commission to perform the function of damage assessment shall be trained through a course of instruction approved by the division.

g. Communications and warning.

(1) The commission shall establish and maintain the capability of disseminating a warning to the public, key officials, emergency response personnel and those other persons within the jurisdiction that may be potentially affected.

(2) The commission shall develop and maintain primary and secondary means of communications to support direction, control, and coordination of emergency management activities.

h. Operations and procedures. The commission should encourage public and private agencies, having defined responsibilities in the countywide emergency operations plan, to develop standard operating procedures, policies, and directives in support of the plan.

i. Training.

(1) The commission shall require the local emergency management coordinator to meet the minimum training requirements as established by the division and identified in subrule 7.3(4).

(2) The commission shall, in conjunction with the local emergency management coordinator, arrange for and actively support ongoing emergency management related training for local public officials, emergency responders, volunteers, and support staff.

(3) Persons responsible for emergency plan development or implementation should receive training specific to, or related to, hazards identified in the local hazard analysis.

(4) The commission should encourage individuals, other than the emergency management coordinator, with emergency management responsibilities as defined in the countywide emergency operations plan, to complete, within two years of appointment, training consistent with their emergency management responsibilities.

(5) The commission should encourage all individuals with emergency management responsibilities to maintain current and adequate training consistent with their responsibilities.

j. Exercises.

(1) The commission shall ensure that exercise activities are conducted annually in accordance with local, state and federal requirements.

(2) Exercise activities shall follow a progressive five-year plan that is designed to meet the needs of the jurisdiction.

(3) Local entities assigned to an exercise shall actively participate and support the role of the entity in the exercise.

(4) Local entities assigned to an exercise should actively participate in the design, development, implementation, and evaluation of the exercise activity.

k. Public education and information.

(1) The commission shall designate the individual or individuals who are responsible for public education and information functions.

(2) The commission shall ensure a public information capability, to include:

1. Designated public information personnel trained to meet local requirements.

2. A system of receiving and disseminating emergency public information.

3. A method to develop, coordinate, and authorize the release of information.

4. The capability to communicate with special needs populations.

(3) The commission should actively support the development of capabilities to electronically collect, compile, report, receive, and transmit emergency public information.

7.2(5) Two or more commissions. Two or more local commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors and cities, enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

605—7.3(29C) Emergency management coordinator.

7.3(1) Each county emergency management commission or joint commission shall appoint an emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission's and coordinator's duties as provided in Iowa Code sections 29C.9 and 29C.10, as further described in subrule 7.1(5), and as otherwise assigned and authorized by the commission.

7.3(2) The representative of the local or joint commission, serving as coordinator, shall not be a member of a local or joint commission. An individual serving in a full-time or part-time governmental position having incompatibility with the position of coordinator shall not be appointed as emergency management coordinator.

7.3(3) Emergency management coordinator qualifications. Each person appointed after July 1, 1990, as an emergency management coordinator shall meet the following requirements with regard to education, abilities, experience, knowledge and skills:

a. Demonstrate a knowledge of local, state, and federal laws and regulations pertaining to emergency management.

b. Demonstrate an understanding of communications systems, frequencies, and equipment capabilities.

c. Demonstrate a knowledge of basic accounting principles and practices.

d. Express oneself clearly and concisely, both orally and in writing.

e. Establish and maintain effective working relationships with employees, public officials, and the general public.

f. Prepare accurate reports.

g. Write plans, direct the use of resources, and coordinate emergency operations under extraordinary circumstances.

h. Exercise good judgment in evaluating situations and making decisions.

i. Coordinate with agencies at all levels of government.

j. Have graduated from an accredited four-year college or university and have two years of responsible experience in emergency management, public or business administration, public relations, military preparedness or related work; or have an equivalent combination of experience and education, substituting 30 semester hours of graduate study for each year of the required work experience to a maximum of two years; or have an equivalent combination of experience and education, substituting one year of experience in the aforementioned areas for each year of college to a maximum of four years; or be employees with current continuous experience in the state classified service that includes the equivalent of 18 months of full-time experience as an emergency management operations officer; or be employees with current continuous experience in the state classified service that includes the equivalent of 36 months of full-time experience as a local emergency management assistant.

7.3(4) Emergency management coordinator continuing education requirements. Each local coordinator shall meet the following educational development requirements. The administrator may extend the time frame for meeting these continuing education requirements upon request from the local or joint commission.

a. By July 1, 2002, or within five years of appointment as an emergency management coordinator, whichever is later, completion of the following independent study courses:

(1) Citizens Guide to Disaster Assistance.

(2) Emergency Operations Center Role in Community Preparedness Response and Recovery Operations.

(3) Emergency Program Manager: An Orientation to the Position.

(4) Emergency Preparedness U.S.A.

(5) Hazardous Materials: A Citizen's Guide.

(6) An Orientation to Community Disaster Exercise.

(7) The Professional in Emergency Management.

(8) Radiological Emergency Management.

(9) Introduction to Hazard Mitigation.

(10) Basic Incident Command System.

b. By July 1, 2002, or within five years of appointment as an emergency management coordinator, whichever is later, completion of the professional development series of courses as prescribed by the Federal Emergency Management Agency.

c. Upon completion of the requirements established in subrule 7.3(4), paragraphs "a" and "b," annual completion of a minimum of 24 hours of state-approved emergency management training.

d. The local emergency management coordinator must document completion of courses by submitting a copy of the certificate of completion, a letter indicating satisfactory completion, or other appropriate documentation.

605—7.4(29C) Local commission or joint commission personnel.

7.4(1) Personnel for the local commission or joint commission shall be considered as employees of that local commission to include the coordinator, operations officers, and emergency management assistants.

7.4(2) The local or joint commission shall determine the personnel policies of the agency to include holidays, rate of pay, sick leave, vacation, and health benefits. The local commission may adopt existing county or city policies in lieu of writing their own policies.

605—7.5(29C) Damage assessment and financial assistance for disaster recovery. Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the emergency management division prior to the governor's making a determination that the magnitude and impact are sufficient to warrant a request for a presidential disaster declaration.

7.5(1) Local preliminary damage assessment and impact statement. The county emergency management coordinator shall be responsible for the coordination and collection of damage assessment and impact statement information immediately following a disaster that affects the county or any municipality within the county.

7.5(2) Damage assessment guidance and forms to be provided. The state emergency management division will provide guidance regarding the methodologies to be used in collecting damage assessment and impact statement information and shall provide the forms and format by which this information shall be recorded.

7.5(3) Joint preliminary damage assessment. Once the governor has determined that a request for a presidential disaster declaration is appropriate, joint preliminary damage assessment teams, consisting of local, state, and federal inspectors, will assess the uninsured damages and costs incurred or to be incurred in responding to and recovering from the disaster. All affected city, municipality, or county governments shall be required to provide assistance to the joint preliminary damage assessment teams for conducting damage assessments. The jurisdiction may be required to develop maps to show the damaged areas and to compile lists of names and telephone numbers of individuals, businesses, private nonprofit entities, and governmental agencies sustaining disaster response and recovery costs or damages. This joint preliminary damage assessment may be required before the request for presidential declaration is formally transmitted to the Federal Emergency Management Agency.

7.5(4) Public assistance and hazard mitigation briefing. In the event that a presidential disaster declaration is received, affected jurisdictions and eligible private nonprofit entities should be prepared to attend a public assistance and hazard mitigation briefing to acquire the information and documents necessary to make their formal applications for public and hazard mitigation assistance. Failure to comply with the deadlines for making application for public and mitigation assistance as established in 44 CFR Part 206 and the Stafford Act (PL 923-288) may jeopardize or eliminate the jurisdiction's or private nonprofit entity's ability to receive assistance.

7.5(5) Forfeiture of assistance funding. Failure to provide timely and accurate damage assessment and impact statement information may jeopardize or eliminate an applicant's ability to receive federal and state disaster assistance funds that may otherwise be available.

State participation in funding of disaster financial assistance in a presidentially declared disaster shall be contingent upon the local or joint emergency management commission's having on file a state-approved, comprehensive, countywide emergency operations plan which meets the standards as provided in subrule 7.2(4), paragraph "d."

605—7.6(29C) Emergency management performance grant program. Emergency management is a joint responsibility of the federal government, the states, and their political subdivisions. Emergency management means all those activities and measures designed or undertaken to mitigate against, prepare for, respond to, or recover from the effects of a human-caused, technological, or natural hazard. The purpose of the emergency management performance grant program is to provide the necessary assistance to local governments to ensure that a comprehensive emergency preparedness system exists for all hazards.

7.6(1) Eligibility. Local or joint emergency management commissions may be eligible for funding under the state and emergency management performance grant program by meeting the requirements, conditions, duties and responsibilities for emergency management commissions and county emergency management coordinators established in rules 7.2(29C) and 7.3(29C). In addition, the local commission shall ensure that the coordinator works an average of 20 hours per week or more toward the emergency management effort. Joint commissions shall ensure that the coordinator works an average of 40 hours per week toward the emergency management effort.

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

7.6(2) Application for funding. Local or joint commissions may apply for funding under the emergency management performance grant program by entering into an agreement with the division and by completing the necessary application and forms, as published and distributed yearly to each commission by the division.

7.6(3) Allocation and distribution of funds. The emergency management division shall allocate funds to eligible local or joint commissions within 45 days of receipt of notice from the Federal Emergency Management Agency that such funds are available. The division shall use a formula for the allocation of funds based upon the number of eligible applicants, the coordinator's salary and benefits and an equal distribution of remaining funds, not to exceed an individual applicant's request. Funds will be reimbursed to local and joint commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the local or joint commission's allocation. In no case will the allocation or reimbursement of funds be greater than one-half of the total cost of eligible emergency management related expenses.

7.6(4) Compliance. The administrator may withhold or recover emergency management performance grant funds from any local or joint commission for their failure or their coordinator's failure to meet any of the following conditions:

a. Appoint a qualified coordinator.

b. Comply with continuing education requirements.

c. Adopt a comprehensive countywide emergency operations plan that meets current standards.

d. Determine the mission of its agency.

e. Show continuing progress in fulfilling the commission's duties and obligations.

f. Conduct commission business according to the guidelines and rules established in this chapter.

g. Enter into and file a cooperative agreement with the division by the stipulated filing date.

h. Abide by state and federal regulations governing the proper disbursement and accountability for federal funds, equal employment opportunity and merit system standards.

i. Accomplish work specified in one or more program areas, as agreed upon in the cooperative agreement, or applicable state or federal rule or statute.

j. Provide the required matching financial contribution.

k. Expend funds for authorized purposes or in accordance with applicable laws, regulations, terms and conditions.

l. Respond to, or cooperate with, state efforts to determine the extent and nature of compliance with the cooperative agreement.

7.6(5) Serious nonperformance problems. If a local or joint commission cannot demonstrate achievement of agreed-upon work products, the division is empowered to withhold reimbursement or to recover funds from the local or joint commission. Corrective action procedures are designed to focus the commission's attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the administrator becomes aware of present or future serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local agency or commission, from indications in the commission or coordinator's quarterly reports that indicate a significant shortfall from planned accomplishments, or from the commission or coordinator's failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

7.6(6) Corrective actions.

a. Informal corrective action. As a first and basic step to correcting nonperformance, a designated member of the state emergency management division staff will visit, call or write the local coordinator to determine the reason for nonperformance and seek an agreeable resolution.

b. Formal corrective action. On those occasions when there is considerable discrepancy between agreed and actual performance and response to informal corrective action is not sufficient or agreeable, the division will take the following steps:

(1) Emergency management staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the local or joint commission.

(2) The administrator will prepare a letter to the local or joint commission which will contain, at a minimum, the following information:

1. The reasons why the division believes the local or joint commission may be in noncompliance, including the specified provisions in question.

2. A description of the efforts made by the division to resolve the matter and the reasons these efforts were unsuccessful.

3. A declaration of the local or joint commission's commitment to accomplishing the work agreed upon and specified in the comprehensive cooperative agreement and its importance to the emergency management capability of the local jurisdiction.

4. A description of the exact actions or alternative actions required of the local or joint commission to bring the problem to an agreed resolution.

5. A statement that this letter constitutes the final nopenalty effort to achieve a resolution and that financial sanctions provided for in these rules will be undertaken if a satisfactory response is not received by the division within 30 days.

7.6(7) Financial sanctions. If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the administrator may invoke the following financial sanction procedures:

a. Send a "Notice of Intention to Withhold Payment" to the chairperson of the local or joint commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the local or joint commission request a hearing before the administrator.

b. Any request by a local or joint commission for a hearing must be made in writing, to the division, within 15 days of receipt of the notice of intention to withhold payment.

c. Any hearing under the notice of intention to withhold payment shall be held before the administrator. However, the administrator may designate an administrative law judge to take evidence and certify to the administrator the entire record, including findings and recommended actions.

d. The local or joint commission shall be given full opportunity to present their position orally and in writing.

e. If, after a hearing, the administrator finds sufficient evidence that the local or joint commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the administrator may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

said rules, regulations, terms and conditions has been corrected or the administrator is satisfied that there will no longer be any such failure.

f: If upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the administrator may issue the findings and take appropriate action as described in the preceding paragraph.

g. If the administrator finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the local or joint commission as described in this rule, the commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the division and the commission.

h. Any emergency management performance grant program funds withheld or recovered by the division as a result of this process shall be reallocated at the end of the federal fiscal year to the remaining participating counties.

These rules are intended to implement Iowa Code sections 29C.6 and 29C.8.

[Filed Emergency 4/24/00, effective 5/17/00]
[Published 5/17/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/17/00.

ARC 9842A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

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 adopts an amendment to 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.).

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 8, 2000, as **ARC 9724A**. No public comment was received. The adopted amendment is identical to that published under Notice.

No waiver provisions have been included in this amendment. This amendment is mandated by 1999 Iowa Acts, chapter 204, section 15, which does not provide for any waivers beyond the text of the amendment.

This amendment will become effective on June 21, 2000.

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

The following amendment is adopted.

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 antifreeze 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*.

[Filed 4/28/00, effective 6/21/00]
[Published 5/17/00]

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ARC 9821A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts an amendment to Chapter 25, "Housing Fund," Iowa Administrative Code.

The amendment permits IDED to reserve up to a maximum of 60 percent of the state's annual HOME allocation for rental housing activities jointly funded with HOME and low-income housing tax credits (a program administered by the Iowa Finance Authority (IFA)). The amendment also reserves to IDED the right to require a 15 percent ratio of CHDO (community housing development organization) projects within the low-income housing tax credit projects funded.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 9, 2000, as **ARC 9684A**. The IDED Board adopted this amendment on April 20, 2000.

A public hearing to receive comments about the proposed amendment was held on February 29, 2000. Several written comments were received. The Iowa Housing Coalition is opposed to linking the HOME program funds to the low-income housing tax credit. The Coalition expressed the opinion that linking HOME funds to tax credits prevented community-based nonprofit organizations from accessing HOME program funds. A developer from Sioux City and the Iowa Finance Authority objected to that portion of the rule reserving to IDED the right to require a 15 percent ratio of CHDO projects within the low-income housing tax credit projects funded. Their concern was that this language could be interpreted to require IFA to also reserve 15 percent of the tax credits for CHDO projects. The Sioux City developer raised questions about the procedures to be developed between IFA and IDED that were mentioned in the Notice of Intended Action.

As a result of these comments, the Department postponed final action on the amendment and incorporated clarifying language requested by IFA. The final amendment still reserves to IDED the ability to meet the HUD requirement that 15 percent of the HOME funds are provided to CHDOs, but clarifies that this provision is not applicable to IFA's tax credit program. The intent of the amendment was to ensure that IDED is able to meet the federal requirement to provide a portion of HOME funds to CHDO projects. To avoid any possible confusion, the second sentence of subrule 25.8(3) was modified using language proposed by IFA.

The Department believes that reserving a portion of its HOME funds for rental housing activities jointly funded with HOME and low-income housing tax credits is a benefit to the state. The combination of these funds has proven to be necessary to serve very low-income persons and to serve rural areas where prevailing rents are substantially below those required to support new housing development. Nonprofit organizations are encouraged to apply.

The proposed amendment to reserve up to 60 percent of HOME funds for joint tax credit projects was filed in January 2000. The Department wanted to let potential applicants know of its intention to reserve HOME funds for joint HOME/tax credit projects and needed to amend its rules as soon as practicable to allow this reservation. Ongoing discussions were taking place between IFA and IDED as to how the joint process would operate, but were not finalized until April. The agencies have now submitted proposed rules to implement the joint review process. IDED's proposed rules are published herein as **ARC 9820A**, and IFA's proposed rules were published in the May 3, 2000, Iowa Administrative Bulletin as **ARC 9811A**.

This amendment is intended to implement Iowa Code section 15.108(1)"a."

This amendment will become effective on June 21, 2000.

The following amendment is adopted.

Amend rule 261—25.8(15) by adopting the following new subrule:

25.8(3) Up to a maximum of 60 percent of the state's annual HOME allocation may be reserved for rental housing activities jointly funded with HOME and low-income housing tax credits. In the event IDED has not satisfied the HUD required 15 percent ratio of HOME funding for CHDO projects at the time low-income housing tax credit projects are considered for joint funding, IDED may elect to first fund those projects meeting the 15 percent CHDO projects even though these projects may not be approved by IFA for low-income housing tax credit reservations.

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[Published 5/17/00]

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ARC 9822A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 53, "Community Economic Betterment Program," Iowa Administrative Code.

The 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 will permit an annual calculation that will be in effect for a 12-month period. The 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 3-month period. Changing the wage levels during the planning phase is a hardship on applicants.

The amendments revise and clarify starting wage threshold requirements. The existing rules require an "average starting wage" of a stated amount. These 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.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9726A** on March 8, 2000. The Iowa Department of Economic Development Board adopted these amendments on April 20, 2000.

A public hearing to receive comments about the proposed amendments was held on March 29, 2000. No comments were received. The adopted amendments are identical to the proposed amendments.

These amendments will become effective on June 21, 2000.

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

The following amendments are adopted.

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 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. Qualifi-

cation 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.

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ARC 9823A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 68, "Iowa Export Trade Assistance Program," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9725A** on March 8, 2000. The Iowa Department of Economic Development Board adopted these amendments on April 20, 2000.

A public hearing to receive comments about the proposed amendments was held on March 28, 2000. No comments were received at the public hearing. At the April 7, 2000, meeting of the Administrative Rules Review Committee, two revisions were requested, and the following changes have been made:

1. Revisions were made to clarify the definition of "exporter." As proposed, the definition was one sentence that included several activities that would meet the definition of an exporter. The substance of the definition remains the same, but the format has been reorganized into a list that more clearly identifies each qualifying activity.

2. The definition of "trade mission" was revised to identify which of the listed elements are required and which are optional.

These amendments will become effective on June 21, 2000.

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

The following amendments are adopted.

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 261—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 one of the following outside of the United States:

- *A manufactured product.*
- *A value-added product.*
- *An agricultural product.*
- *A service.*

"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 department of agriculture and land stewardship~~. Qualified trade missions must include ~~all~~ *each* 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.

Trade missions may also include:

- 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:

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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 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.*

[Filed 4/21/00, effective 6/21/00]
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ARC 9814A

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 8, "Mutuel Department," and Chapter 13, "Occupational and Vendor Licensing," Iowa Administrative Code.

Item 1 allows the licensee more flexibility in allowing the stewards, who are on site, to make the determination as to the approval of smaller fields for trifecta wagering.

Item 2 includes making a threat or intimidating statement as grounds for denial, suspension or revocation of an occupational license.

Item 3 rescinds the labor organization registration rule which the Commission has no statutory authority to enforce.

These amendments are identical to those published under Notice of Intended Action in the February 9, 2000, Iowa Administrative Bulletin as **ARC 9647A**. A public hearing was held on February 29, 2000. No comments were received.

These amendments will become effective June 21, 2000.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are adopted.

ITEM 1. Amend subrule **8.2(13)**, paragraph **"g,"** as follows:

g. Shall prohibit trifecta wagering on any contest with ~~seven~~ *six* or fewer betting interests scheduled to start, except in greyhound racing, or as provided in (1) below:

(1) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the parimutuel wagering industry or in the public confidence in racing. ~~The stewards shall cancel trifecta wagering anytime there are fewer than seven betting interests at the time the horses leave the paddock for the post.~~ The ~~administrator~~ *stewards* may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the licensee.

(2) Reserved.

ITEM 2. Amend subrule 13.10(8) as follows:

13.10(8) Illegal sale, possession, receipt or use of a controlled substance; intoxication; use of profanity; fighting; *making threatening or intimidating statements or engaging in threatening or intimidating behavior;* or any conduct of a disorderly nature on association grounds.

ITEM 3. Rescind and reserve rule **491—13.14(99D,99F)**.

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[Published 5/17/00]

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ARC 9835A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 476.2 and 476.3(1) and Iowa Code Supplement section 476.103, the Utilities Board (Board) gives notice that on April 18, 2000, the Board issued an order in Docket No. RMU-99-7, In re: Unauthorized Changes In Telecommunications Service, "Order Adopting Rules," adopting amendments to subrules 6.8(1), 6.8(2), 6.8(3), 22.23(1), and 22.23(2) and adopting new subrules 22.23(3), 22.23(5), and 22.23(6).

On July 23, 1999, the Board issued a Notice of Intended Action to consider amendments to adopt new rules 199 IAC 6.8(476) and 199 IAC 22.23(476). The proposed rule making was published in the IAB Vol. XXII, No. 3 (8/11/99), pp. 189-193, as **ARC 9267A**. Comments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), U S WEST Communications, Inc. (U S WEST), Billing Concepts, Inc. (BCI), GTE Communications Corporation (GTE), and joint comments were filed by AT&T Communications of the Midwest, Inc., and Sprint Communications, L.P. (AT&T/Sprint). An oral presentation concerning these new rules was held on October 21, 1999.

Simultaneously with this proposed rule making the Board issued an order in Docket No. RMU-99-8, Unauthorized Changes of Telecommunications Service (Emergency Rules), "Order Adopting Rules Without Notice and Providing for Early Effective Date." The rules were Adopted and Filed Emergency and published in the IAB Vol. XXII, No. 3 (8/11/99), pp. 196-198, as **ARC 9268A**.

These amendments are intended to implement a new statute entitled "An Act Prohibiting Unauthorized Changes in Telecommunications Service, Prohibiting Certain Acts in the Advertisement or Solicitation of Changes in Telecommunications Service, and Providing Remedies and Penalties," Iowa Code Supplement section 476.103, which became effective July 1, 1999. The new statute provides the Board with the authority to adopt rules to protect customers from unauthorized changes in their telecommunications service, even if the service has been deregulated pursuant to Iowa Code section 476.1D. Additional remedies are provided to the Attorney General to address the issue of fraud in the sale of telecommunications services.

Unauthorized changes in telecommunications service may take a variety of forms. Unauthorized changes in a customer's preferred carrier are sometimes referred to as slamming, while the addition of unauthorized services to a customer's bill is sometimes called cramming. These activities represent a growing area of concern for telecommunications customers in Iowa.

In 1996, the Board deregulated most interexchange services, pursuant to Iowa Code section 476.1D. Since that time, the Board has had limited jurisdiction over the part of the telecommunications market in which most slamming has occurred. Nonetheless, the Board continues to receive a significant number of complaints. In 1998, Board staff responded to 428 calls regarding slamming issues and 174 calls alleging cramming. In 1997, Board staff fielded 211 slamming calls (cramming complaints were not separately tracked).

The Consumer Protection Division of the Attorney General's Office also processes many complaints regarding telecommunications services. The Board understands that the Consumer Protection Division received about 275 such complaints in 1995, 480 complaints in 1996, 937 complaints in 1997, and approximately 1,300 complaints in 1998. The trend is clear and disturbing.

Pursuant to Iowa Code Supplement section 476.103, the new subrules will apply with equal force to regulated and deregulated services. The Board's rules must be consistent with the regulations of the Federal Communications Commission (FCC) regarding procedures for verification of customer authorization of a change in service. The FCC verification procedures include written or electronic authorization or independent third-party verification.

The Board's rules must also provide for (1) customer notification of any changes in service, (2) procedures for customer account change freezes, and (3) procedures for correcting unauthorized changes and compensating customers and other persons whose interests may be damaged by an unauthorized change in service. Finally, Iowa Code Supplement section 476.103 gives the Board expanded remedial authority with respect to telecommunications service providers that make unauthorized changes, including civil penalties for any violations of the statute or rules and more severe penalties for patterns of violations.

On December 17, 1998, the FCC issued an order in The Matter of Implementation of the Consumer Carrier Selection Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129 (the "FCC Order"), adopting new rules intended to protect each customer's choice of telecommunications service providers. The majority of the FCC's slamming rules took effect on April 27, 1999.

Generally, the complaints will be resolved pursuant to the Board's standard complaint procedures, with informal proceedings, a proposed resolution from Board staff, and an option for formal complaint proceedings in appropriate cases. However, a few special procedures will apply. For example, the time for the telephone utility's response to the initial complaint will be reduced to ten days, to be consistent with the FCC's verification procedures, and the proposed resolution may include an assessment of damages among the interested persons in each complaint proceeding, pursuant to Iowa Code Supplement section 476.103. In this context, the Board interprets the term "assessment of damages" to mean, in most cases, an allocation of the various telecommunications service charges at issue. Thus, the proposed resolution (or a Board order following formal complaint proceedings) will allocate responsibility for primary interexchange carrier (PIC) change charges, service charges, and other charges that have appeared or may appear on the customer's bill, but in the absence of unusual circumstances the proposed resolution or order will not assess among the parties any responsibility for incidental, consequential, punitive, or similar damages.

Consumer Advocate suggested that the requirement for complaints to be written be eliminated. The Board agreed that it is appropriate to receive telephone and other oral complaints, which can be reduced to writing by Board staff for delivery to the company involved. Subrules 6.8(1) and 6.8(2) have been revised accordingly.

Subrule 6.8(6) prohibits any action to re-bill, directly bill, or otherwise collect any disputed charges for a change in service until after Board action on a complaint is final. Consumer Advocate suggested that all disputed amounts be removed from a customer's bill. AT&T/Sprint complained that it is not always possible to remove a disputed amount from a customer's bill while the dispute is being investigated. They said that they will not attempt to collect the dis-

puted amount while the claim is being investigated. However, by leaving the disputed amount on a customer's bill as part of the amount due, an attempt to collect the disputed amount is being made. The Board has not been persuaded by the possible difficulties expressed by AT&T/Sprint that the subrule be altered to permit a disputed amount to appear on a customer's bill as part of the amount due. If the disputed amount can be separated from the amount due, and identified for the customer separate from the amount currently due, the Board would agree that there is no longer a current attempt being made to recover the disputed amount. The Board's concern is that the disputed amount does not appear as part of a past due amount that will then become part of a collection situation affecting a customer's credit history. Because of the Board's concern, no changes have been made to subrule 6.8(6).

Item 2, subrule 22.23(1), includes definitions of "slamming" (unauthorized changes in a customer's preferred service provider), "cramming" (unauthorized additions or changes to the services on a customer account, for which a separate charge is made), and "jamming" (unauthorized account freezes that make it more difficult for a customer to change service providers upon demand).

U S WEST and Consumer Advocate suggested that the definition of "consumer" is too broad, expressing concern that the definition could include persons who do not (or should not) have the authority to make changes to an account. It was suggested that the definition for "subscriber" be substituted, meaning the person whose name appears on the account and others authorized to make changes on the account. The Board finds merit with this concern but prefers to use the term "customer" rather than "subscriber." The Board has amended the subrule by adding the term "customer" and its definition and substituting the term "customer" with a more limited definition as suggested.

U S WEST also suggested that the definition of "slamming" include an element of fault to prevent the punishment of "inadvertent" changes that are not the result of negligence, recklessness, or intentional conduct. The Board has not amended the definition, which merely requires verified consent for all designations of new providers.

Consumer Advocate suggested the addition of a general, flexible prohibition of all fraudulent conduct. The Board understands the concern of Consumer Advocate, but is not persuaded that any additional language is necessary to attain this goal.

AT&T, at the oral presentation, suggested that the definition of "preferred carrier freeze" currently relates to a freeze on an "account" rather than on the customer's carrier choice. The FCC does not permit account-level freezes. AT&T suggested that the word "account" be changed to "preferred carrier choices" to alleviate this problem. The Board agreed with this suggestion and has amended the definition as indicated.

AT&T, MCI, and Sprint made additional suggestions after the conclusion of the oral presentation to alter the definition of "service provider." Additionally, they suggested that a definition be added to define the term "damages" so that it would not include incidental, consequential, or punitive damages. The Board has adopted these additional suggestions in subrule 22.23(5).

Also in Item 2, subrule 22.23(2) prohibits unauthorized changes in service and provides for verification of all changes to a customer account, along with customer notification of any such changes. Changes made at the request of a submitting service provider must be verified using one of the three FCC-approved verification procedures. Changes made as a result of a direct customer request to the executing service provider may be verified using the FCC procedures or through the internal records of the executing service provider, if those records contain sufficient information to establish the date and time of the request and the identity of the requesting customer. The rules require that all verifications be maintained for at least two years from the date the change is implemented. Verification of a preferred carrier freeze, however, must be maintained for the life of the freeze, since a customer may not be aware of an unauthorized freeze until the customer tries to change the service.

The rules require customer notification of all changes in service within 30 days of the effective date of the change, as required by Iowa Code Supplement section 476.103. The notice must clearly and conspicuously identify the change, any charge or fee associated with the change, and the name and toll-free contact number of the service provider responsible for the change. This information may be included as a line item in the billing portion of the customer's bill, as a separate written statement on the bill, in a separate mailing to the customer, or by such other means as will provide the required information in a clear and conspicuous manner.

The emergency rules adopted by reference the FCC regulations regarding preferred carrier freezes. GTE supported the Board proposal to adopt the FCC verification procedures by reference. Consumer Advocate suggested that it would be more appropriate to rewrite or include the specific language from the FCC rule that it intends to use in these rules. This should include any change in terms from the FCC rule to match the terms used in the Iowa Administrative Code and contained in the definitions as adopted. Consumer Advocate additionally suggested that several provisions be added to the FCC verification procedures to add specificity. The Board agreed with the suggestion that the FCC rules be rewritten to include the specific terminology of these rules and included within these rules. The Board rejected the suggestions of Consumer Advocate that additional provisions are necessary to add greater specificity to the verification procedures.

Consumer Advocate recommended that subrule 22.23(2) specifically prohibit a telecommunications carrier from taking any action to make a "change in service" without the customer's "verified consent," arguing that this change is necessary to bring the substantive conduct in conformance with the definitions. The Board has adopted this suggestion.

AT&T/Sprint submitted that the definitions do not appear to address authorization by use. They suggested that an authorized change in telephone service include telecommunications services that are used, initiated, or requested by the customer, including "dial-around" services such as "10-10-XXX," directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer. The choice to use the service indicates authorization of the charges for that service. The Board agreed with the suggestion that additional language is necessary to ensure that such services that are initiated or requested by the customer are not inaccurately characterized as cramming. The Board considers the inclusion of the term "used" to make the definition too broad.

Subrule 22.23(3) requires that all carriers providing or billing for telecommunications services to customers located in Iowa register with the Board, using the form provided. This will allow the Board to assemble a directory of telephone service providers offering services in Iowa, permitting Board staff to contact each of them in the event a cus-

tomer complaint is received. This directory is a critical part of the Board's power to enforce these rules. As noted previously, in 1998 the Board received 428 calls alleging slamming. These calls appeared to involve over 100 non-local service providers. In some cases, the service provider's name (as provided by the complaining customer) appears to be a variation on the name of another, often well-known carrier. This sometimes makes it difficult for the Board to determine whether the alleged slammer is an established carrier or a new entrant that may have intentionally adopted a similar name in an attempt to confuse potential customers. The directory should help to resolve these issues more easily and quickly.

Consumer Advocate has suggested that the Board require additional information on the registration form in subrule 22.23(3). Consumer Advocate argued that this additional information would assist in ascertaining the precise identity of service providers and would be relevant to the Board as it monitors the entity's actual conduct in its interactions with Iowa customers. The Board is not convinced that this additional information is necessary or that it will add significantly to the Board's ability to monitor an entity's conduct. The Board adopted the registration form without change.

Subrule 22.23(4) refers the reader to Chapter 6 of the Board's rules for the applicable complaint procedures.

U S WEST, BCI, and GTE all objected to the requirement that the service provider inform the customer of the right to contact the Board regarding the complaint and to provide the Board's toll-free number. They argued that Iowa Code Supplement section 476.103(3)"e" requires that the Board rules encourage service providers to resolve customer complaints without involvement of the Board. Conversely, Consumer Advocate suggested that the Board increase its involvement in each company's dispute resolution efforts by adopting rules that would require each service provider to make available a toll-free number for complaints, on a 24-hour, 7-days-a-week basis. The Board is not persuaded by the suggestion that requiring the provision of its toll-free number to customers who contact a service provider with a complaint is in violation of Iowa Code Supplement section 476.103(3)"e." The use of the Board's informal complaint process as described in Chapter 6 of the Board's rules will encourage rapid resolution without invoking formal proceedings, thus bringing the matter before the Board. Subrule 22.23(4) has not been revised from the adopted and filed emergency rule.

Subrule 22.23(5) provides penalties for violations of the anti-slamming statute or rules. These include civil penalties for any violation of the provisions of Iowa Code Supplement section 476.103, or the proposed Board rules, along with more severe sanctions for behavior revealing a pattern of violations on the part of a telephone service provider. The Board has not proposed a specific number of violations that will establish a pattern of violations in subrule 22.23(6); the number may vary depending upon the circumstances. For example, a service provider that has only 10 customers in the state, all 10 of whom are the victims of slamming, may have demonstrated a pattern of violations sufficient to justify severe sanctions, while a service provider with hundreds of thousands of customers in Iowa and 20 slamming complaints may be experiencing only a small percentage of inadvertently mishandled customer requests, which may not amount to a pattern of violations. Further complicating the question of what constitutes a pattern of violations is the fact that as service offerings become more numerous and complex, the resulting confusion is likely to produce more service order errors, both by customers and service providers. For these reasons, the Board proposed to determine whether a provider has shown a pattern of violations based upon the facts of each specific situation, after notice to the affected persons and an opportunity for hearing.

AT&T/Sprint raised a concern with the provision that offers the possibility of joint and several damages in the event of a soft slam, arguing that the provision is inconsistent with Iowa law, violates due process, and imposes liability on innocent wholesale carriers. The soft slam language is discretionary as to Board penalties. It is reasonable for the Board to be able to consider any liability attributable to the provider of the wholesale services in a soft slam situation on a case-by-case basis.

Consumer Advocate suggested that the rules also reference the customer-specific enforcement authorized by the new statute. In addition, Consumer Advocate urged the Board to significantly increase the penalties proposed in its rules. In contrast, GTE, AT&T/Sprint, and U S WEST suggested that the proposed rules relating to civil penalties be limited. The Board rejects the suggestions of all the commenters and has adopted the subrule without modification. The subrule offers a flexible range of remedies to be applied on a case-by-case basis.

Finally, subrule 22.23(7) includes provisions for addressing complaints between telephone service providers. Iowa Code Supplement section 476.103 grants primary jurisdiction over this subject matter to the Board. The subrule includes a provision permitting any party to request that a matter be immediately docketed as a formal complaint proceeding, bypassing the informal process, in appropriate circumstances. The Board has adopted this subrule without change.

Consumer Advocate recommended the Board adopt additional rules requiring that service providers take certain minimum steps toward educating customers regarding slamming, cramming, and their rights. Although the Board can certainly see some benefit in such a requirement, it is likely beyond the scope of the notice in this docket, which included no requirements for customer education. The Board will not adopt any customer education requirements at this time.

Consumer Advocate provided examples of slamming rules from many other states as examples and suggestions for modifications of language. The Board reviewed those examples and, where not specifically adopted, has rejected each one of those suggested revisions.

These amendments are intended to implement Iowa Code sections 476.2 and 476.3(1) and Iowa Code Supplement section 476.103.

These amendments will become effective June 21, 2000.

The following amendments are adopted.

ITEM 1. Amend subrules 6.8(1), 6.8(2) and 6.8(3) as follows:

6.8(1) Upon receipt of the ~~written~~ complaint and with the customer's acknowledgment, a copy of the complaint *or a notification of receipt of a telephone, or other oral, complaint* will be forwarded to the executing service provider and the preferred service provider as a request for a change in the ~~subscriber's~~ *customer's* service to the ~~subscriber's~~ *customer's* preferred service provider, unless the service has already been changed to the preferred service provider.

6.8(2) The complaint *or notification of receipt of a telephone, or other oral, complaint* will also be forwarded to the alleged unauthorized service provider. That entity shall file a response to the complaint within ten days of the date the complaint *or notification of receipt of a telephone, or other oral, complaint* was forwarded. The response must include proof of verification of the ~~subscriber's~~ *customer's* authori-

UTILITIES DIVISION[199](cont'd)

zation for a change in service or a statement that the unauthorized service provider does not have such proof of verification.

6.8(3) If the alleged unauthorized service provider includes with its response alleged proof of verification of the ~~subscriber's~~ *customer's* authorization for a change in service, then the response will be forwarded to the customer. The customer will have ten days to challenge the verification or otherwise reply to the service provider's response.

ITEM 2. Amend rule 199—22.23(476) as follows:

Amend subrules 22.23(1) and 22.23(2) as follows:

22.23(1) Definitions. As used in this rule, unless the context otherwise requires:

"Change in service" means the designation of a new provider of a telecommunications service to a ~~consumer~~ *customer*, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a ~~consumer~~ *customer* account.

"Consumer" means a person other than a service provider who uses a telecommunications service.

"Cramming" means the addition or deletion of a product or service for which a separate charge is made to a ~~telecommunications consumer~~ *telecommunication customer's* account without the verified consent of the affected ~~consumer~~ *customer*. Cramming does not include the addition of extended area service to a customer account pursuant to board rules, even if an additional charge is made. *Cramming does not include telecommunications services that are initiated or requested by the customer, including dial-around services such as "10-10-XXX," directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer.*

"Customer" means the person other than a service provider whose name appears on the account and others authorized by that named person to make changes to the account.

"Executing service provider" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider or from its own customer.

"Jamming" means the addition of a preferred carrier freeze to a ~~consumer's~~ *customer's* account without the verified consent of the ~~consumer~~ *customer*.

"Letter of agency" means a written document complying with the requirements of ~~47 CFR § 64.1160(1999).~~ *199 IAC 22.23(2)"b."*

"Preferred carrier freeze" means the limitation of a ~~consumer's account~~ *customer's preferred carrier choices* so as to prevent any change in preferred service provider for one or more services unless the ~~consumer~~ *customer* gives the service provider from which the freeze was requested the ~~consumer's~~ *customer's* express consent.

"Service provider" means a person providing a telecommunications service, not including commercial mobile radio service.

"Slamming" means the designation of a new provider of a telecommunications service to a ~~consumer~~ *customer*, including the initial selection of a service provider, without the verified consent of the ~~consumer~~ *customer*.

"Soft slam" means an unauthorized change in service by a service provider that uses the carrier identification code (CIC) of another service provider, typically through the purchase of wholesale services for resale.

"Submitting service provider" means a service provider who requests another service provider to execute a change in service.

"Telecommunications service" means a local exchange or long distance telephone service other than commercial mobile radio service.

"Verified consent" means verification of a ~~consumer's~~ *customer's* authorization for a change in service.

22.23(2) Prohibition of unauthorized changes in telecommunications service.

a. Verification required. No ~~telecommunications carrier~~ *service provider* shall submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with ~~the procedures set forth in 47 CFR § 64.1150 (1999). No telecommunications carrier shall execute a change in service on one of its own customer accounts unless and until the change has first been confirmed in accordance with~~ *one of* the *following* procedures: ~~set forth in 47 CFR § 64.1150 (1999)~~

(1) The service provider has obtained the customer's written authorization in a form that meets the requirements of 199 IAC 22.23(2)"b"; or

(2) The service provider has obtained the customer's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in subparagraph (1) above. Service providers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

(3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change; or

(4) The local service provider may change the preferred service provider, for customer-originated changes to existing accounts only, through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service.

All verifications shall be maintained for at least two years from the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred carrier freeze is in effect.

b. Letter of agency form and content. ~~A letter of agency must conform to the requirements of 47 CFR § 64.1160 (1999).~~

UTILITIES DIVISION[199](cont'd)

(1) A service provider may use a letter of agency to obtain written authorization or verification of a customer's request to change the customer's preferred service provider selection. A letter of agency that does not conform with this subrule is invalid for purposes of this rule.

(2) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in subparagraph (5) below having the sole purpose of authorizing a service provider to initiate a preferred service provider change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the preferred service provider change.

(3) The letter of agency shall not be combined on the same document with inducements of any kind.

(4) Notwithstanding subparagraphs (2) and (3) above, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in subparagraph (5) below and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a preferred service provider change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

1. The customer's billing name and address and each telephone number to be covered by the preferred service provider change order;

2. The decision to change the preferred service provider from the current service provider to the soliciting service provider;

3. That the customer designates [insert the name of the submitting service provider] to act as the customer's agent for the preferred service provider change;

4. That the customer understands that only one service provider may be designated as the customer's interstate or interLATA preferred interexchange service provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred service providers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

5. That the customer understands that any preferred service provider selection the customer chooses may involve a charge to the customer for changing the customer's preferred service provider.

(6) Any service provider designated in a letter of agency as a preferred service provider must be the service provider directly setting the rates for the customer.

(7) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current service provider.

(8) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

c. Customer notification. Every change in service shall be followed by a written notification to the affected customer to inform the customer of the change. Such notice shall be provided within 30 days of the effective date of the change. Such notice may include, but is not limited to, a conspicuous written statement on the customer's bill, a separate mailing to the customer's billing address, or a separate written statement included with the customer's bill. Each such statement shall clearly and conspicuously identify the change in service, any associated charges or fees, the name of the service provider associated with the change, and a toll-free number by which the customer may inquire about or dispute any provision in the statement.

d. Preferred carrier freezes. ~~Preferred carrier freezes must comply with the requirements of 47 CFR § 64.1190 (1999).~~

(1) A preferred service provider freeze (or freeze) prevents a change in a customer's preferred service provider selection unless the customer gives the service provider from whom the freeze was requested express consent. All local exchange service providers who offer preferred service provider freezes must comply with the provisions of this subrule.

(2) All local exchange service providers who offer preferred service provider freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's service provider selections.

(3) Preferred service provider freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred service provider freeze. The service provider offering the freeze must obtain separate authorization for each service for which a preferred service provider freeze is requested.

(4) Solicitation and imposition of preferred service provider freezes.

1. All solicitation and other materials provided by a service provider regarding preferred service provider freezes must include:

- *An explanation, in clear and neutral language, of what a preferred service provider freeze is and what services may be subject to a freeze;*
- *A description of the specific procedures necessary to lift a preferred service provider freeze; an explanation that these steps are in addition to the verification requirements in 22.23(2)"a" and 22.23(2)"b" for changing a customer's preferred service provider selections; and an explanation that the customer will be unable to make a change in service provider selection unless the freeze is lifted; and*
- *An explanation of any charges associated with the preferred carrier freeze.*

2. No local exchange carrier shall implement a preferred service provider freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

- *The local exchange carrier has obtained the customer's written and signed authorization in a form that meets the requirements of 22.23(2)"d"(4)"3"; or*
- *The local exchange carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred service provider freeze is to be imposed, to impose a preferred service provider freeze. The electronic authorization shall confirm appropriate verification data (e.g., the customer's date of birth or social security number) and the information required in 22.23(2)"d"(4)"3." Service providers electing to confirm preferred ser-*

vice provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the preferred service provider freeze request, including automatically recording the originating automatic numbering identification; or

• An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred service provider freeze and confirmed the appropriate verification data (e.g., the customer's date of birth or social security number) and the information required in 22.23(2)"d"(4)"3." The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred service provider freeze.

3. A local exchange service provider may accept a written and signed authorization to impose a freeze on the customer's preferred service provider selection. Written authorization that does not conform with this subrule is invalid and may not be used to impose a preferred service provider freeze.

• The written authorization shall comply with 22.23(2)"b"(5)"2" and "3" and 22.23(2)"b"(8) concerning the form and content for letters of agency.

• At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms: (1) the customer's billing name and address and the telephone number(s) to be covered by the preferred service provider freeze; (2) the decision to place a preferred service provider freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred service provider freezes on additional preferred service provider selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen; (3) that the customer understands that the customer will be unable to make a change in service provider selection unless the preferred service provider freeze is lifted; and (4) that the customer understands that any preferred carrier freeze may involve a charge to the customer.

(5) All local exchange service providers who offer preferred service provider freezes must, at a minimum, offer customers the following procedures for lifting a preferred service provider freeze:

1. A local exchange service provider administering a preferred service provider freeze must accept a customer's written and signed authorization stating the intention to lift a preferred service provider freeze; and

2. A local exchange service provider administering a preferred service provider freeze must accept a customer's oral authorization stating the intention to lift a preferred carrier freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred service provider freeze, the service provider administering the freeze shall confirm appropriate verification data (e.g., the customer's date of birth or social security number) and the customer's intent to lift the particular freeze.

Adopt **new** subrules 22.23(3), 22.23(5) and 22.23(6) as follows:

22.23(3) Carrier registration.

a. Registration required. Each carrier that provides or bills for telecommunications services to customers located in Iowa shall register with the board and shall provide, at a minimum, the information specified in the form that appears in this subrule.

DEPARTMENT OF COMMERCE
UTILITIES BOARD
TELECOMMUNICATIONS SERVICE PROVIDER REGISTRATION

1. FULL NAME OF CARRIER PROVIDING SERVICE IN IOWA:

_____

2. CARRIER MAILING ADDRESS (including 9-digit ZIP code):

_____

_____

3. NAME, TITLE, TELEPHONE NUMBER, E-MAIL ADDRESS, AND FAX NUMBER OF CONTACT PERSON:

_____

_____

_____

4. ALL TRADE NAMES OR D/B/A'S USED BY CARRIER IN IOWA OR IN ADVERTISING OR BILLING THAT MAY REACH IOWA CUSTOMERS:

_____

_____

5. NAME, MAILING ADDRESS, AND TELEPHONE NUMBER OF AGENT IN IOWA AUTHORIZED TO ACCEPT SERVICE OF PROCESS ON BEHALF OF CARRIER:

_____

_____

_____

6. TYPES OF TELECOMMUNICATIONS SERVICE PROVIDED (CHECK ALL THAT APPLY):

___ LOCAL EXCHANGE SERVICE
___ INTEREXCHANGE SERVICE
___ DATA TRANSMISSION
___ ALTERNATIVE OPERATOR SERVICES ONLY
___ OTHER—PLEASE SPECIFY:_____

7. ATTESTATION. I, _____, certify that I am the company officer responsible for this registration, that I have examined the foregoing registration, and that to the best of my knowledge, information, and belief the information is accurate and will be updated as required.

Dated ___/___/___

SIGNATURE_____

b. Failure to register. Failure to file and reasonably update a registration, or provision of false, misleading, or incomplete information, may result in civil penalties under 22.23(5) and may be considered as evidence of a pattern or practice of violation of these rules.

22.23(5) Civil penalties and assessment of damages.

a. Civil penalties. In addition to any applicable civil penalty set out in Iowa Code section 476.51, a service provider who violates a provision of the anti-slamming statute, a rule adopted pursuant to the anti-slamming statute or an order lawfully issued by the board pursuant to the anti-

slamming statute is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than $10,000 per violation. Each violation is a separate offense.

b. Amount. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. Collection. A civil penalty collected pursuant to this subrule shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

d. Exclusion from regulated rates. A penalty paid by a rate-of-return regulated utility pursuant to this subrule shall be excluded from the utility's costs when determining the utility's revenue requirement and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. Civil actions. The board shall not commence an administrative proceeding to impose a civil penalty under this rule for acts subject to a civil enforcement action pending in court under Iowa Code section 714D.7.

f. Assessment of damages among interested persons. As a part of formal complaint proceedings, the board may determine the potential liability, including assessment of damages, for unauthorized changes in service among the customer, the previous service provider, the executing service provider, the submitting service provider, and any other interested persons. In the event of a soft slam, the board may impose joint and several liability on the reseller and the facilities-based service provider. For purposes of this rule and in the absence of unusual circumstances, the term "damages" means charges directly relating to the telecommunications services provided to the customer that have appeared or may appear on the customer's bill. The term "damages" does not include incidental, consequential, or punitive damages.

22.23(6) Penalties for patterns of violations. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of these rules, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph "a" or "b" above to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

[Filed 4/28/00, effective 6/21/00]
[Published 5/17/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/17/00.

ARC 9816A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development adopts amendments to Chapter 1, "Workforce Development Board," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9687A** on February 9, 2000. The Department of Corrections (DOC) requested that a statement be added to subrules 1.5(6) and 1.6(7) to provide for consultation between the Director and the Department of Corrections prior to the Workforce Development Board's adopting a final recommendation on the resolution of an inquiry. The state Workforce Development Board requested that regional advisory boards also be consulted prior to adoption of a final recommendation. DOC also requested that the term "prisoner" be changed to "offender" in rules 1.5(84A) and 1.6(84A). These changes have been incorporated.

The Workforce Development Board adopted the amendments on April 19, 2000.

The amendments will become effective on June 21, 2000.

These amendments are intended to implement Iowa Code sections 84A.1 to 84A.1B and Iowa Code chapter 96.

The following amendments are adopted.

ITEM 1. Amend subrule 1.1(2) as follows:

1.1(2) Nonvoting members. The board consists of ~~seven~~ *eight* ex officio, nonvoting members. Of the ~~seven~~ *eight* members, four members shall be members of the general assembly; one member shall be a president or president's designee of one of the three state universities, designated by the board of regents on a rotating basis; one member shall represent the largest statewide public employees' organization representing state employees; ~~and~~ one member shall be a superintendent or superintendent's designee of a community college, appointed by the Iowa association of community college presidents*; and one member shall represent the independent colleges and universities in Iowa*.

ITEM 2. Amend rule 877—1.4(84A) as follows:

877—1.4(84A) Records. Agendas, minutes, and materials presented to the board are available from the ~~Policy Office, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309~~ *Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319*, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4) or which are otherwise confidential by law. Board records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 96.11(5). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier. Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

ITEM 3. Amend 877—Chapter 1 by adopting the following new rules:

877—1.5(84A) Coordination with the department of corrections on private sector employment projects. To assist the department of corrections with programs that employ offenders in the private sector, the department of workforce development shall be responsible for coordinating the following process:

1.5(1) Prior to an employer's submitting an application to the department of corrections for a private sector employment project, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet site.

1.5(2) The department of corrections shall send a letter requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the offenders. The letter should be sent to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

1.5(3) The department of workforce development shall verify in writing the job listing, including the number of qualified applicant referrals and hires made as a result of the job order, the average entry-level wage rate for the proposed job(s), the entry-level wage range, the current unemployment rate for the county where the employer is located, and the current employment levels of the company that will employ the offenders based upon the most recent quarter for which data is available. The average wage rate and wage range will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

1.5(4) Average entry-level wage rates and entry-level wage ranges for jobs currently held by offenders and employment levels of companies employing offenders shall be updated by the department of workforce development every six months upon the department of corrections' sending a letter listing all current companies employing offenders and the offenders' job classifications to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

1.5(5) The department of workforce development shall provide a periodic report to the state workforce development board regarding information supplied to the department of corrections for private sector employment projects. Frequency of the report will depend upon the level of activity.

1.5(6) Inquiries concerning private sector employment projects shall be in writing and address the following questions:

a. Whether and how the project is believed to violate the intent of Iowa Code section 904.809;

b. Evidence of a local surplus of labor in the job classifications of the type in which offenders are employed; and

c. Whether private sector employees or employees involved in a labor dispute have been displaced as a result of the project.

Inquiries shall be sent to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. A copy of the inquiry shall be sent to the department of corrections. The director of the department shall consult with the director of prison industries and the affected regional advisory board concerning the inquiry prior to the workforce development board's making a final recommendation regarding possible corrective action.

The administrative rules committee of the state workforce development board shall review the inquiry and any additional responses or oral testimony requested by the committee and make a recommendation to the full board as to whether the intent of Iowa Code section 904.809 has or has not been met and whether corrective action, if any, needs to be taken by the department of corrections to meet the intent. At the discretion of the administrative rules committee, oral presentations may be requested from the party(ies) to the inquiry. The full board shall make a final recommendation within 60 days of receipt of the inquiry. The board's final recommendation shall be mailed to both the department of corrections and the party(ies) making the inquiry.

877—1.6(84A) Coordination with the department of corrections on construction and maintenance projects. To assist the department of corrections with the employment of offenders on construction and maintenance projects, the department of workforce development shall be responsible for coordinating the following process:

1.6(1) Prior to an employer's submitting an application to the department of corrections for employing offenders on a construction or maintenance project, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet site.

1.6(2) The department of corrections shall send a letter requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the offenders. The letter should be sent to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

1.6(3) The department of workforce development shall verify in writing the job listing, including the number of qualified applicant referrals and hires made as a result of the job order, the average entry-level wage rate for the proposed job(s), the entry-level wage range, the prevailing wage as determined by the U.S. Department of Labor, the current unemployment rate for the county where the employer is located, and the current employment levels of the company that will employ the offenders based upon the most recent quarter for which data is available. The average entry-level wage rate and entry-level wage range will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

1.6(4) It is recommended that all offenders employed in construction and maintenance projects receive a ten-hour OSHA safety course provided free of charge by the department of workforce development. The department of workforce development will make every effort to conduct the training within a reasonable time period after receipt of a request for training.

1.6(5) If the contract to employ offender labor exceeds six months, the department of corrections shall request and receive from the department of workforce development the average wage rates and wage ranges for jobs currently held by offenders and current employment levels of companies employing offenders. The letter should be addressed to Division Administrator, Division of Policy and Information,

Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

1.6(6) The department of workforce development shall provide a periodic report to the state workforce development board regarding information supplied to the department of corrections for construction and maintenance projects. Frequency of the report will depend upon the level of activity.

1.6(7) Inquiries concerning construction and maintenance projects performed by offenders may be made by area workers, or their representatives, that are affected by a project. Inquiries shall be in writing and address the following questions:

a. Whether and how the project is believed to violate the intent of Iowa Code sections 904.701 and 904.703;

b. Evidence of a local surplus of labor in the job classifications of the type in which offenders are employed;

c. Whether private sector employees or state, county or local government employees or employees involved in a labor dispute have been displaced as a result of the project; and

d. Whether existing contracts for employment or services have been impaired.

Inquiries shall be sent to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. A copy of the inquiry shall be sent to the department of corrections. The director of the department shall consult with the director of the department of corrections and the affected regional advisory board concerning the inquiry prior to the workforce development board's making a final recommendation regarding possible corrective action.

The administrative rules committee of the state workforce development board shall review the inquiry and any additional responses or oral testimony requested by the committee and make a recommendation to the full board as to whether the intent of Iowa Code sections 904.701 and 904.703 has or has not been met and whether corrective action, if any, needs to be taken by the department of corrections to meet the intent. At the discretion of the administrative rules committee, oral presentations may be requested from the party(ies) to the inquiry. The full board shall make a final recommendation within 60 days of receipt of the inquiry. The board's final recommendation shall be mailed to both the department of corrections and the party(ies) making the inquiry.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/17/00.

ARC 9815A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development adopts Chapter 7, "Iowa Workforce Investment Act Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9688A** on February 9, 2000. No comments concerning the new chapter were received from the public. Since the Notice of Intended Action was submitted, additional directives were received from the U.S. Department of Labor and technical changes were requested by department staff. The following changes were made to incorporate the requirements of the directives and requested technical changes:

1. A provision was added to subrule 7.5(1) to allow counties and cities the option of not participating in the Chief Elected Official Board.

2. Paragraphs "d" to "i" of subrule 7.5(5) were moved to subrule 7.5(6) as paragraphs "f" to "k" because these are duties jointly performed by the Chief Elected Official Board and Regional Workforce Investment Board.

3. In rule 877—7.9(84A,PL105-220), introductory paragraph, the last sentence was deleted as it is repetitive of rule 877—7.10(84A,PL105-220).

4. The phrase "labor organization" was added to the parenthetical phrase in 7.9(4)"f."

5. In the first sentence of 7.9(5)"c," the phrase "required partners" was changed to "mandatory partners."

6. In 7.10(1)"c"(1), "previous partnerships negotiated for services for customers" was added to the criteria, and in 7.10(1)"c"(2), "effective use of previous grant funds" was added to the criteria.

7. At the end of 7.12(4), the phrase "with the assistance of the department" was added.

8. Minor changes in wording were made to 7.13(1)"f" and "g," and paragraph "p" was added to include a description of individual training accounts in the regional plan.

9. New rules 877—7.14(84A,PL105-220) and 7.15(84A,PL105-220) were added to outline allowable activities and services and the requirements for individual training accounts.

10. Rules 877—7.14(84A,PL105-220) to 877—7.22(84A,PL105-220) were renumbered as 877—7.16(84A,PL105-220) to 877—7.24(84A,PL105-220) because of the addition of rules 877—7.14(84A,PL105-220) and 877—7.15(84A,PL105-220).

11. In 7.17(8)"a," the prior approval to purchase personal computers was deleted.

12. In 7.17(8)"d," the circumstance requiring unnumbered property tags was changed to any property with an aggregate value of $2,000 or more at the time of purchase.

13. In 7.17(8)"e"(1)"1," the phrase "if applicable" was added at the end of the item.

14. In 7.17(10), paragraphs "g" to "m" were added to define certain costs that are not allowable under WIA.

15. In rule 877—7.17(84A,PL105-220), subrules 7.17(11) to 7.17(14) were added to clarify record retention, access, recovery and substitution requirements.

16. In subrule 7.18(1), the single audit was further defined by adding the phrase "in compliance with OMB circular A-133 (A-133)."

17. The phrase "fund source pages" was deleted from subrule 7.20(1).

The chapter provides local elected officials, regional workforce investment board members and local workforce development partners with the necessary policies and procedures to administer the Workforce Investment Act of 1998 beginning July 1, 2000.

The Workforce Development Board adopted the new chapter on April 19, 2000.

These rules are intended to implement Iowa Code sections 84A.1 to 84A.1B, Iowa Code chapter 96, and the Workforce Investment Act of 1998.

This new chapter will become effective on June 21, 2000.

The following **new** chapter is adopted.

CHAPTER 7
IOWA WORKFORCE INVESTMENT ACT PROGRAM

877—7.1(84A,PL105-220) Designation of responsibility. Through Executive Order Number One and Executive Order Number Five, the department of workforce development was designated by the governor as the department responsible for activities and services under the Workforce Investment Act (WIA) of 1998 (P. L. 105-220).

877—7.2(84A,PL105-220) Purpose. The purpose of the Iowa workforce investment Act program is to meet the needs of businesses for skilled workers and the training, education and employment needs of individuals through a statewide, one-stop workforce development center system.

877—7.3(84A,PL105-220) Definitions.

"Chief elected official board" means the units of local government joined through an agreement for the purpose of sharing liability and responsibility for programs funded by the Workforce Investment Act of 1998.

"Contractor" means grantees, subrecipients, coordinating service providers, and service providers.

"Coordinating service provider" means the entity or consortium of entities selected by the regional workforce investment board and the chief elected official board to coordinate partners within the workforce development center system. The coordinating service provider is one of the workforce development center system partners.

"Department" means the department of workforce development.

"Director" means the director of the department of workforce development.

"Local elected official" means the county supervisors and mayors of a region's cities with a population of more than 50,000.

"Local grant recipient" means the chief elected official board.

"Mandatory partners" means the service providers that make their services available through the workforce development center system and use a portion of their resources to support the operation of the regional workforce development center system and the delivery of core services to their customers. Entities that carry out the following federal programs are required to make their services available through the workforce development center system: Wagner-Peyser Act; Unemployment Insurance; Senior Community Service Employment Activities - Title V Older Americans Act; Adult Education and Literacy Activities - Title II; Title I of the Rehabilitation Act of 1973; Welfare to Work; Veterans Services under Chapter 41, Title 38; Employment and Training Activities under Community Block Grants; HUD Employment and Training Activities; and Post-Secondary Vocational Education Activities under the Carl Perkins Act. In addition, those entities selected to provide Workforce Investment Act funded services for adults, dislocated workers and youth are mandatory partners, as are service providers for Native American programs, migrant and farm worker programs, veterans workforce programs, and Job Corps.

"Regional workforce investment board (RWIB)" means a board established according to 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code.

"Subrecipient" means an entity selected by the chief elected official board to receive the Workforce Investment Act funds in a region from the department and disburse those funds to the entity(ies) designated by the regional workforce investment board.

"Workforce development center system" means the regional network of workforce development centers and access points for workforce development services supported by the chief elected official board, regional workforce investment board, partners, service providers, and vendors. The system is focused on meeting the needs and priorities of the customer through an integrated service delivery system based on interagency partnerships and the sharing of resources.

"Workforce Investment Act of 1998," "WIA" or "the Act" means Public Law 105-220.

877—7.4(84A,PL105-220) Service delivery region designations. The governor is responsible for the designation of workforce investment regions with the assistance of the state workforce development board, after consultation with the chief elected officials and after consideration of comments received through a public comment process.

7.4(1) In making the designation of regions, the governor shall take into consideration the following:

a. Geographic areas served by local educational agencies and intermediate educational agencies;

b. Geographic areas served by postsecondary educational institutions and vocational education schools;

c. The extent to which the regions are consistent with labor market areas;

d. The distance that individuals will need to travel to receive services provided in the regions; and

e. The resources of the areas that are available to effectively administer the activities carried out through the workforce development centers.

7.4(2) In order to initiate the designation process, the governor shall publicly announce the proposed region designations after receiving a recommendation from the state workforce development board. This will begin a public comment period of two weeks, during which local elected officials and other interested parties may comment on the proposed designations. Due to state legislative limitations, the maximum number of regions that may be designated is 16.

7.4(3) Any request from any unit of local government with a population of 500,000 or more shall be approved by the governor. In addition, the governor shall approve any requests from any unit of general local government, or consortium of contiguous units of general local government, that was a service delivery area under the federal Job Training Partnership Act, provided that it is determined that the area performed successfully in each of the last two program years and has sustained the fiscal integrity of funds. For the purposes of this subrule, "performed successfully" means that the service delivery area met or exceeded the performance for the following performance standards as appropriate:

a. Title IIA: adult follow-up employment rate; adult welfare follow-up employment rate; adult follow-up weekly earnings; and adult welfare follow-up weekly earnings.

b. Title III: entered employment rate; and average wage at placement.

Also for the purposes of this subrule, "sustained fiscal integrity" means that the Secretary of the Department of Labor has not made a final determination during any of the last three years that either the grant recipient or administrative entity misspent funds due to willful disregard of the requirements of the Job Training Partnership Act, gross negligence, or failure to observe accepted standards of administration.

7.4(4) The final designation of the regions shall be made by the governor once all comments have been received and reviewed.

7.4(5) Any unit of general local government, or consortium of contiguous units of general government, that requests, but is not designated, a region under 7.4(3) may submit an appeal in accordance with the provisions of 7.24(12).

877—7.5(84A,PL105-220) Chief elected official board. Each region is required to form a chief elected official board made up of representatives of the elected officials of local governments within the region.

7.5(1) The board shall consist of a representative of each county within a region and a representative of each of the region's cities with a population of 50,000 or more. Although required to participate, the supervisors or mayors may choose to "opt out" by resolution of their full boards of supervisors or city councils. By exercising this option, the county or city will no longer share in the liability for the WIA funds or have a voice in the design and oversight of the system.

7.5(2) The board shall be formed through an agreement that details how the responsibilities and liabilities related to WIA programs will be shared by the local governments. At a minimum, the agreement must contain the following items:

a. All elements of an agreement required by Iowa Code chapter 28E for joint exercise of governmental powers;

b. Process for selecting the chairperson;

c. Process for nominating and selecting appointments to the regional workforce investment board;

d. Apportionment of responsibility and liability among participating units of government, including losses, expenses and burdens that may result from any misuse of WIA grant funds; and

e. Designation of an entity to serve as the local subrecipient.

7.5(3) The fully executed agreement, or any amendments to the agreement, must be filed with the secretary of state and the county recorder of each county that is a party to the agreement. A copy of the agreement and any amendments must also be sent to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

7.5(4) The chief elected official board shall serve as the local grant recipient and be liable for any misuse of WIA grant funds, unless an agreement is reached with the department to act as the local grant recipient and to bear such liability. The department shall serve as a region's local grant recipient only in rare or extreme circumstances.

7.5(5) The chief elected official boards have the following roles and responsibilities:

a. Providing input to the governor, through the department and state workforce development board, on designation of workforce investment regions;

b. Securing nominations for regional workforce investment board vacancies in accordance with 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code; and

c. Accepting liability for any misuse of WIA funds expended under contract with the chief elected official board.

7.5(6) In partnership with the regional workforce investment board, the chief elected official board is responsible for:

a. Negotiating and reaching agreement with the department on regional performance standards;

b. Appointing a youth advisory council;

c. Determining the role of the coordinating service provider;

d. Designating and certifying the coordinating service provider;

e. Developing a chief elected official/regional workforce investment board agreement to detail how the two boards shall work together in establishing and overseeing the region's workforce development center system, as defined in 877—7.7(84A,PL105-220);

f. Developing and entering into a memorandum of understanding with the region's workforce development center system's partners;

g. Conducting oversight of the WIA adult and dislocated worker services, youth programs, and the workforce development center system;

h. Evaluating service delivery to determine if regional needs and priorities are being met;

i. Determining whether regional needs have changed and, if so, whether a plan modification is necessary;

j. Ensuring quality improvement is ongoing and performance standards are met; and

k. Developing and submitting the regional workforce development customer service plan based on a regional needs assessment and analysis.

877—7.6(84A,PL105-220) Regional workforce investment board. Each region shall establish a regional workforce investment board as defined in 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code. The roles and responsibilities of the regional workforce investment board include:

1. Selecting service providers for WIA adult and dislocated worker intensive services and youth programs.

2. Establishing policy for the region's workforce development center system.

3. Developing a budget to carry out the duties of the board, subject to the approval of the chief elected official board.

4. Coordinating WIA youth, adult and dislocated worker employment and training activities with economic development strategies and developing other employer linkages with these activities.

5. Promoting the participation of private sector employers in the workforce development system and ensuring the availability of services to assist such employers in meeting workforce development needs.

6. Certifying eligible training providers.

7. Determining the use of the strategic workforce development fund, including the operation and funding of a summer or in-school youth program(s), use of discretionary funds, and selection of service providers.

8. Selecting the welfare-to-work service provider.

9. Submitting an annual report to the state workforce development board.

10. Establishing cooperative relationships with other boards in the region.

11. Directing the activities of the youth advisory council.

12. Sharing the duties with the chief elected official board as outlined in subrule 7.5(6).

877—7.7(84A,PL105-220) Regional workforce investment board/chief elected official board agreement. Each regional workforce investment board and chief elected official board shall enter into an agreement to define how they shall share certain responsibilities.

7.7(1) At a minimum, the agreement must include the following elements:

a. How the coordinating service provider will be selected;

b. How the boards will be involved in negotiations of performance measures with the department;

c. How the boards will develop a memorandum of understanding with the region's workforce development center system's partners;

d. How the boards will develop and approve the regional workforce development customer service plan;

e. How the boards will share the oversight of the workforce development center system;

f. Process that will be used by the boards to appoint members to the youth advisory council;

g. Process for modifying or amending the agreement;

h. Process to be used to develop an operating budget for the regional workforce investment board and youth advisory council; and

i. Methods of communications between the two boards.

7.7(2) A fully executed copy, and any subsequent modifications, of the agreement shall be submitted to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

877—7.8(84A,PL105-220) Youth advisory council. Each region must appoint a youth advisory council to provide expertise and make recommendations regarding youth employment and training policy.

7.8(1) The roles and responsibilities of the youth advisory council, at the direction of the regional workforce investment board, include the following:

a. Assist in the development of the regional customer service plan relating to eligible youth;

b. Recommend and oversee youth service providers; and

c. Coordinate youth activities funded under WIA.

7.8(2) Youth advisory council membership shall include:

a. Members of the regional workforce investment board that have a special interest or expertise in youth policy;

b. Individuals who represent youth service agencies, such as juvenile justice and local law enforcement agencies;

c. Individuals who represent local public housing authorities, if applicable;

d. Parents of youth eligible for WIA youth services or who were served under a Job Training Partnership Act youth program;

e. Individuals with experience relating to youth activities;

f. Former Job Training Partnership Act participants;

g. Representatives of the Job Corps, if Job Corps has an office within the region; and

h. Any other individuals that the chairperson of the regional workforce investment board, in cooperation with the chief elected official board, determines to be appropriate.

7.8(3) The size of the youth council, the number of representatives from each sector, term length, nomination process, and county/city representation are decisions of the regional workforce investment board and chief elected official board.

7.8(4) The regional workforce investment board shall submit the name, mailing address, and sector affiliation of each youth advisory council appointee to the department for mailing list purposes. The list, and subsequent updates due to new appointments, shall be submitted to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

877—7.9(84A,PL105-220) Selection of coordinating service provider. To receive funds made available under Title I of WIA, the regional workforce investment board, in agreement with the chief elected official board, must designate an entity as the coordinating service provider for the workforce investment region.

7.9(1) The regional workforce investment board and chief elected official board must determine the role of the coordinating service provider. At a minimum, the coordinating service provider's roles and responsibilities shall include the following:

a. Provide overall customer management and tracking, including responsibility for results of enrollments.

b. Manage the workforce development center system in the region, including workforce development center facilities, and ensure that services are accessible and available in every county of the region.

c. Ensure workforce development center system partners' compliance with the memorandum(s) of understanding.

d. Coordinate and negotiate the resource sharing agreement.

e. Ensure that performance standards and customer satisfaction goals for the region's workforce development center system are met.

f. Provide information and feedback to the regional workforce investment board and chief elected official board concerning the delivery of the services outlined in the customer service plan versus the needs and priorities identified in the regional needs assessment and analysis.

g. Maintain, promote and market the regional workforce development center system.

h. Develop and submit an annual progress report toward meeting the needs and priorities identified in the regional needs assessment and analysis to the regional workforce investment board.

i. May, as described in the memorandum(s) of understanding, determine eligibility for training services.

7.9(2) The regional workforce investment board and chief elected official board need to determine if they want to grandfather the current coordinating service provider, based on the role that has been determined. The boards also need to determine if the current coordinating service provider desires to be grandfathered.

7.9(3) If the regional workforce investment board or chief elected official board does not desire to grandfather the existing coordinating service provider, or if the coordinating service provider members do not desire to be grandfathered, then the service provider(s) needs to be selected prior to the designation of the coordinating service provider.

7.9(4) The coordinating service provider may be a public or private entity, or a consortium of entities, of demonstrated effectiveness located in the region. Eligible entities may include, but are not limited to, the following:

a. A postsecondary educational institution;

b. An employment service agency established under the Wagner-Peyser Act;

c. A private nonprofit organization (including a community-based organization);

d. A private, for-profit entity;

e. A government agency; or

f. Another interested organization (includes a local chamber of commerce, labor organization or other business organization).

Elementary schools and secondary schools are the only entities not eligible for designation or certification as a coordinating service provider. However, nontraditional public secondary schools and area vocational schools are eligible for designation.

7.9(5) To designate a coordinating service provider, the regional workforce investment board must utilize one of the three processes listed below. More than one option may be pursued concurrently.

a. An agreement with the governor to designate the coordinating service provider that was in place on August 7, 1998. In order to utilize this option, the chairpersons of the regional workforce investment board and chief elected official board must provide a written notice to the department indicating that both boards have taken appropriate action and desire to pursue this option.

b. A competitive process. At a minimum, the competitive process to designate the coordinating service provider shall include the following:

(1) Public notice. A public notice shall be published in one of the official county newspapers, as designated by the county board of supervisors. The public notice must indicate that both boards shall hold a joint meeting to select the coordinating service provider(s) for the region. The notice must list the criteria that will be used in the selection of the coordinating service provider(s). The notice must also require that written proposals be submitted by a specific date and invite interested entities to give presentations and answer questions relating to the selection criteria in 7.9(6) at the joint public meeting. Notices must also be mailed to potentially interested entities within the region.

(2) Public meeting. Since both boards must agree on the designation of the coordinating service provider, at a minimum, the boards shall jointly conduct a public meeting to review the written proposals received, obtain any additional information from entities submitting written proposals, and reach an agreement as to the selection(s).

c. An agreement between the regional workforce investment board and a consortium of entities that, at a minimum, includes three or more of the mandatory partners. In order to utilize this option, at a minimum, the regional workforce investment board and chief elected official board shall notify all partners that they are willing to consider proposals from mandatory partners and hold an open meeting to obtain input and finalize the action.

7.9(6) The following criteria are suggested for use in the selection of a coordinating service provider:

a. The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports, and capability of the agency's fiscal unit to manage a similar type of program or project;

b. The likelihood of meeting program goals based upon factors such as past performance, staff commitment, and availability and location of staff;

c. The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the programs; and

d. Other criteria as determined by both boards.

877—7.10(84A,PL105-220) Selection of service providers. Core and intensive services for the adult program and the dislocated worker program shall be provided through the workforce development center. These services may be provided by one entity or a number of different entities. If the role of the coordinating service provider includes the provision of core and intensive services for adults and dislocated workers, then the selection of adult and youth service providers may be combined with the selection of the coordinating service provider. The regional workforce investment board and chief elected official board must determine the most effective and efficient manner to provide these services in the region. The regional workforce investment board and chief elected official board must also determine which service providers will be responsible for ensuring that performance standards are met and that the service provider(s) responsible for performance have the authority to make enrollment decisions for their participants.

7.10(1) In selecting service providers, the regional workforce investment board may use the following procedure or may develop a more formal procurement procedure. At a minimum, the procedure to designate service providers must include the following:

a. Public notice. A public notice shall be published in the official county newspaper, as designated by the county board of supervisors. The public notice must indicate that the regional workforce investment board shall hold a meeting to select the service provider(s) to provide core and intensive services for the adult and dislocated worker programs under Title I. The notice shall list the criteria for the selection of the service provider(s) and invite interested entities to give presentations and answer questions relating to the selection criteria. Notices shall also be mailed to potentially interested entities within the local region.

b. Public meeting. The regional workforce investment board shall conduct a public meeting to obtain information from entities interested in providing core and intensive services in the local region and to reach an agreement as to the selection of the service provider(s).

c. Criteria for selecting service providers. The following are examples of criteria that could be considered and addressed in the selection of a service provider:

(1) The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports, previous partnerships negotiated for services for customers, and capability of the agency's fiscal unit to manage a similar type of program or project;

(2) The likelihood of meeting performance goals based upon factors such as past performance, effective use of previous grant funds, staff commitment, and availability of staff;

(3) The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the program; and

(4) Other criteria as determined by the regional workforce investment board.

7.10(2) Youth service providers shall be selected via a competitive process and based on recommendations of the youth advisory council. Since the delivery of the youth services could be accomplished through a number of different service providers, the regional workforce investment board should initially designate a youth service provider to coordinate the operation of the youth program and to provide eligibility, enrollment, objective assessment and individual service strategy services for youth. Additional youth service providers could be designated at a later date. At a minimum, the procedure to designate the youth service provider(s) must include the following:

a. Public notice. A public notice shall be published in one of the official county newspapers, as designated by the county board of supervisors. The public notice must indicate

that the regional workforce investment board shall hold a public meeting to select a youth service provider to coordinate the operation of the youth program, and to provide eligibility, enrollment, objective assessment and individual service strategy services for youth. The notice must list the criteria to be used in the selection of the youth service provider(s) and must require that written proposals be submitted by a specific date. The notice must also invite interested entities that have submitted written proposals to give presentations and answer questions relating to the selection criteria at the public meeting. Notices must also be mailed to potentially interested entities within the local region.

b. Public meeting. The regional workforce investment board must conduct a public meeting to review the written proposals received, obtain any additional information from entities submitting written proposals, and reach an agreement as to the selection(s).

c. Criteria for selecting youth service providers. The following are examples of criteria that could be considered and addressed in the selection of a service provider:

(1) The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports and capability of the agency's fiscal unit to manage a similar type of program or project;

(2) The likelihood of meeting performance goals based upon factors such as past performance, staff commitment, and availability of staff;

(3) The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the program; and

(4) Other criteria as determined by the regional workforce investment board.

7.10(3) Entities with taxing authority may not use tax paid services as in-kind matching funds.

877—7.11(84A,PL105-220) Memorandum of understanding. The memorandum of understanding is an agreement developed and executed between the regional workforce investment board, with the agreement of the chief elected official board, and the workforce development center system partners relating to the operation of the workforce development center system in the region. There may be a single memorandum of understanding developed that addresses the issues relating to the regional workforce development center system, or the regional workforce investment board and partners may decide to enter into several agreements. Regardless of whether there is a single agreement or multiple agreements, each partner should be aware of the contents of all of the agreements executed.

7.11(1) The regional workforce investment board and the chief elected official board should initiate the negotiation process for the development of the agreement. Prior to the start of negotiations, the following tasks shall be completed:

a. Identify all of the local partners and the services they provide.

b. Name the coordinating service provider.

c. Determine the role of the coordinating service provider.

d. Complete the regional needs assessment and analysis.

e. Execute a single memorandum of understanding or multiple memorandums of understanding.

7.11(2) At a minimum, the memorandum of understanding shall include:

a. The services to be provided through the workforce development center system.

b. The location of the comprehensive workforce development center(s), as well as other locations where each partner's services will be provided. All partners must make their core services available, at a minimum, at one comprehensive physical center in the region. All adult and dislocated worker core services shall also be available at the comprehensive center. In addition, core services may be provided at additional sites, and partners' applicable core services need not be provided exclusively at the comprehensive workforce development center. The core services may be made available by the provision of appropriate technology at the comprehensive workforce development center by co-locating personnel at the center, by cross-training of staff, or through a cost reimbursement agreement.

c. The programs and services that will be available at the different locations must be specified, as well as the manner in which the services will be made available.

d. The particular arrangements for funding the services provided through the workforce development center system and the operating costs of the system. Each partner must contribute a fair share of the operating costs based on the use of the workforce development center delivery system by the individuals attributable to the partner's program. While the resources that a partner contributes do not have to be cash, the resources must be of value and must be necessary for the effective and efficient operation of the center system. The specific method of determining each partner's proportionate responsibility must be described in the agreement. This could include a list of resources that each partner is providing toward the operation of the system. Since most partners' budgets fluctuate on an annual basis, partner contributions for the operating costs of the system should be reevaluated annually.

e. The partners who will be using the common intake/case management system as the primary referral mechanism, and how referrals will occur between and among the partners not utilizing the common intake/case management system.

f. When the agreement will become effective as well as when the memorandum will terminate or expire. The effective date must be no later than July 1, 2000.

g. The process or procedure for amending the agreement. The procedure should include such items as:

(1) Identification of who can initiate an amendment;

(2) Time lines for completing an amendment;

(3) Conditions under which an amendment will become necessary; and

(4) Method of communicating changes to all of the partners.

7.11(3) It is a legal obligation for the regional workforce investment board, chief elected official board and partners to engage in good-faith negotiation and reach agreement on the memorandum of understanding. Any or all parties may seek the assistance of the department or other appropriate state agencies in negotiating the agreements. After exhausting all alternatives, the department or the other state agencies may consult with the appropriate federal agencies to address impasse situations. If the regional workforce investment board and chief elected official board have not executed a memorandum of understanding with all of the mandatory partners and service providers, the region shall not be eligible for state incentive grants awarded for local cooperation.

877—7.12(84A,PL105-220) Performance measures. The programs authorized in Title I are evaluated by measures established by the Act on a state and regional basis. In order for

the state to qualify for incentive funds, it must meet performance standards set for these measures, in conjunction with successful performance by programs funded under the Carl Perkins Act and the Workforce Investment Act Title II.

7.12(1) Standards for measurement for each region shall be established through negotiations between the department, the chief elected official board and each regional workforce investment board.

7.12(2) Performance outcome measures. The overall mission of Iowa's workforce development center system is to increase the size of the skilled labor force and increase earned income among Iowa citizens. Each region's workforce development center system shall address its locally developed priorities in conjunction with the above goals. In addition to having the performance of the regional workforce development center system evaluated as a whole, all Title I programs shall be evaluated based on the following outcome measures:

a. Adult program outcome measures.

(1) Entry into unsubsidized employment;

(2) Retention in unsubsidized employment for six months after entry into employment;

(3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

b. Dislocated worker program outcome measures.

(1) Entry into unsubsidized employment;

(2) Retention in unsubsidized employment for six months after entry into employment;

(3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

c. Youth aged 19 to 21 outcome measures.

(1) Entry into unsubsidized employment;

(2) Retention in unsubsidized employment for six months after entry into employment;

(3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter postsecondary education, advanced training, or unsubsidized employment.

d. Youth aged 14 to 18 outcome measures.

(1) Attainment of basic skills and, as appropriate, work readiness or occupational skills;

(2) Attainment of secondary school diplomas or their recognized equivalents; and

(3) Placement and retention in postsecondary education, advanced training, military service, employment, or qualified apprenticeships.

e. Customer satisfaction of participants.

f. Customer satisfaction of employers.

7.12(3) Other measures. The following measures shall also be tracked and progress reported.

a. Entry by participants who have completed training services into unsubsidized employment related to the training received;

b. Wages at entry into employment (including rate of wage replacement for groups of participants, such as dislocated workers);

c. Cost of workforce investment activities relative to the effect of the activities on the performance of participants;

d. Retention and earnings received in unsubsidized employment 12 months after entry into the employment; and

e. Performance of recipients of public assistance, out-of-school youth, veterans, individuals with disabilities, displaced homemakers, and older individuals, as required by the Department of Labor.

7.12(4) Retention in employment measures and wages earned measures will be calculated using data from the unemployment insurance wage record database with the assistance of the department.

7.12(5) Regional performance standards shall be negotiated between the department, the regional workforce investment board and chief elected official board. Performance standards shall be negotiated for each region annually. The department, the regional workforce investment board and chief elected official board shall evaluate regional performance and the appropriateness of the negotiated standards each year. Formal negotiation shall be conducted for two-year periods and remain consistent with years in which needs assessment activities are conducted.

The department shall establish a minimum acceptable level of performance for each measure, based upon levels established through negotiation between the state and the Department of Labor and using historical data. Negotiation will focus on the adjusted level of performance, which will serve as the regional objective. Performance of a program within a region below the minimum acceptable levels shall be the basis for corrective action or sanctions. Performance above adjusted levels shall be the basis for incentive awards. In addition, regions may negotiate maximum levels of performance (level at which adjusted levels shall not be negotiated beyond during the first five years).

7.12(6) Incentive awards. A portion of the state level funds shall be reserved from Title I programs to provide incentive awards to regions that demonstrate superior performance and to provide technical assistance to all regions. Incentive awards, which are granted during a program year, shall be distributed based upon performance from the previous program year. Actual distribution of the funds shall occur after the end of each program year when final performance standards are calculated. At that time, performance shall be compared against the region's adjusted levels to determine eligibility for, and the amount of, incentive awards.

Incentive awards shall be distributed to regional workforce investment boards when average performance across all measures exceeds the average adjusted levels for the percent achieved score for each measure. When the percent achieved score is greater than 100 percent, the region qualifies for a regional incentive award. There is no requirement for the number of individual measures that must be exceeded, but the customer and employer satisfaction measures must be exceeded for a region to qualify for an incentive award.

The regional workforce investment board must utilize the incentive funds to support Title I services, but it is possible for a region to purchase services that do not count toward performance measurement.

The determination of actual performance achievement on the 17 performance measures and any subsequent incentive awards shall be based on data contained in the integrated cus-

tomer service (ICS) system. The initial determination of incentive awards shall be made no later than September 1 following the end of the program year. By that time, the chair of each regional workforce investment board shall be notified of its initial performance and incentive award determination. The regional workforce investment board, or its designee, shall be allowed two weeks in which to respond to these initial determinations. The response shall be limited to the calculation of the awards. Changes to the data shall not be permitted unless authorized by the department. A final determination and the awarding of incentive funds shall occur no later than October 1 following the end of the program year. The department reserves the authority to adjust the time lines for the awarding of incentive funds if circumstances warrant such an adjustment.

7.12(7) If a region does not meet performance outcome requirements, the department shall provide technical assistance to the region to improve its performance. The following process shall be used:

a. Technical assistance shall be available to the Title I service providers through the department's staff. In situations where regional performance falls below the minimum acceptable level, the department will assist the regional workforce investment board, or its designee, with the development of a performance improvement plan.

b. If regional Title I programs do not meet the minimum acceptable level of performance for two consecutive years, the regional workforce investment board shall be required to develop a performance improvement plan. Technical assistance shall also be available to the regional workforce investment board and chief elected official board to adjust the regional customer service plan to facilitate the success of the region's performance improvement plan.

c. The performance improvement plan must be reviewed and approved by the chief elected official board prior to its submittal of the plan to the department.

7.12(8) If a region falls below the minimum acceptable levels of performance agreed upon for the region's average composite percent achieved score in any of the program areas for two consecutive years, the governor, through the department, shall take corrective action. The critical measures that determine possible sanctions are:

1. Adult program measures average;
2. Dislocated worker program measures average;
3. Youth program measures average; and
4. Customer satisfaction measures average.

At a minimum, the corrective action shall include the development of a performance improvement plan and the possibility of a reorganization plan, under which the governor:

a. Requires the appointment and certification of a new regional workforce investment board;

b. Prohibits the use of particular service providers that have been identified as achieving poor levels of performance;

c. Requires the certification of a new coordinating service provider;

d. Requires the development of a new regional plan; or

e. Requires other appropriate measures designed to improve the performance of the region.

An appeal to sanctions may be made by following the process identified in 7.24(15). If a region is being sanctioned, it shall not qualify for an incentive award in the Title I category.

877—7.13(84A,PL105-220) Regional customer service plan. Each regional workforce investment board, in partnership with the chief elected official board, shall develop and submit to the governor a five-year comprehensive plan that is in compliance with the state's workforce investment plan. A region must have an approved plan in place prior to receiving funds.

7.13(1) The plan shall contain the following elements:

a. Workforce development services available in the region.

b. An explanation of how customers access the services.

c. Statement of the region's workforce development priorities.

d. An identification of the workforce investment needs of businesses, job seekers, and workers in the region.

e. Current and projected employment opportunities, and the job skills necessary to obtain such opportunities.

f. A description of the regional workforce development center system, including the locations of access points, such as the region's one-stop center, satellite workforce development centers, resource centers, and other locations within the region where access to services shall be provided (including the access point in each county for department services that is required by state law); what products and services will be delivered at each of these locations and how access to those services will be provided at that location; identification of the products and services that may be provided upon a fee basis and an explanation of the amount and circumstances when the fee will be applied; and a description or flowchart of the service delivery system, identifying how customers will be served and referred within the center system, and when necessary, how program services, including the adult, dislocated worker and youth programs, will be provided to employers, and to other customers through the adult, dislocated workers, rapid response, and youth programs.

g. Description of the region's policies regarding issues such as activities and services, eligibility, selection, enrollment, and applicant and participant processes.

h. If a region will be sharing the costs of delivering services with another region within a labor market area, that arrangement and cost-sharing agreement shall be described.

i. Identification of the chief elected official board's and regional workforce investment board's oversight policies concerning the region's performance standards and continuous improvement activities.

j. Identification of how the regional workforce investment board and chief elected official board will evaluate the service delivery process and service providers' performance.

k. Description of the annual budget development, review and monitoring process for the region.

l. Description of how economic development groups, older workers, disabled individuals, and partners are provided an opportunity to provide periodic and meaningful input regarding the operation of the workforce development system.

m. Identification of the subrecipient or entity responsible for the disbursal of grant funds.

n. Attachments, including the regional needs assessment and analysis; region's negotiated performance measures; the region's memorandum of understanding; a copy of the region's complaint procedures; procurement procedures; and any documentation customers will be asked to provide for enrollment.

o. Public input process, including proof of publication for public notices soliciting public input for the plan.

p. Limitations on the dollar amount or duration of an individual training account (ITA), or both. There may be a

limit for an individual participant that is based on the needs identified in the individual employment plan, as documented by an individual needs determination, or there may be a maximum amount applied to all ITAs. The amount of any ITA must be decreased by the amount of any Pell Grant awarded to a participant.

7.13(2) Prior to submitting the plan to the governor, the regional workforce investment board shall provide opportunities for public input regarding the plan. The public input process must include, at minimum:

a. Making copies of a proposed plan available to the public through such means as public hearings and public notices in local newspapers.

b. Allowing a 30-day period for regional workforce investment board members and members of the public, including representatives of business and labor organizations, to submit comments to the regional workforce investment board on the proposed plan after the plan is made available to the public. When the plan is submitted to the governor, any comments received expressing disagreement with the plan shall be included.

c. Holding open meetings to make information about the plan available to the public on an ongoing basis.

7.13(3) The plan must be formally approved by the regional workforce investment board and chief elected official board. An original signed document and four copies must be submitted by April 1, 2000, to the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

7.13(4) The department shall review the plan and recommend approval to the state workforce development board, unless deficiencies in the plan are identified in writing by the department and revision is required; or the plan is not in compliance with federal and state laws and regulations, including required consultations and public comment provisions.

7.13(5) Modifications to the plan may be required by the department under certain circumstances, including significant changes in regional economic conditions, changes in the financing available, changes in the regional workforce investment board structure, or a need to revise strategies to meet performance goals. A proposed modification of the plan must be approved by vote of the regional workforce investment board and chief elected official board at a public meeting.

877—7.14(84A,PL105-220) Activities and services.

7.14(1) Core services. Core services are designated as self-service and informational, which do not require registration or eligibility determination; and staff-assisted, which require registration and eligibility determination.

a. The following types of activities and services are considered self-service or informational core services:

(1) Determination of eligibility to receive services under WIA;

(2) Outreach, intake (which may include worker profiling) and orientation to the information and other services available through the system;

(3) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(4) Job search and placement assistance and, where appropriate, career counseling;

(5) Provision of employment statistics information, related to local, regional, and national labor market areas, such as job vacancy listings in such labor market areas, information on job skills necessary to obtain the jobs listed, and information relating to local occupations in demand and the earnings and skill requirements for such occupations.

(6) Provision of performance and program cost information on eligible providers of training services;

(7) Provision of information regarding how the local area is performing on the local performance measures and any additional information with respect to the workforce development center system in the local region;

(8) Provision of accurate information relating to the availability of supportive services, including child care and transportation available in the local region, and referral to such services as appropriate;

(9) Provision of information regarding filing claims for unemployment compensation;

(10) Assistance in establishing eligibility for welfare-to-work and programs of financial aid for assistance for training and education programs that are not funded under the Act and are available in the region;

(11) Follow-up services, including counseling regarding the workplace, for WIA participants who are placed in unsubsidized employment, for not less than 12 months after the first day of employment, as appropriate.

b. The following types of activities and services are considered staff-assisted core services:

(1) Counseling;

(2) Individual job development;

(3) Job clubs; and

(4) Screened referrals.

7.14(2) Intensive services. A participant must receive intensive services before being determined to be in need of training services to obtain employment that leads to self-sufficiency. Intensive services include:

a. Comprehensive and specialized assessments of skill levels and service needs, including diagnostic testing and use of other assessment tools, and in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

b. Development of an individual employment plan to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve the employment goals;

c. Group counseling;

d. Individual counseling and career planning;

e. Case management for participants seeking training services;

f. Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training;

g. Out-of-area job search expenses;

h. Relocation expenses;

i. Internships; and

j. Work experience.

7.14(3) Training services. The following types of activities and services are considered to be training services:

a. Occupational skills training, including training for nontraditional employment;

b. Programs that combine workplace training with related instruction, which may include cooperative education programs;

c. Training programs operated by the private sector;

d. Skill upgrading and retraining;

e. Entrepreneurial training;

f. Job readiness training; and

g. Customized training.

7.14(4) Supportive services. Supportive services are those services necessary to enable an individual to participate in activities authorized under WIA. The following types of supportive services are allowable:

a. Clothing;
b. Counseling;
c. Dependent care;
d. Financial assistance;
e. Health care;
f. Housing assistance;
g. Miscellaneous services;
h. Needs-related payments;
i. Residential/meals support;
j. Services to individuals with disabilities;
k. Supported employment and training; and
l. Transportation.

7.14(5) Youth services. An array of services may be made available to youth. The list of youth services, which must be made available in each region, is as follows:

a. Tutoring, study skills training and instruction leading to secondary school completion, including dropout prevention strategies;

b. Alternative secondary school offerings;

c. Summer employment opportunities directly linked to academic and occupational learning;

d. Paid and unpaid work experiences, including internships and job shadowing;

e. Occupational skill training;

f. Leadership development opportunities;

g. Supportive services;

h. Adult mentoring, for a duration of at least 12 months, which may occur both during and after program participation;

i. Follow-up services; and

j. Comprehensive guidance and counseling, including drug and alcohol abuse counseling.

71.4(6) Customized training. The purpose of customized training is to provide training that is specific to an employer's needs, so individuals will be hired, or retained, by the employer after successful completion of the training. Customized training is normally provided in a classroom setting and is designed to meet the special requirements of an employer or group of employers. The employer(s) must commit to hire, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training and must pay not less than 50 percent of the cost of the training. Participants enrolled in this activity must be covered by adequate medical and accident insurance.

7.14(7) Entrepreneurial training. The purpose of entrepreneurial training is to help participants acquire the skills and abilities necessary to successfully establish and operate their own self-employment businesses or enterprises.

a. The methods of providing training may include classes in small business development, marketing, accounting, financing, or any other courses that could contribute to a participant's goal of self-employment. On-site observation and instruction in business skills may also be provided, as well as individualized instruction and mentoring.

b. Entrepreneurial training may not be used for training in job-specific skills other than business management. However, it may be provided concurrently or consecutively with specific skill training for the purpose of establishing an enterprise that utilizes those skills.

c. Payments under entrepreneurial training are limited to training programs and activities that provide instruction in business operation and management. Funds may not be used for any direct costs associated with the establishment or operation of the business (e.g., materials, inventory, overhead, or advertising).

d. All participants who are enrolled in this training must apply for any financial assistance for which they may qualify, including Pell Grants. For purposes of this requirement, financial assistance does not include loans.

e. Participants must be covered by adequate medical and accident insurance.

7.14(8) Follow-up services. The purpose of these services is to identify any problems or needs that might preclude a former participant from remaining employed or continuing to progress toward unsubsidized employment. The provision of follow-up services and contacts or attempted contacts must be documented in the participant file.

a. Follow-up services must be provided for all adults and dislocated workers who enter employment for not less than 12 months after the first day of employment. The first follow-up contact must occur within the first 30 days of entering employment. The first contact must be a personal contact (in person or by telephone) with the participant. A second contact must occur approximately 90 days after the first day of employment. Contacts are required quarterly thereafter for the next three quarters. The types of follow-up services provided must be based on the needs of the adult or dislocated worker. Follow-up services may include:

(1) Counseling regarding the workplace;

(2) Assistance to obtain better employment;

(3) Determination of the need for additional assistance; and

(4) Referral to services of partner agencies or other community resources.

b. Follow-up services must be provided for all youth for not less than 12 months from the date of exit from the program. The first follow-up contact must occur within the first 30 days of entering employment. The first contact must be a personal contact (in person or by telephone) with the participant. A second contact must occur approximately 90 days after the first day of employment. Contacts are required quarterly thereafter for the next three quarters. Follow-up services may be provided beyond 12 months at the discretion of the RWIB. The types of services provided must be determined based on the needs of the youth. Follow-up services for youth may include:

(1) Leadership development and supportive services;

(2) Regular contact with the youth's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development, and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Tracking the progress of youth in employment, post-secondary training, or advanced training.

7.14(9) Guidance and counseling. Guidance and counseling is the provision of advice to participants through a mutual exchange of ideas and opinions, discussion and deliberation. Guidance and counseling should be academic or employment-related, and may include drug and alcohol abuse counseling and referral. Guidance for youth must be categorized as either academic (primarily provided to assist a youth in achieving academic success), or employment-related (primarily provided to assist a youth in achieving employment-related success).

7.14(10) Institutional skill training. The purpose of this service is to provide individuals with the technical skills and information required to perform a specific job or group of

jobs. Institutional skill training is conducted in a classroom setting.

a. All participants who are enrolled in this service must apply for any financial assistance for which they may qualify, including Pell Grants. All participants must be covered by the training institution's tuition refund policy. In the absence of a refund policy established by the training institution, the WIA service provider must negotiate a reasonable refund policy with the training site.

b. Participants must be covered by adequate medical and accident insurance.

c. A participant who is employed must not be earning a self-sufficiency wage to be enrolled in this service.

7.14(11) Job club. The purpose of this activity is to provide a structured job search activity for a group of participants who develop common objectives during their time of learning and working together, supporting one another in the job search process. The scheduled activities and required hours of participation should reflect proven job search techniques and the employment environment of the region.

a. Participants in job club shall meet the following objectives:

(1) Have been prepared to understand and function in the interview process and the workplace;

(2) Have completed all tools needed for effective work search, including a résumé and an application letter; and

(3) Have the opportunity to complete as many actual job contacts and interviews as possible after completing all of the job search tools.

b. Participants must be covered by adequate medical and accident insurance.

7.14(12) Leadership development. The purpose of leadership development is to enhance the personal life, social, and leadership skills of participants, and to remove barriers to educational and employment-related success. Leadership development opportunities may include the following:

a. Exposure to postsecondary educational opportunities;

b. Community and service learning projects;

c. Peer-centered activities, including peer mentoring and tutoring;

d. Organizational and team training, including team leadership training;

e. Training in decision making, including determining priorities;

f. Citizenship training, including life skills training such as parenting, work behavior training, and budgeting of resources;

g. Employability training; and

h. Positive social behavior or "soft skills," including but not limited to, positive attitudinal development, self-esteem building, cultural diversity training, and work simulation activities.

Leadership development activities are normally conducted in a group setting and must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule. Participants must be covered by adequate on-site medical and accident insurance.

7.14(13) Limited internship. The purpose of a limited internship is to provide a participant with exposure to work and the requirements for successful job retention that are needed to enhance the long-term employability of that participant.

a. Limited internships are limited in duration, devoted to skill development, and enhanced by significant employer investment.

b. Internships may be conducted at public, private, for-profit and nonprofit work sites. The use of an intern should involve a substantial investment of effort by employers accepting the intern, and an intern must not be employed in a manner that subsidizes or appears to subsidize private sector employers.

c. The total participation in a limited internship for any participant must not exceed 500 hours per enrollment. In addition, for in-school youth, participation must be limited to 20 hours per week during the school year. In-school youth may participate full-time during summer vacation and holidays.

d. Limited internship agreements must be written only for positions for which a participant would not normally be hired because of lack of experience or other barriers to employment.

e. Participants may be compensated for time spent in the activity. This compensation may be in the form of incentive and bonus payments or wages. If the participant receives wages, the WIA service provider is the employer of record. The wages paid to the participant must be at the same rates as similarly situated employees or trainees of the employer of record, but in no event less than the higher of the federal or state minimum wage. Participants receiving wages must always be paid for time worked, must not be paid for any scheduled hours they failed to attend without good cause, and must, at a minimum, be covered by workers' compensation in accordance with state law. In addition, all participants who are paid wages must be provided benefits and working conditions at the same level and to the same extent as other employees of the employer of record working a similar length of time and doing the same type of work.

f. Participants receiving incentive or bonus payments based on attendance must not receive any payment for scheduled hours that they failed to attend without good cause.

g. Participants who are not receiving wages must be covered by adequate on-site medical and accident insurance.

h. Limited internships may be used in conjunction with on-the-job training with the same employer. However, when this occurs, the internship must precede on-the-job training, and the on-the-job training time for the participant must be reduced.

i. If the private sector work site employer hires the participant during internship, the internship for that participant must be terminated.

7.14(14) Mentoring. The purpose of mentoring is to provide a participant with the opportunity to develop a positive relationship with an adult. The adult mentor should provide a positive role model for educational, work skills, or personal or social development. Mentoring for youth must be categorized as either academic (primarily provided to assist a youth in achieving academic success) or employment-related (primarily provided to assist a youth in achieving employment-related success).

7.14(15) On-the-job training. The purpose of on-the-job training (OJT) is to train a participant in an actual work situation that has career advancement potential in order to develop specific occupational skills or obtain specialized skills required by an individual employer.

a. Since OJT is employment, state and federal regulations governing employment situations apply to OJT. Participants in OJT must be compensated at the same rates, including periodic increases, as trainees or employees who are sim-

ilarly situated in similar occupations by the same employer. Wages paid must not be less than the highest of federal or state minimum wage or the prevailing rates of pay for individuals employed in similar occupations by the same employer.

b. Participants in OJT must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of job. Each participant in OJT must be covered by workers' compensation in accordance with state law.

c. Payment to employers is compensation for the extraordinary costs of training participants, including costs of classroom training, and compensation for costs associated with the lower productivity of such participants. A trainer must be available at the work site to provide training under an OJT contract. For example, a truck driving position in which the driver drives alone or without immediate supervision or training would not be appropriate for OJT. The payment must not exceed 50 percent of the wages paid by the employer to the participant during the period of the training agreement. Wages are considered to be moneys paid by the employer to the participant. Wages do not include tips, commissions, piece-rate-based earnings or nonwage employee fringe benefits. Payment for overtime hours and holidays is only allowable in accordance with local policies. Holidays may be used as the basis for OJT payments only if the participant actually works and receives training on the holiday.

d. An OJT contract with an employer may be written for a maximum of 6 calendar months unless the contract is for a part-time OJT of less than 500 hours, in which instance the contract period may be extended to a maximum of 12 months. Under no circumstances may an OJT contract be written for a participant if the hours of training required for the position in which the participant is to be trained are determined to be less than 160 hours. The number of OJT training hours for a participant must be determined using a standardized chart, unless the regional customer service plan contains an alternative methodology for determining the length of OJTs. The hours specified must be considered as a departure point for determining actual WIA training hours. If the total number of training hours for the OJT position cannot be provided during the maximum contract length allowable, as many training hours as possible must be provided. The OJT training hours for a participant must be reduced if a participant has related prior employment or training in the same or similar occupation. Previous training or experience, which occurred so long ago that skills gained from that experience are obsolete, may be disregarded to the extent that those skills need to be relearned or reacquired. The number of training hours for a participant may be increased based upon the participant's circumstances, such as a disability. The number of hours of training for any participant as well as the process for extending or reducing those training hours from the basic method of determination must be documented.

e. OJTs may not be written with temporary help agencies or employee leasing firms for positions which will be "hired out" to other employers for probationary, seasonal, temporary or intermittent employment. A temporary employment agency may serve as the employer of record only when the OJT position is one of the staff positions with the agency and not a position that will be "hired out."

f. In situations in which an employer refers an individual for eligibility determination with the intent of hiring that individual under an OJT contract, the individual referred may be enrolled in an OJT with the referring employer only when the referring employer has not already hired the individual and an objective assessment and service plan have been completed which support the development of an OJT with the referring employer.

g. Prior to recontracting with an OJT employer, the past performance of that employer must be reviewed. An OJT contract must not be entered into with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees. Employer eligibility for future OJT contracts need not result in termination if OJT participants voluntarily quit, are terminated for cause, or are released due to unforeseeable changes in business conditions. An employer that has been excluded from OJT contracting because of failing to hire participants may again be considered for an OJT placement one year after that sanction was imposed. In this recontracting situation, if the employer fails to retain the participant after the OJT ends, and there is no apparent cause for dismissing the employee, the employer must not receive any future OJT contracts.

h. OJTs may be written for employed workers when the following additional criteria are met and documented:

(1) The employee is not earning a self-sufficiency wage as defined in the regional customer service plan; and

(2) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes identified in the regional customer service plan.

7.14(16) Preemployment training. The purpose of preemployment training is to help participants acquire skills necessary to obtain unsubsidized employment and to maintain employment.

a. Activities may include, but are not limited to:

(1) Instruction on how to keep jobs, including employer's expectations relating to punctuality, job attendance, dependability, professional conduct, and interaction with other employees;

(2) Assistance in personal growth and development which may include motivation, self-esteem building, communication skills, basic living skills, personal maintenance skills, social planning, citizenship, and life survival skills; and

(3) Instruction in how to obtain jobs, including completing applications and résumés, and interviewing skills.

b. Preemployment training activities must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

c. Participants must be covered by adequate on-site medical and accident insurance.

7.14(17) Remedial and basic skill training. The purpose of remedial and basic skill training is to enhance the employability of participants by upgrading basic literacy skills through basic and remedial education courses, literacy training, adult basic education, and English as a second language (ESL) instruction. Remedial and basic skill training may be conducted in a classroom setting or on an individual basis. Remedial and basic skill training may be used to improve academic or language skills prior to enrollment in other training activities.

a. For adults and dislocated workers, remedial and basic skill training must be offered in combination with other al-

lowable training services (not including customized training).

b. Remedial and basic skill training activities must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

c. Participants must be covered by adequate on-site medical and accident insurance.

7.14(18) Secondary education certification. The purpose of secondary education certification is to enhance the employability of participants by upgrading their level of education. Secondary education certification activities may be conducted in a classroom setting or on an individual basis.

a. Secondary education certification must be categorized as one of the following:

(1) Secondary school;

(2) Alternative school;

(3) Tutoring; or

(4) Individualized study.

b. Participation in this component must be expected to result in a high school diploma, general educational development (GED) certificate, or an individualized educational program (IEP) diploma.

c. Secondary education certification activities must include a schedule for the participant to follow, regular contact by a staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

d. Participants must be covered by adequate on-site medical and accident insurance.

7.14(19) Skill upgrading. The purpose of skill upgrading is to provide short-term prevocational training to participants to upgrade their occupational skills and enhance their employability. Examples of allowable skill upgrading activities include a typing refresher to increase speed and accuracy, keyboarding, or basic computer literacy. Skill upgrading may be conducted in a classroom setting or on an individual basis, but must be short-term in nature and must not exceed nine weeks in duration. Participants must be covered by adequate on-site medical and accident insurance.

7.14(20) Summer activities. The purpose of summer activities is to provide a youth with summer employment activities that are directly linked to academic and occupational learning.

a. The employment component provides participants with a positive employment experience during the summer months. The employment experience should be directly linked to academic and occupational learning activities. The employment component could be a limited internship, on-the-job training, vocational exploration, or work experience.

b. The summer academic learning component assists youth in achieving academic success. For in-school youth the goal is to prevent the erosion of basic literacy skills over the summer months and, to the extent possible, to increase basic literacy skill levels, particularly in reading and math. In addition, the purpose of the academic learning component includes the improvement of the employment potential of individuals who are not intending to return to school.

(1) All participants must have at least 30 hours of academic learning activities included in their service strategies.

(2) The academic learning activities should be designed as a comprehensive instructional approach that includes thinking, reasoning, and decision-making processes that are necessary for success in school, on the job, and in society in general.

(3) The academic learning activity may include:

1. Remedial and basic skill training;
2. Basic literacy training;
3. Adult basic education;
4. English as a second language;
5. General educational development (GED) instruction;
6. Tutoring;
7. Study skills training;
8. Leadership development opportunities;
9. Adult mentoring;
10. Citizenship training;
11. Postsecondary vocational and academic courses;
12. Applied academic courses; and
13. Other courses or training methods that are intended to retain or improve the basic educational skills of the participant.

(4) The academic learning activities may be conducted in a classroom setting or on an individual basis. The academic learning curriculum provided to a participant should take into account the learning level and interests of that participant.

(5) A participant may be paid a wage-equivalent payment (stipend) based upon attendance for time spent in the academic learning activity, or may be paid release time wages for time spent in the academic learning activity if work experience, on-the-job training, limited internship or vocational exploration is the primary activity. In lieu of being paid a stipend or wages, the youth may be rewarded with an incentive and bonus payment. Participants cannot be paid for unattended hours in the academic learning activity.

c. The occupational learning component provides youth with an opportunity to learn occupational skills related to a specific occupation, or to an occupational cluster. The occupational learning activities may be incorporated in the employment or academic learning component or may be a separate component such as skill upgrading.

d. Participants must be covered by adequate on-site medical and accident insurance.

7.14(21) Vocational exploration. The purpose of vocational exploration is to expose participants to jobs available in the private or public sector through job shadowing, instruction and, if appropriate, limited practical experience at actual work sites.

a. Vocational exploration may take place at public, private nonprofit, or private-for-profit work sites.

b. The total participation in this activity for any participant in any one occupation must not exceed 160 hours per enrollment.

c. The length of a participant's enrollment is limited to a maximum of 640 hours, regardless of the number of explorations conducted for the participant.

d. The participant must not receive wages for the time spent in this activity and is not necessarily entitled to a job at the end of the vocational exploration period.

e. The service provider must derive no immediate advantage from the activities of the participant and on occasion the operation of the employer may actually be impeded. In the case of private-for-profit organizations, the participant must not be involved in any activity that contributes, or could be expected to contribute, to additional sales or profits or otherwise result in subsidization of wages for the organization.

f. Vocational exploration activities must include a schedule for the participant to follow, regular contact by a

staff person, a maximum length of time allowed in the activity, and documentation that the participant and staff are making the required contacts and following the established schedule.

g. Participants must be covered by adequate on-site medical and accident insurance.

7.14(22) Work experience. The purpose of work experience is to provide participants with short-term or part-time subsidized work assignments to enhance their employability through the development of good work habits and basic work skills. Work experience should help participants acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment.

a. This activity should be used for individuals who have never worked or have been out of the labor force for an extended period of time including, but not limited to, students, school dropouts, individuals with disabilities, displaced homemakers, and older individuals. Work experience must be limited to persons who need assistance to become accustomed to basic work requirements, including basic work skills, in order to successfully compete in the labor market.

b. Work experience may be used to provide:

(1) Instructions concerning work habits and employer and employee relationships in a work environment;

(2) An improved work history and work references;

(3) An opportunity to actively participate in a specific work field; and

(4) An opportunity to progressively master more complex tasks.

c. Work experiences may be paid or unpaid. If the participant is paid wages, the wages must be at the same rates as similarly situated employees or trainees of the employer of record, but in no event less than the higher of the federal or state minimum wage. In most situations, the service provider is the employer of record. Participants must always be paid for time worked, but must not be paid for any scheduled hours they failed to attend without good cause.

d. In addition, all individuals participating in work experience must be provided benefits and working conditions at the same level and to the same extent as other employees of the employer of record working a similar length of time and doing the same type of work. Each participant must be covered either by workers' compensation in accordance with state law or by adequate on-site medical and accident insurance. Participants are exempt from unemployment compensation insurance. Therefore, unemployment compensation costs are not allowable.

e. Under certain conditions participants in a wage-paying work experience may be paid for time spent attending other activities. Such payments may be made only if work experience participation is scheduled for more than 50 percent of the scheduled training time in all activities. Usually, the participant will be enrolled simultaneously in both the work experience and another activity.

f. Service providers may supplement the costs of wages and fringe benefits only if the service provider is the employer of record. In these instances, the payment for work experience would be made to the employer after adequate time and attendance and supporting documentation is provided. Any such arrangement must be specified in an agreement with the service provider.

g. Work experience may take place in the private, for-profit sector, the nonprofit sector, or the public sector. A participant cannot be placed in work experience with an employer with whom the participant is already employed in an unsubsidized position.

h. Work experience must not be used as a substitute for public service employment activities.

i. A work experience agreement at one work site may be written for a maximum of 13 calendar weeks unless the agreement is for a part-time work experience of less than 500 hours, in which instance the activity period may be extended to a maximum of 26 weeks.

7.14(23) Miscellaneous services.

a. Bonding is an allowable cost, if it is not available under federally or locally sponsored programs. If bonding is an occupational requirement, it should be verified that the participant is bondable before the participant is placed in training for that occupation.

b. The costs of licenses or application fees are allowable if occupationally required.

c. The costs of relocation are allowable if it is determined by service provider staff that a participant cannot obtain employment within a reasonable commuting area and that the participant has secured suitable long-duration employment or obtained a bona fide job offer in the area of relocation.

d. The costs of lodging for each night away from the participant's permanent home are allowable if required for continued program participation. While the participant is away from home or in travel status for required training the costs for meals are allowable.

e. The costs of special services, supplies, equipment, and tools necessary to enable a participant with a disability to participate in training are allowable. It is not an allowable use of WIA funds to make capital improvements to a training or work site for general compliance with the Americans with Disabilities Act requirements.

f. Supported employment and training payments are allowable to provide individuals requiring individualized assistance with one-on-one instruction and with the support necessary to enable them to complete occupational skill training and to obtain and retain competitive employment. Supported employment and training may only be used in training situations that are designed to prepare the participant for continuing nonsupported competitive employment. Employment positions supported at sheltered workshops or similar situations may not utilize this activity.

g. The cost of transportation necessary to travel to and from WIA activities and services, including job interviews, are allowable.

h. Incentive and bonus payments are allowable to reward youth for attendance or achievement. Payments must be based upon a local policy that is described in the regional customer service plan, is applied consistently to all participants and is based on attendance or achievement of basic education skills, preemployment/work maturity skills, or occupational skills. The payments may be based on a combination of attendance and achievement.

877—7.15(84A,PL105-220) Individual training accounts. The individual training account (ITA) is established on behalf of a participant by the intensive service provider. ITA is the mechanism through which adults and dislocated workers shall purchase training services from eligible training providers. Payment for supportive services and related needs is not allowable under the ITAs.

7.15(1) Adult and dislocated worker service providers must provide participants the opportunity to select an eligible training provider, maximizing participant choice yet also allowing consultation from the participant's case manager. Unless the program has exhausted funding or has insufficient funds to cover the estimated cost of the program, the service

provider must refer the individual to the selected training provider. Since funds are limited, priority shall be given to recipients of public assistance and other low-income individuals.

7.15(2) Participants whose application for a Pell Grant is pending may receive training services; however, an agreement must be in place between the participant and the training provider. In the event the Pell Grant is awarded, funds shall be released to reimburse the program and not the participant.

7.15(3) Payments from ITAs may be made in a variety of ways including credit vouchers, electronic transfer of funds through financial institutions, purchase orders, credit/debit cards or other appropriate methods. How funds will be transferred within a region, within the state and outside the state shall be a local decision as described by the regional workforce investment board in the local plan.

7.15(4) The actual implementation of ITAs will involve the service provider(s) in the region where the participant resides and the selected training provider. Payment amounts and duration of an ITA may be limited according to the needs identified in the individual's employment plan and specified in the local plan.

877—7.16(84A,PL105-220) Certification of training providers.

7.16(1) Eligible training providers. Eligible training providers include:

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and provide a program that leads to an associate degree, baccalaureate degree or certificate;

b. Entities that carry out programs under the National Apprenticeship Act; and

c. Other public or private providers of a program of training services.

7.16(2) Training programs. A program of training services is one or more courses or classes that, upon successful completion, lead to a certificate, an associate degree, or baccalaureate degree; or a competency or skill recognized by employers; or a training regimen that provides individuals with additional skills or competencies generally recognized by employers.

7.16(3) Certification process. An application for each training program must be submitted to the regional workforce investment board in the region in which the training provider desires its program to be approved. Each program of training services must be described, including appropriate performance and cost information. Training providers shall be approved, initially, as well as subsequently, by regional workforce investment boards in partnership with the department.

7.16(4) Regional workforce investment board role. The regional workforce investment board shall be responsible for:

a. Accepting applications from postsecondary educational institutions, entities providing apprenticeship programs, and public and private providers for initial and subsequent approval.

b. Submitting to the department the local list of approved providers, including performance and cost information for each program.

c. Ensuring dissemination of the statewide list to participants in employment and training activities through the regional workforce development center system.

d. Consulting with the department in cases where approved providers shall have their approval revoked because inaccurate information has been provided.

e. Notifying all known providers of training in their region regarding the process and time line for accepting applications.

7.16(5) Department role. The department shall be responsible for:

a. Establishing initial approval criteria as well as setting minimum levels of performance for public and private providers;

b. Setting minimum levels of performance measures for all providers to remain subsequently approved;

c. Developing and maintaining the state list of eligible training providers, which is compiled from information submitted by the regional workforce investment boards;

d. Verifying the accuracy of the information on the state list;

e. Removing training providers who do not meet program performance levels;

f. Disapproving training providers who provide inaccurate information; and

g. Disapproving training providers who violate any provision of the Workforce Investment Act.

7.16(6) Initial provider approval. Upon completion of the application, initial approval shall be granted to:

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and provide a program that leads to an associate or baccalaureate degree, certificate, or diploma; and

b. Entities that carry out apprenticeship programs registered under the National Apprenticeship Act.

c. Other public and private providers of training services that currently provide a training program shall be required to submit additional information to the regional workforce investment board in the region in which they desire to provide training services.

The department shall accept documentation from the appropriate certification body for postsecondary educational institutions that are eligible to receive funds under Title IV and National Apprenticeship programs, who do not provide a program of training services at the time of application.

7.16(7) Other public and private providers of training services that currently do not provide a program of training services at the time of application must:

a. Document the need for the training based on specific employer needs in the region; and

b. Develop a training curriculum with the agreement of local employers.

Once the training provider's program is approved, the training provider shall be included on a statewide list that will be available to customers seeking training services.

7.16(8) To be eligible effective July 1, 2000, interested training providers must submit their applications to the regional workforce investment board in their region. The application date shall be established by each regional workforce investment board. All approved applications must be submitted to the department by May 31, 2000. The department has 30 days from the receipt of the regionally approved applications to review and verify the information provided. Initial approval for all training providers shall be effective until November 30, 2001.

7.16(9) If a training provider has been determined to be initially eligible and desires to continue its eligibility, it must submit performance information to the regional workforce investment board and meet performance levels annually.

7.16(10) Each regional workforce investment board shall maintain a list of all approved training providers, including providers for on-the-job and customized training in the region, and make the list available statewide. The regional workforce investment board shall submit all approved applications to the department after the applications are received locally. The department shall be responsible for maintaining the statewide list of all approved training providers. The list will be updated at least annually or as needed and made available to participants in employment and training activities and others through the regional workforce development center system. The regional workforce investment board has the responsibility of notifying all known providers of training in the board's region regarding the process and time line for accepting applications. The department may approve training providers from other neighboring states when requested.

7.16(11) Application process for initial approval.

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and entities that carry out programs under the National Apprenticeship Act must submit an application as required by the regional workforce investment board. The regional workforce investment board may develop its own application procedures or adopt the procedure developed by the department for other public and private training providers.

b. Other public or private providers of a program of training services shall be required to complete and submit an application to the regional workforce investment board in each region as specified below. The application requires identifying information on the training provider and enrollment periods, as well as the following information:

(1) The name and description of the training program(s) to be offered.

(2) The cost of each training program (tuition; books; supplies, including tools; uniforms; fees, including laboratory; rentals, deposits and other miscellaneous charges) to complete a certificate or degree program or an employer-identified competency skill.

(3) A description of the facility and organization of the school.

c. Program completion rate for all individuals participating in the applicable program conducted by the provider. A program completer is a person who has obtained a certificate, degree, or diploma; or received credit for taking the program; or received a passing grade in the program; or finished the required curriculum of the program.

d. Percentage of all students in the program who obtained unsubsidized employment.

e. Average wages of all students in unsubsidized employment.

For initial approval, the regional workforce investment board may require additional information.

7.16(12) Required information for subsequent approval. To remain an approved training provider, all training providers must have their performance information reviewed by the regional workforce investment board on an annual basis. The required performance information for subsequent approval includes the following information:

a. Program completion rate for all individuals participating in the applicable program conducted by the provider.

b. Percentage of all students who obtained unsubsidized employment.

c. Average wages of all students who obtained unsubsidized employment. (If a training provider is using the unemployment insurance database to calculate wages, the average starting wage will be calculated by a national Department of Labor formula that converts quarterly unemployment insurance wages into an hourly rate.)

d. Where applicable, the rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skill of the graduates of the training program.

e. Percentage of WIA participants who obtained unsubsidized employment.

f. Percentage of WIA participants who have completed the training program and who are placed in unsubsidized employment.

g. Retention rates in unsubsidized employment, six months after the first day of employment, of WIA participants who have completed the training program.

h. Average wages, six months after the first day of employment, received by WIA participants who have completed the training program.

i. Average actual cost of training, including tuition, fees, and books, for WIA participants to complete the training program.

The department shall publish, on an annual basis, guidelines on acceptable performance measures for training providers.

7.16(13) Nonapproval. The department, in consultation with the regional workforce investment board, determines whether or not to approve a training provider. If the regional workforce investment board determines that the training provider does not meet the established performance levels, a written recommendation shall be sent to the division administrator of the division of workforce development center administration. The division administrator shall make a determination whether the training provider is disapproved and removed from the list. Regional workforce investment boards and the department must take into consideration the following factors when determining subsequent approval:

a. The specific economic, geographic, and demographic factors in the region in which the training providers seeking approval are located; and

b. Characteristics of the populations served by the training providers seeking approval, including difficulties in serving such populations, where applicable.

If it is determined that an eligible provider or an individual supplying information on behalf of the provider intentionally supplies inaccurate information, the department shall terminate the approval of the training provider for a minimum of two years. If either the regional workforce investment board or the department determines that an eligible provider substantially violates any requirement under the Act, it may terminate approval to receive funds for the program involved or take other such action as determined to be appropriate. A provider whose approval is terminated under any of these conditions is liable to repay all WIA training funds it received during the period of noncompliance.

7.16(14) Appeal process. If a training provider has been determined to be ineligible by failing to meet performance levels, intentionally supplying inaccurate information, or violating any provision of the Act, it has the right to appeal the denial of approval to the department. The training provider shall follow appeal procedures as defined in 7.24(13).

877—7.17(84A,PL105-220) Financial management. Allowable costs shall be determined in accordance with the Office of Management and Budget (OMB) circulars applicable to the various entities receiving grant funds from the depart-

ment. Nothing in this rule shall supersede the requirements placed on each entity as promulgated by the applicable OMB circular including factors which affect allowability of costs, reasonable costs, allocable costs, applicable credits, direct costs, indirect or facility and administrative costs, allowable costs as defined in "selected items of cost," in accordance with the appropriate OMB circular.

Additional regulations applicable to contractors are found in 29 CFR Part 97 for State and Local Governments and Part 95 for Institutions of Higher Education, Hospitals and other Non-Profit Organizations. Exceptions to those regulations are that:

1. Procurement contracts and other transactions between local boards and units of state and local governments must be conducted only on a cost reimbursement basis.

2. Program income shall be calculated based on the methods outlined in 7.17(2).

3. Any excess revenue over expenditures incurred for services provided by a governmental unit or nonprofit must be considered program income.

7.17(1) General requirements of a financial management system. Financial management systems should provide fiscal controls and accounting procedures that conform to generally accepted accounting principles (GAAP) as they relate to programs administered. A financial management system must also have certain procedures in place to ensure that the system meets the requirements of state and federal laws and regulations.

7.17(2) Program income means income generated by a program-supported activity or earned only as a result of the contract.

a. Program income includes:

(1) Income from fees for services performed and from conferences;

(2) Income from the use or rental of property acquired with contract funds;

(3) Income from the sale of commodities or items fabricated under a contract;

(4) Income generated due to revenue in excess of expenditures for services rendered, when provided by a governmental unit or nonprofit entity.

b. Program income does not include:

(1) Interest earned on grant funds, rebates, credits, discounts, refunds, or any interest earned on any of them. (Such funds shall be credited as a reduction of costs if received during the same funding period. Any credits received after the funding period must be returned to the department.);

(2) Taxes, special assessments, levies, fines, and other governmental revenues raised by a contractor;

(3) Income from royalties and license fees, copyrighted material, patents, patent applications, trademarks, and inventions developed by a contractor;

(4) Any other refunds or reimbursements, such as Pell Grant reimbursement. (Such funds shall be credited back to the program that incurred the original costs.);

(5) Any other funds received as the result of the sale of equipment. (Such funds shall be credited back to the program that incurred the original costs.)

c. Costs incidental to the generation of program income must be deducted, if not already charged to the grant, from gross program income to determine net program income. Net program income earned may be retained and not sent back to the department, if such income is added to the funds committed to the particular program under which it was earned. Net program income must be used for allowable program purposes, and under the terms and conditions applicable to the use of that program's funds. Program income generated may be used for any allowable activity under the program that generated that income.

d. All net program income generated and expended must be reported to the department each month on the financial status report. Documentation of the use of net program income must be maintained on file. Any net program income not used in accordance with the requirements of this rule must be returned to the department.

(1) The classification of costs, including cost limitations, apply to net program income. Net program income must be disbursed prior to requesting additional cash payments. Net program income not disbursed prior to the submittal of the annual closeout reports must be returned to the department.

(2) If the net program income cannot be used by the region that generated such income for allowable purposes, the funds must be returned to the department. The department may permit another region to use the net program income for allowable purposes.

7.17(3) Working capital advance payments of federal funds.

a. Reimbursement is the preferred method for payment. However, the subrecipient may provide working capital advance payments of federal funds only to contractors, not vendors or training providers, after determining that:

(1) Reimbursement is not feasible because the contractor lacks sufficient working capital;

(2) The contractor meets the standards of this rule governing advances to contractor;

(3) Advance payment is in the best interest of the grantee or subrecipient; and

(4) The reason for needing an advance is not the unwillingness or inability of the grantee or subrecipient to provide timely reimbursements to meet the contractor's actual cash disbursements.

b. If the conditions in 7.17(3)"a" are met, working capital advance payments may be made to contractors by use of one of the two procedures outlined below:

(1) Cash is only advanced (through check or warrant) to the contractor to cover its estimated disbursement needs for an initial period, generally geared to the contractor's disbursement cycle, but in no event may the advance exceed 20 percent of the contract amount. After the initial advance, the contractor is only reimbursed for its actual cash disbursements; or

(2) Cash is advanced electronically on a weekly basis similar to the system maintained between the department and its contractors. Drawdowns and expenditures must be timed in a way that minimizes the delay between the receipt and actual disbursement of those funds.

7.17(4) Cost allocation. The methods of cost allocation identified in this subrule are not all inclusive. Any method chosen must be consistent with cost allocation principles as defined in the OMB circular applicable to the contractor.

a. Any single cost which is properly chargeable to more than one program or cost category is allocated among the appropriate programs and cost categories based on the benefits derived. Contractors that receive WIA funds are required to maintain a written cost allocation for WIA expenditures. A cost allocation plan is the means by which costs related to more than one program or cost category are distributed appropriately. All costs included in a cost allocation plan must be supported by formal accounting records that substantiate the propriety of eventual charges. Each subrecipient must develop a written plan that addresses how joint costs will be allocated during the fiscal year. The plan must include:

(1) The time period involved;
(2) Programs that must be allocated;
(3) Basis to be used for allocation; and
(4) Exceptions to the general rules.

Any cost that cannot be identified as a direct cost of a particular program or a cost category is allocated based on one of the acceptable methods discussed above and must be included in the cost allocation plan.

b. Cost allocation plans are based on a documented basis. The basis upon which a given cost is allocated is relevant to the nature of the cost being allocated, and whether the cost is a legitimate charge to the program(s) and cost category to which it is being allocated. The basis upon which costs are allocated is consistent throughout the fiscal year.

c. Possible acceptable actual bases for allocating costs include:
(1) Staff timesheet allocation basis (fixed or variable).
(2) Service level allocation basis (fixed or variable).
(3) Usage rate allocation basis (fixed or variable).
(4) Full-time employees basis (fixed only).

d. Funds received under various programs may be allocated using the cost pooling method. Under a cost pooling method, expenditures that cannot be identified to a particular cost category or program may be pooled and allocated in total on a monthly basis. If this method is established, the expenditures must be allocated to each program based upon the benefit derived by each program. Cost pools may be established for a cost category, a line item in an agency's budget or to include multiple programs. The process used to allocate pool costs must ensure that no program or cost category is charged an amount in excess of what is allowed by law or regulation. Examples include:

(1) Administrative, program services or combined cost category pool. (An administrative pool may be used if an entity also has administrative costs associated with programs other than WIA Title I programs.)
(2) Facility or supplies line item cost pool.
(3) Workforce (multiple) programs.

e. Cost allocation plans must be submitted by August 31 of each year to Bureau of Administrative Support, Budgeting and Reporting, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

7.17(5) Indirect costs may be charged to programs, if the contractor has an approved indirect cost agreement with a federal cognizant agency or another state agency and the agreement covers the term of the grant. The plan must be in compliance with the applicable OMB circular for the entity charging indirect costs.

7.17(6) Time and attendance documentation must be maintained for any individual who receives any part of the individual's wage from programs funded by WIA and for all participants receiving payments based in whole or in part on attendance in programs funded by WIA.

7.17(7) A contractor receiving federal or state funds from the department and conducting its own procurement must have written procurement procedures. The procedures must be consistent with applicable state and local laws and regulations; the procurement standards set forth in this subrule; and the regulations as described in 29 CFR Part 95 for institutions of higher education and nonprofit organizations; or 29 CFR Part 97 for state and local government organizations.

a. State and federal procurement laws and regulations, including the procurement standards set forth in this subrule, take precedence over any contractor procurement policies and procedures.

b. The written procurement policies and procedures of each contractor must include, at a minimum, the following elements:
(1) Authority to take procurement actions;
(2) Standards of conduct;
(3) Methods of procurement;
(4) Solicitation procedures; and
(5) Documentation requirements.

c. There are three types of allowable procurement procedures: request for quotations (RFQ), request for proposals (RFP), and sole source. Contractors must conduct competitive procurement except as outlined in "d" below.

d. The circumstances or situations under which sole source procurement is allowable are limited to the following:
(1) Any single purchase of supplies, equipment, or services totaling less than $2,000 in the aggregate;
(2) Single participant work experience, vocational exploration, limited internship and on-the-job training contracts;
(3) Enrollment of individual participants in institutional skills training;
(4) All other individual training or services contracts involving only one participant, except where such contracts include the purchase of property. Such property must be purchased through competitive procedures;
(5) Activities and services that are provided by the fiscal agent, designated service provider, or subrecipient when a determination of demonstrated performance clearly documents the staff's ability to provide the training or services;
(6) A modification to a contract that does not substantially change the statement of work of that contract;
(7) After solicitation of an adequate number of sources, only one acceptable response was received;
(8) Any single service or workshop costing less than $5,000 identified in the regional customer service plan;
(9) Supplies, property and services which have been determined to be available from a single source; and
(10) An emergency situation for which the department or applicable governing boards provide written approval.

7.17(8) Property purchased with funds received through the department must be acquired in accordance with the department standards.

a. Prior approval must be obtained from the department before purchasing any property with a unit acquisition value of $5,000 or more.

b. Real property (real estate and land) shall not be purchased with funds received through the department.

c. Title to all property purchased with the department funds, including participant property, is vested with the state if the state is the majority owner. (If more than one agency contributed funds for the purchase of property, the majority owner is the entity that provided the largest portion of funds. In instances in which entities contributed the same amount of funding, the state is considered the majority owner.)

d. Prenumbered department property tags shall be affixed to all property with a unit acquisition value of $2,000 or more, and to all personal computer logic units and monitors. Unnumbered department property tags shall be affixed to all property with an aggregate value of $2,000 or more at time of purchase. Prenumbered and unnumbered tags will be provided to each region.

e. At a minimum, an inventory of all property must include the following:
1. Property tag number, if applicable;
2. Description of the property;
3. Stock or identification number, including model and manufacturer's serial number, when applicable;

4. Manufacturer;
5. Purchase date;
6. Purchase order number, when applicable;
7. Unit cost;
8. Location of property;
9. Condition of property;
10. Disposition of property as applicable; and
11. Grant agreement number.

f. A physical observation of all property must be conducted by the program operator prior to the end of each fiscal year (June 30). A complete inventory list must be provided to the department in each fiscal year's close-out package.

g. All property purchased with the department funds or transferred from programs under the authority of the department must be used to meet program objectives and the needs and priorities identified in the regional customer service plan. Property purchased with the department funds must be used by the coordinating service provider or program operator in the program or project for which it was acquired, as long as it is needed for that project or program. When no longer needed for the original program or project, the property may be used in other activities supported by the department.

h. The department-purchased property may be made available for use on other projects or programs providing such use does not interfere with the work on the project or program for which it was originally acquired. Priority should be given to other programs or projects supported by the department.

i. Disposition of any property, including participant property, is allowable only with the written concurrence of the department. The request to dispose of property must be in writing and include:

1. A description of the property;
2. Its purchase price;
3. Property tag number;
4. Current condition; and
5. Preference for the method of disposal.

j. The method of disposal may be the outright disposal by local waste agencies of items that are either unusable or unsafe or are currently of immaterial value. Those items that do not fit this definition may be sold locally, using a public process, to generate program income.

k. Requests to dispose of property are to be sent to Business Management, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

l. Any funds generated from sale of property are to be considered program income and must be used to further the objectives of the program(s) that paid for that property originally. If that funding source no longer exists, then the program income generated must be used for other allowable employment or training activities. In cases where the property was purchased from multiple funding sources, the program income generated may be attributed to the funding source that paid the greatest share of the cost of the property. Otherwise, the program income must be allocated by the same percentages as were used to purchase the property originally.

7.17(9) Certifications. All contractors must certify, as a condition to receive funding, compliance with the following laws and implementing regulations:

a. Workforce Investment Act of 1998 (P. L. 105-220) and all subsequent amendments.
b. U.S. Department of Labor implementing regulations.
c. Iowa Code chapters 84, 84A, and 96.
d. Iowa Administrative Code 877—Chapter 11.
e. Iowa Civil Rights Act of 1965.
f. OMB Circular A-87 for State and Local Governments.
g. OMB Circular A-122 for Non-Profit Entities.
h. OMB Circular A-21 for Institutions of Higher Education.
i. Appendix E of 45 CFR Part 74 for hospitals receiving research and development grants.
j. 29 CFR Part 97 for State and Local Governments.
k. 29 CFR Part 95 for Institutions of Higher Education, Hospitals and other Non-Profit Organizations.
l. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).
m. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
n. Americans with Disabilities Act of 1990.
o. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).
p. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
q. Debarment and suspension; restrictions on lobbying (29 CFR Part 93).
r. Drug-Free Workplace (29 CFR Part 98).
s. Other relevant regulations as noted in the department's handbook for grantees and contracts for services with the department.

7.17(10) Unallowable costs. WIA funds shall not be spent on the following:

a. Wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system.
b. Expenses prohibited under any other federal, state or local law or regulation.
c. Foreign travel, if the source of funds is formula funds under Subtitle B, Title I of WIA.
d. Financial assistance for any program involving political activities.
e. The encouragement of a business to relocate from any location in the United States if the relocation results in any employees losing their jobs at the original location.
f. Customized, skill, or on-the-job training or company-specific assessments of job applicants or employees of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employees losing their jobs at the original location.
g. Any region may enter into an agreement with another region within the same labor market to pay or share costs of program services, including supportive services. The agreement must be approved by each regional board providing guidance to the area and shall be described in the regional customer service plan.
h. WIA funds cannot be used for public service employment except for disaster relief employment.
i. Fees may not be charged for placement or referral to a WIA activity. However, services, facilities, or equipment funded under the WIA may be used on a fee-for-service basis by employers in a region in order to provide employment and training activities to incumbent workers when such services, facilities, or equipment is not in use to provide services for WIA participants; if such use for incumbent workers would not have an adverse affect on providing services to WIA participants; and if the income derived from such fees is used to carry out WIA programs.
j. WIA funds may not be spent on employment generating activities, economic development, and other similar activities, unless they are directly related to training for eligible

individuals. Employer outreach and job development activities are directly related to training for eligible individuals. Allowable employer outreach and job development activities include:

(1) Contacts with potential employers for the purpose of placement of WIA participants;

(2) Participation in business associations (such as chambers of commerce);

(3) Staff participation on economic development boards and commissions, and work with economic development agencies to provide information about WIA programs, to assist in making informed decisions about community job training needs, and to promote the use of first source hiring agreements and enterprise zone vouchering services;

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small and new business to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information of WIA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIA activities in the private sector.

k. The employment or training of participants in sectarian activities is prohibited, as is the construction, operation or maintenance of any part of any facility that is used for sectarian instruction or religious worship. However, WIA funds may be used for the maintenance of a facility that is not primarily devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants.

l. WIA Title I funds may not be used for the encouragement of a business to relocate from any location in the United States if the relocation results in any employee's losing a job at the original location. Also, WIA Title I funds may not be used for customized, skill, or on-the-job training or company-specific assessments of job applicants or employees of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee's losing a job at the original location. Pre-award reviews must be conducted to verify that employers are new or expanding and are not relocating from another area.

m. A participant in a program or activity authorized under Title I of WIA shall not displace (including a partial displacement) any current employee as of the date of the participation. In addition, a program or activity authorized under Title I of WIA must not impair existing contracts for services or collective bargaining agreements. If so, the appropriate labor organization and employer must provide written concurrence before the program or activity begins. Regular employees and program participants alleging displacement may file a complaint under WIA grievance procedures.

7.17(11) Record retention. Contractors must maintain all records pertinent to funds received from IWD, including financial, statistical, property, and participant records and supporting documentation.

a. Contractors shall maintain books, records, and documents that sufficiently and properly document and calculate all charges billed for a period of at least five years after the end of each contractor's fiscal year.

b. All records must be retained for a longer period of time if any litigation, audit, or claim is started and not resolved during that period. In these instances, the records must be retained either for five years after the end of the entity's fiscal year or for three years after the litigation, audit, or claim is resolved, whichever is longer.

c. Records for property must be retained for a period of three years after the final disposition of the property.

7.17(12) Disaster recovery system. The contractor must ensure that a satisfactory plan is in place for record recovery in the event that critical records are lost due to fire, vandalism, or natural disaster. All computerized or microfilmed MIS and accounting records must be safeguarded by off-site or multiple-site storage of such records.

7.17(13) Access to records. The state, U.S. Department of Labor, Director—Office of Civil Rights, the Comptroller General of the United States, and any of their authorized representatives must have timely and reasonable right of access to any pertinent books, documents, papers, or other records of the contractor to make audits, examinations, excerpts or transcripts. These rights are not limited to the record retention policies, but may last as long as the records are actually retained by the contractor. If the contractor has established a retention period longer than that required by the regulations, access to those records, by any of the above organizations, does not cease until the records are actually destroyed or discarded.

7.17(14) Records substitution. Substitution of original records can be made by microfilming, photocopying, film imaging or other similar methods.

877—7.18(84A,PL105-220) Auditing.

7.18(1) State and local governments, nonprofits, institutions for higher education and hospitals. Contractors that expend $300,000 or more in a fiscal year in federal funds shall have a single or program-specific audit conducted for that year. Contractors that expend $300,000 or more in federal funds in a fiscal year shall have a single audit conducted, in compliance with OMB Circular A-133 (A-133), except when they elect to have a program-specific audit conducted. Program-specific audits are allowed under the following circumstances:

a. A contractor expends federal funds under only one federal program; and

b. Federal program laws, regulations, or grant agreements do not require a financial statement audit of the contractor.

Contractors that expend less than $300,000 in federal funds in a fiscal year are exempt from federal audit requirements for that year. However, records must be made available for review or audit by the state and federal agencies and the General Accounting Office.

7.18(2) Commercial organizations. If such entities expend more than $300,000 in federal funds in their fiscal year, then either an A-133 audit or a program-specific audit must be conducted.

7.18(3) Vendors. In most cases, contractors need only ensure that procurement, receipt, and payment for goods or services comply with the laws, regulations, and the provisions of contracts or agreements. However, the contractor is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine compliance. If these transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of the contract or agreement.

7.18(4) Relation to other audits. Audits performed in accordance with A-133 are in lieu of any financial audit required under individual federal awards. To the extent that this audit meets a federal agency's needs, it shall rely upon and use such audits. However, this does not limit the authority of the federal agency, including the General Accounting Office, to conduct or arrange for additional audits. Federal agencies that conduct additional audits shall ensure that they build upon audit work previously conducted and be responsible for costs incurred for the additional audit work.

7.18(5) Frequency of audits. With the following exceptions, the audit is normally conducted on an annual basis. Entities which are required by constitution or statute, in effect on January 1, 1987, to have audits performed less frequently are permitted to undergo audits biennially. Also, nonprofit entities that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, are permitted to undergo audits biennially.

7.18(6) Completion and submittal. The audit must be completed and data collection/reporting package forms are to be submitted the earlier of 30 days after the completion of the audit or within nine months after the period covered by the audit. The data collection form and reporting package must also be submitted to the federal clearinghouse designated by the Office of Management and Budget. In addition, one copy of the reporting package and any management letters issued by the auditors are to be submitted to Budgeting and Reporting Bureau, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50319. Each contractor shall provide one copy of the reporting package to the contracting entity that provided the contractor with WIA funds.

7.18(7) Data collection form. Each contractor shall submit a data collection form to the contracting entity that provided the contractor with WIA funds. This form should state whether the audit was completed in accordance with A-133 guidelines and provide information concerning the federal funds and the results of the audit. The form used shall be approved by the Office of Management and Budget, available from the clearinghouse designated by OMB, and include a signature of a senior level representative of the contractor. Also, a certification must be submitted which states that the entity audited complied with the requirements of A-133, that the form was prepared in accordance with A-133, and that the form, in its entirety, is accurate and complete.

The auditors must sign a statement to be included with the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, the form is not a substitute for the reporting package, and the content of the form is limited to the data elements prescribed by OMB.

7.18(8) Reporting package. Auditors are required to complete a reporting package that includes:

1. Financial statements and schedule of expenditures of federal awards;
2. Summary schedule of prior audit findings;
3. Auditor's report(s); and
4. Corrective action plan.

7.18(9) Records retention. One copy of the data collection form and one copy of the reporting package must remain on file for three years from the date of submission to the federal clearinghouse.

7.18(10) Audit resolution. If an audit is completed with no findings, the department shall receive a notification of audit letter from the appropriate audit firm. The auditee shall be notified of the acceptance of that letter. In no case shall the date from receipt of an acceptable audit report or notification letter to the date of the final determination exceed 180 days. The department shall issue an initial determination within 30 days of receipt of each audit report with negative findings. Such initial determination shall identify costs questioned under the audit and either propose corrective actions to be taken or request additional documentation from the auditee.

a. Each initial determination shall include:

(1) Relevant statutory, regulatory or grant agreement citations supporting the findings and determinations;

(2) Necessary corrective actions required by the auditee to achieve compliance;

(3) A request for additional documentation, as necessary, to adequately respond to the findings; and

(4) Notice of the opportunity for an audit resolution conference with the department.

Each auditee shall be allowed a 30-day period in which to respond. An additional 30 days in which to respond may be requested in writing prior to the end of the initial 30 days. Such request shall include the reason the extension is needed and the date by which the response will be completed. Such a request must be received by the department no later than 30 days after the issuance of the initial determination. The auditee shall be notified in writing of the approval or disapproval of the request.

b. Within 30 days after the due date of the response to the initial determination, a final determination shall be issued and sent to the auditee. A final determination shall be issued whether or not a response to the initial determination has been made. The final determination shall include:

(1) Identification of those costs questioned in the audit report that will be allowed and an explanation of why those costs are allowed;

(2) Identification of disallowed costs, a listing of each disallowed cost and a description of the reasons for each disallowance;

(3) Notification to the chief elected official board and auditee of final determination and debt establishment, if relevant; and

(4) Information on the auditee's and chief elected official board's right to appeal through the department's appeals process.

When a debt has been established, the final determination will be used to set up a debt account in the amount of the debt.

7.18(11) The decision to impose the disallowed cost sanction shall take into consideration whether or not the funds were expended in accordance with that program's rules and regulations, the contract agreement, the Iowa Administrative Code and generally accepted accounting practices. Ignorance of the requirements is not sufficient justification to allow a previously questioned cost nor will the auditee's inability to pay the debt be a consideration in the decision to impose the disallowed cost sanction.

7.18(12) An audit file shall be maintained for each audit or notification letter received from each auditee. The audit may not be considered closed until such time as the federal clearinghouse designated by the Office of Management and Budget accepts the state's resolution report.

877—7.19(84A,PL105-220) Debt collection procedures.

7.19(1) Debt collection begins once the debt has been established by either an audit final determination or financial/program monitoring final decision letter. Debts arising from

other forms of oversight will be identified through written communication to the chief elected official board.

7.19(2) If the debt is appealed, debt collection is suspended until that appeal is resolved. If the appeal is granted, debt collection shall not be established.

7.19(3) No earlier than 15 days, but not later than 20 days, after the debt has been established, an initial demand for repayment letter shall be sent to the chief elected official board by certified mail with return receipt requested. The initial demand letter informs the chief elected official board that a debt has been established and references the previous letter that established the debt. When applicable, instructions for requesting a waiver from debt shall be provided in the letter. The chief elected official board shall be granted 15 days from the date of the initial demand letter either to submit payment in full or to forward the applicable request for waiver. If the chief elected official board refuses those options, does not accept the letter, or if no response is received within the required time frame, a final demand for payment shall be issued.

7.19(4) The final demand letter, also sent by certified mail with return receipt requested, shall ask for payment within 10 days from the date of that letter. If the chief elected official board refuses the options identified in the final demand letter, does not accept the letter or does not respond, legal action shall be taken. Such action will seek payment of the debt as well as applicable court costs and accrued interest.

7.19(5) The debt collection process is suspended if a request for waiver is received by the department in accordance with waiver policies applicable to that program. If the request for waiver is denied, the debt collection process will continue.

7.19(6) Payment options. Payment options include the following:

a. Payment in full. Payment of debts is generally a one-time cash payment due at the time of final determination by the department. In cases of documented financial hardship or for other reasons as allowed by law, the department may grant repayment as outlined in "b" or "c" below. However, the department may charge interest on debts from the date they are established.

b. Repayment agreement. A repayment agreement may be negotiated for a time period not to exceed one year. The agreement must be written and signed by both parties. The agreement must include a schedule of payments which includes exact payment dates, amount of debt and each payment, interest, dates of agreement and a requirement for payment in full for breach of the agreement by the chief elected official board.

c. Allocation reduction. Where allowable, a reduction may be made in a chief elected official board's budget to offset a debt. This may be done in cases where the misexpenditure of funds was not due to willful disregard of the Act or regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure. Such allocation reductions will come from administrative funds only.

877—7.20(84A,PL105-220) Grantee report requirements.

7.20(1) Financial reports. Financial status reports and funds verification forms are tools used by the department for oversight of financial activity, as well as providing the documentation necessary to complete state and federal reports. Failure to report in a timely manner may result in advance payment delays, negative performance evaluations or possible termination of the contract.

a. Financial status reports. Expenditures must be reported according to the programs and cost categories identified in the budget summary section of each contract. Revenue is reported according to the amount drawn from the department, via wire transfer, at the end of the reporting period. At least quarterly (September, December, March and June reports) expenditures must be reported on an accrued cost basis. Expenditures should further be reported on a modified first-in, first-out basis, which means the oldest year's funds, by cost category, are to be expended first. Financial status reports and fund source pages are to be submitted to Department of Workforce Development, Bureau of Financial Management, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

b. Funds verification forms. Funds drawn by the contractor from the department are done so by electronic funds transfer. The funds are generally requested on Monday of each week and distributed on Friday of the same week. Exceptions are made for weeks that include holidays, and those are addressed on a case-by-case basis. The financial management bureau of the department shall notify contractors in advance of call-in date changes. Funds are requested by preparation of an electronic funds verification form that is attached to an E-mail request. This is sent to the financial management bureau and is the basis for the Friday wire transfer. In order to establish a wire transfer system for a contractor, bank account information must be received by the department two weeks prior to the first wire transfer of funds. The timing of the contractor's receipt of funds and the disbursement of those funds must be done in a manner that minimizes the time that elapses between those two transactions.

7.20(2) Program reports. The information entered into the department's management information system is the official database to be used for reporting. Reports are to be submitted to the program coordinator responsible for each individual program. Monthly expenditure reports are due the twentieth of the month following the month that is being reported. Final federal program reports for adult and dislocated worker programs are due August 15 of each year. Final federal program reports for youth programs are due May 15 of each year.

7.20(3) Performance reports. Progress on performance objectives must be reported to the department on a quarterly basis. Quarterly progress reports are due from each regional workforce investment board on October 30, January 31, and April 30 of each year. The annual progress report is due from each region to the department on August 15 of each year.

877—7.21(84A,PL105-220) Compliance review system. The department shall conduct annual financial, program, and quality reviews.

7.21(1) Financial compliance reviews. An annual financial compliance review shall be conducted by the department. The on-site reviews will be of all programs administered through written agreement between the department, the subrecipient, and the fiscal agents. Monitoring of non-fiscal agent entities will be limited to those subcontractors of the department that receive $100,000 or more during the fiscal year. The monitoring will be performed to ensure compliance with, but is not limited to, federal and state laws and regulations, the workforce development center system handbook, welfare-to-work handbook, contractual agreements with the department, and generally accepted accounting principles, memorandum(s) of understanding, resource sharing agreements and cost allocation plans.

7.21(2) Program compliance reviews. An annual program compliance review shall be conducted by the department. The reviews will focus on the designated service providers for various programs. The on-site reviews include, but are not limited to, the following: activities and services; applicant and participant processes; participant eligibility; participant file review; procurement procedures; management information systems; local plans; and verifications of program performance. The review will ensure local compliance with the applicable state and federal laws and regulations.

7.21(3) Initial determination. Separate initial determination letters are completed for each on-site visit. The report shall include a description of findings, which includes specific references to the standards, policies or procedures which have been violated; if necessary, recommended and required corrective action to be implemented by the contractor, designated service provider or coordinating service provider; a description of any questioned costs, including the amount; and time frames for completing any corrective action and responding to the initial report. Responses to the initial determination letter shall be submitted to the department within 20 days from the date of receipt of the letter.

7.21(4) Final determination. A final determination letter shall be issued to the subrecipient within 20 days after receipt of the response from the fiscal agent. The letter shall state the department's determination on all findings that required a response and the notification of the right to appeal the final determination. If any findings are unresolved or if costs are disallowed, the letter shall also include a description of the unresolved finding(s); a citation or reference to the applicable regulations or policies on which the finding was based; the final determination of the department on each unresolved finding; and, if there are disallowed costs, the amount of costs disallowed and notification that an initial demand letter shall be sent. Copies of the final determination letter shall be sent to each region's regional workforce investment board, chief elected official board, and coordinating service provider chairs.

7.21(5) Follow-up. Follow-up on findings identified shall be conducted during the following fiscal year's review. The department's follow-up will review corrective actions taken in response to those findings.

7.21(6) Appeals. The subrecipient may submit an appeal of a final determination within ten days of receipt of the final determination. The appeal may be on behalf of a designated service provider, coordinating service provider or the fiscal agent. The appeal must be directed to the Division Administrator, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. The request for an appeal must also include a copy of the final determination and the basis for the appeal. Appeals shall be reviewed by a three-member appeal committee which shall include one staff member from three different bureaus in the department. Appeals shall be reviewed by staff not actually involved in the on-site monitoring that resulted in the original finding and subsequent final determination. A decision on the appeal shall be rendered by a majority vote of the appeal committee. If the appeal committee cannot arrive at a decision, the division administrator shall make the final decision.

7.21(7) Quality reviews. The department shall conduct annual quality reviews. The reviews will focus on overall workforce development center system performance, customer satisfaction, and continuous improvement.

a. System performance measures will be reviewed with the coordinating service provider to identify areas of strength and areas that may need improvement. The review will include an interview with the required workforce development center system partners individually or the partners as a group, or both. The regional customer service plan will also be reviewed to determine what progress is being made to meet the needs and priorities identified by the regional workforce investment board and chief elected official board. In the event system performance standards are not being met, the objective of the review will be to help identify methods for improvement. Should the same issues be identified for two consecutive years, a corrective action plan will be required by the department. All other issues will be referred to the regional workforce investment board for its action.

b. The memorandum(s) of understanding between the workforce development center system partners and the regional workforce investment board will be reviewed. The purpose is to ensure that the products and services offered through the system are available, accessible, and being used.

c. The review will look at efforts being made to coordinate workforce development services throughout the region, to build new partnerships, and to assess the results of these efforts. This may include, but is not limited to, joint grant applications, efforts to integrate services and minimize duplication from the system, level of participation in the system by required and voluntary partners, and unique funding or service delivery methods involving multiple service providers.

d. Overall customer satisfaction of the workforce development center system is to be evaluated. Randomly selected program participants and employers identified in the common intake system will be interviewed. The interview will include, at a minimum, a review of the customer's file as presented on the common intake system, the customer's overall perception of how the customer was treated, an evaluation of the services offered as compared to the needs of the customer, and a review of the case file with the case manager.

e. An exit interview to review the findings will be conducted with the regional workforce investment board and coordinating service provider. Methods for improving systems will be discussed and an agreement reached on their implementation. The coordinating service provider will have 14 days to respond to the findings and recommendations, at which time a final report will be prepared and delivered to the chair of the regional workforce investment board.

877—7.22(84A,PL105-220) Equal opportunity compliance. Reserved.

877—7.23(84A,PL105-220) Regional level complaint procedures. Each coordinating service provider must establish procedures for grievances and complaints. At a minimum, the local procedures must provide:

7.23(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local workforce investment system, including one-stop partners and service providers;

7.23(2) An opportunity for an informal resolution and a hearing to be completed within two days of the filing of the grievance or complaint;

7.23(3) A process which allows an individual alleging a labor standards violation to submit a grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

7.23(4) An opportunity for a local level appeal to the department when:

a. No decision is reached within 60 days; or

b. Either party is dissatisfied with the local hearing decision.

7.23(5) Participants, service providers and other interested individuals must be informed of the local complaint procedure in writing, as well as the ability and procedures to appeal local decisions to the department.

877—7.24(84A,PL105-220) Department complaint procedures. Complaints may be filed with the department to resolve alleged violations of the Act, federal or state regulations, grant agreements, contract or other agreements under the Act. The department's complaint procedure may also be used to resolve complaints with respect to audit findings, investigations or monitoring reports.

7.24(1) Grievances and complaints from customers and other parties related to the regional workforce development center system and regional programs shall be filed through regional complaint procedures. Any party which has alleged violations at the regional level, and has filed a complaint at the regional level, may request review by the department if that party receives an adverse decision or no decision within 60 days of the date the complaint was filed at the regional level.

7.24(2) Any interested person, organization or agency may file a complaint. Complaints must be filed within 90 calendar days of the alleged occurrence. Complaints must be clearly portrayed as such and meet the following requirements:

a. Complaints must be legible and signed by the complainant or the complainant's authorized representative;

b. Complaints must pertain to a single subject, situation or set of facts and pertain to issues over which the state has authority (unless appealed from the regional level);

c. The name, address and telephone number (or TDD number) must be clearly indicated. If the complainant is represented by an attorney or other representative of the complainant's choice, the name, address and telephone number of the representative must also appear in the complaint;

d. Complaints must state the name of the party or parties complained against and, if known to the complainant, the address and telephone number of the party or parties complained against;

e. Complaints must contain a clear and concise statement of the facts, including pertinent dates, constituting the alleged violations;

f. Complaints must cite the provisions of federal or state regulations, grant agreements, or other agreements believed to have been violated, if applicable;

g. Complaints must state the relief or remedial action(s) sought;

h. Copies of documents supporting or referred to in the complaint must be attached to the complaint; and

i. Complaints must be addressed to Complaint Officer, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

7.24(3) A complaint is deemed filed with the department when it has been received by the complaint officer and meets the requirements outlined in 7.24(2). Upon receipt of a complaint, the department will send a copy of the complaint and a letter of acknowledgment and notice to the complainant and any persons or entities cited in the complaint within seven calendar days. The letter of acknowledgment and notice shall contain the filing date and notice of the following opportunities:

a. The opportunity for informal resolution of the complaint at any time before a hearing is convened; and

b. The opportunity for a party to request a hearing by filing with the complaint officer within seven calendar days of receipt of the acknowledgment of the complaint.

7.24(4) Failure to file a written request for a hearing within the time provided constitutes a waiver of the right to a hearing, and a three-member panel shall rule on the complaint based upon the information submitted. If a hearing is requested within seven calendar days of receipt of the acknowledgment of the complaint, the hearing shall be held within 20 calendar days of the filing of the complaint. The party(ies) to the complaint shall have the opportunity to submit written evidence, statements, and documents in a time and manner prescribed by the complaint officer.

7.24(5) The complaint officer shall convene a review panel of three agency staff members to review complaints within 20 calendar days of the receipt of the complaint. The review panel may, at its discretion, request oral testimony from the complainant and the parties complained against. Within 30 calendar days of the receipt of the complaint, the review panel shall issue a written decision, including the basis for the decision and, if applicable, remedies to be granted. The decision shall detail the procedures for a review by the director if the complainant is not satisfied with the decision.

7.24(6) Party(ies) may appeal the decision by filing an appeal with the complaint officer no later than 10 calendar days from the issuance date of the decision. The complaint officer will forward the complaint file to the director for review. If no appeal of the decision is filed within the time provided, the decision shall become the final agency decision.

7.24(7) A complaint may, unless precluded by statute, be informally settled by mutual agreement of the parties at any time before a hearing is convened. The settlement must be effected by a settlement agreement or a statement from the complainant that the complaint has been withdrawn or resolved to the complainant's satisfaction. The complaint officer must acknowledge the informal settlement and notify the parties of the final action. With respect to the specific factual situation which is the subject of controversy, the informal settlement constitutes a waiver by all parties of the formalities to which they are entitled under the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A, the Act, and the rules and regulations of the Act.

7.24(8) Upon receipt of a timely request for a hearing, the complaint officer shall assign the matter to a panel. The panel will give all parties at least seven days' written notice either by personal service or certified mail of the date, time and place of the hearing. The notice may be waived in case of emergency, as determined by the panel, or for administrative expediency upon agreement of the interested parties.

a. The notice of hearing shall include:

(1) A statement of the date, time, place, and nature of the hearing;

(2) A brief statement of the issues involved; and

(3) A statement informing all parties of their opportunities at the hearing.

b. All parties are granted the following opportunities at hearing:

(1) Opportunity for the complainant to withdraw the request for hearing before the hearing;

(2) Opportunity to reschedule the hearing for good cause, provided the hearing is not held later than 20 days after the filing of the complaint;

(3) Opportunity to be represented by an attorney or other representative of choice at the complainant's expense;

(4) Opportunity to respond and present evidence and bring witnesses to the hearing;

(5) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the complaint officer;

(6) Opportunity to question any witnesses or parties;

(7) The right to an impartial review panel; and

(8) A final written agency decision shall be issued within 60 days of the filing of the complaint.

7.24(9) An appeal to the director must be filed within 10 calendar days from the issuance date of the decision and include the date of filing the appeal and the specific grounds upon which the appeal is made. Those provisions upon which an appeal is not requested shall be considered resolved and not subject to further review. Appeals must be addressed to Complaint Officer, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

Upon receipt of an appeal, the complaint officer shall forward the complaint file to the director. The complaint officer shall give written notice to all parties of the filing of the appeal and set a deadline for submission of all written evidence, statements, and documents. The director shall consider all timely filed appeals, exceptions, statements, and documents at the time the decision is reviewed. With the consent of the director, each party may present oral argument. The director may adopt, modify or reject the review panel's decision or remand the case to the review panel for the taking of such additional evidence and the making of such further findings of fact, decision and order as the director deems necessary.

Upon completing the review of the review panel's decision, the director shall issue and forward to all parties a final written decision no later than 60 days after the filing of the initial complaint.

7.24(10) The director's decision is final unless the Secretary of Labor exercises the authority of federal review in accordance with 20 CFR Part 667. Federal level review may be accepted by the Secretary if the complaint meets the requirements of 20 CFR Part 667. Upon exhaustion of the state's grievance and complaint procedure, or when the Secretary has reason to believe that the state is failing to comply with the Act, the state plan, or the region's customer service plan, the Secretary must investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true.

7.24(11) Any party receiving an adverse decision at the regional level may file an appeal within 10 calendar days to the department's complaint officer. In addition, any complaint filed at the regional level with no decision within 60 days of the date of the filing may be reviewed by the department. The request to review the complaint must be filed with the complaint officer within 15 calendar days from the date on which the decision should have been received. The appeal or request for review must comply with the procedures as prescribed in 7.24(2) for filing a complaint. The parties involved shall be afforded the rights and opportunities for filing a state level complaint.

The complaint officer shall review all complaints filed within seven calendar days. If the subject and facts presented in the complaint are most relevant to regional policy, the complaint officer shall remand the complaint to the coordinating service provider of the appropriate region for resolution.

Failure to file the complaint or grievance in the proper venue does not negate the complainant's responsibility for filing the complaint in the appropriate time frames.

7.24(12) A unit or combination of units of general local governments or a rural concentrated employment program grant recipient that requests, but is not granted automatic or temporary and subsequent designation as a local workforce investment area, may appeal to the state workforce development board within 30 days of the nondesignation. If the state workforce development board does not grant designation on appeal, the decision may be appealed to the Secretary of Labor within 30 days of the written notice of denial. The appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210. The appellant must establish that it was not accorded procedural rights under the appeal process described in the state plan or establish that it meets the requirements for designation in the Act. The Secretary shall take into account any comments submitted by the state workforce development board.

7.24(13) Training providers have the opportunity to appeal denial of eligibility by a regional workforce investment board or the department, termination of eligibility or other action by a regional workforce investment board or the department, or denial of eligibility as a provider of on-the-job training or customized training by the coordinating service provider. All appeals must be filed with the department within 30 days of receipt of written notice of denial or termination of eligibility. Appellants must follow the procedures for a complaint described in 7.24(2). Appeals shall be handled in the same manner as a complaint. State decisions issued under this subrule may not be appealed to the Secretary of Labor.

7.24(14) WIA participants subject to testing for use of controlled substances and WIA participants who are sanctioned after testing positive for the use of controlled substances may appeal to the department using the procedures for a complaint described in 7.24(2). State decisions issued under this subrule may not be appealed to the Secretary of Labor.

7.24(15) A workforce development region may appeal nonperformance sanctions to the Secretary of Labor under the following conditions:

a. The region has been found in substantial violation of WIA Title I, and has received notice from the governor that either all or part of the local plan will be revoked or that a reorganization will occur; or

b. The region has failed to meet regional performance measures for two consecutive years and has received the governor's notice of intent to impose a reorganization plan. Revocation of the regional plan or reorganization does not become effective until the time for appeal has expired or the Secretary has issued a decision. An appeal must be filed within 30 days after receipt of written notification of plan revocation or imposed reorganization. It must be submitted by certified mail, return receipt requested, to Secretary of Labor, Attention: ASET, U.S. Department of Labor, Washington, DC 20010. A copy of the appeal must be simultaneously provided to the governor. In deciding the appeal, the Secretary may consider comments submitted in response from the governor. The Secretary will notify the governor and appellant in writing of the Secretary's decision within 45 days after receipt of the appeal filed under 7.24(15)"a" above; and within 30 days after receipt of appeals filed under 7.24(15)"b" above.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

These rules are intended to implement Iowa Code sections 84A.1 to 84A.1B, Iowa Code chapter 96, and the Workforce Investment Act of 1998.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/17/00.

SUMMARY OF DECISIONS *
THE SUPREME COURT OF IOWA
FILED APRIL 26, 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. 98-1149. TEGGATZ v. RINGLEB.

Appeal from the Iowa District Court for Franklin County, John S. Mackey, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered en banc. Opinion by McGiverin, C.J. (11 pages $4.40)

Tom Teggatz sought to recover a civil judgment for money that Joseph Ringleb stole while employed by Teggatz. The district court concluded the amount of restitution ordered in a related criminal theft prosecution precluded Teggatz from recovering additional damages from Ringleb. Teggatz appeals. **OPINION HOLDS:** I. Under the plain language of Iowa Code section 910.8 (1997), an order requiring restitution by a criminal defendant does not limit or impair the victim's rights to sue and recover damages from the offender in a civil action. II. A valid guilty plea precludes a criminal defendant from relitigating essential elements of the criminal offense in a later civil case. Teggatz properly offered Ringleb's criminal case file into evidence for the purposes of establishing the elements of his civil action. However, doing so did not preclude Teggatz from relitigating the issue of damages in the civil case. III. To apply issue preclusion in this case would render the tolling provisions of Iowa Code section 910.8 meaningless and would fail to recognize the notable differences between a criminal restitution proceeding and a civil action. Due to these differences, a victim has not had his or her day in court simply because the victim may have participated in the criminal restitution proceedings. IV. We reverse the district court's ruling and remand for further proceedings.

*Reproduced as submitted by the Court

No. 98-1370. LAND O'LAKES, INC. v. HANIG.

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Ternus, J. (11 pages $4.40)

Land O'Lakes, Inc. commenced an action to recover damages it sustained when Donald Hanig failed to deliver corn as required by the parties' contract. At issue was the adequacy of the assurances provided by Hanig upon Land O'Lakes' demand for reasonable assurance of performance. In a bench trial, the district court ruled that Hanig's assurances were adequate and that Land O'Lakes, not Hanig, had breached the contracts when it cancelled the contracts based on its dissatisfaction with the assurances of performance provided by Hanig. Land O'Lakes appeals. **OPINION HOLDS:** I. There is not substantial evidence to support the trial court's conclusion that Hanig provided adequate assurances. Hanig conditioned his promised performance upon a judicial determination that the contracts were enforceable. It would have been a practical impossibility for such a determination to be made within thirty days of the coop's demand for assurances, as required by Iowa Code section 554.2609(4) (1995). II. Hanig's assurances were inadequate for the additional reason that his performance was conditioned on a requirement (a judicial determination of enforceability) that was not within the parties' contracts. Under the U.C.C, when a party states an intention not to perform except on conditions that go beyond the contract, the statement constitutes a repudiation of the contract. III. We reverse the trial court's judgment and remand for entry of judgment in favor of Land O'Lakes. Upon remand, the trial court shall determine the damages to which Land O'Lakes is entitled on the record previously made, and shall enter judgment for that amount, plus costs and interest.

No. 98-1863. STATE OF IOWA v. SCHMITZ.

Appeal from the Iowa District Court for Dubuque County, R. J. Curnan, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Ternus, J. (9 pages $3.60)

Law enforcement officers executing a search warrant at defendant's residence found multiple items of stolen property. The State filed three separate charges of second-degree theft. The first was based upon defendant's possession of pet supplies stolen from a pet store on October 3, 1995. The second was founded on defendant's possession of a jacket stolen from a store on November 24, 1994. The third was based upon his possession of some wheels and tires stolen from a vehicle on May 4, 1996. The pet supplies case was tried first and defendant was found guilty of having exercised control over stolen property in violation of Iowa Code section 714.1(4) (1995). Defendant successfully moved to dismiss the remaining charges on double jeopardy grounds. The court found that exercising control over stolen property on the same day, in the same location, is one act, irrespective of whether there were

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No. 98-1863. STATE OF IOWA v. SCHMITZ. (continued)

different victims. The State appealed. **OPINION HOLDS:** The crime of exercising control over stolen property is not a continuing offense for double jeopardy purposes. Iowa Code section 714.1(4) does not proscribe a course of conduct encompassing a series of acts, but rather prohibits a single act of possession of stolen property. Although the three theft charges were based on the *same kind* ~~of~~ conduct, they were not based on the *same* conduct, because each charge was premised on the possession of different stolen property. Therefore, there is no double jeopardy violation. The trial court erred in granting defendant's motion to dismiss the second and third theft charges.

No. 98-1145. MONROE COUNTY v. INTERNATIONAL INS. CO.

Appeal from the Iowa District Court for Monroe County, Phillip R. Collett, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J. (7 pages $2.80)

A substantial tort judgment was entered against Monroe County in prior litigation. Much of that judgment was affirmed in *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418 (Iowa 1996) (*Iowa Coal II*). That litigation had been preceded by an earlier action that was before this court in *Iowa Coal Mining Co. v. Monroe County*, 494 N.W.2d 664 (Iowa 1993) (*Iowa Coal I*). The damage claim successfully pursued in *Iowa Coal II* was premised on the legal theory that the county had unlawfully and tortiously interfered with a contractual relationship. Monroe County brought this indemnity claim against its insurers, International Insurance Company and Mount Airy Insurance Company. In denying coverage, International and Mount Airy relied on several exclusions in their respective "claims made" policies, including an exclusion for litigation pending prior to the operative dates of the policies. The district court granted the insurers summary judgment, and Monroe County appeals. **OPINION HOLDS:** I. Under the policies' prior litigation exclusions, a claim is excluded if it is based upon or in any way involves any fact, circumstance, or situation underlying or alleged in litigation pending on or before the operative date designated in the policy. II. Although the damages claimed in *Iowa Coal I*, which predated the policies' operative dates, were based on a different legal theory than the claim on which plaintiffs prevailed in *Iowa Coal II*, it seems inescapable that the latter involved facts, circumstances, and situations underlying or alleged in the former. III. The reasonable expectations doctrine will not be applied to cases in which an ordinary layman would not misunderstand the extent of the coverage provided from a reading of the policy and there are no circumstances attributable to the insurer that would foster coverage expectations beyond that which is provided. This was the situation with respect to Monroe County's expectations in the present case. The district court judgment is affirmed.

No. 98-1817. CLEMENTS v. GAMBLERS SUPPLY MANAGEMENT CO.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Carter, J. (6 pages $2.40)

Byron Clements and Mark Clements were licensed ship captains employed by the defendant riverboat casino. They allegedly discovered their employer was violating federal laws regarding inspection and repair of the riverboat. They confronted the management and indicated their concern about the passengers' safety. Both were subsequently terminated. They then filed petitions alleging state law claims for wrongful termination, contending they were terminated because they refused to violate federal safety regulations. The district court granted defendants' motion for summary judgment, finding the plaintiffs were "seamen" and that federal maritime law preempted their state law claims. The Clements appealed. **OPINION HOLDS:** We find that no fundamental tenet of substantive maritime law is frustrated by the state law retaliatory discharge claims that the Clements are advancing here. The district court ruled that federal law governed the rights of the parties to the exclusion of state law, so the merits of the Clements' state law claims were not adjudicated in that court and are not now before this court. Because we conclude that the state law claim is not precluded by federal law, it must now be considered on its merits. The judgment of the district court is therefore reversed and the case remanded for that purpose.

No. 99-0300. STATE v. MOORE.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J. (5 pages $2.00)

As Kevin Moore was leaving a state park at about 10:30 p.m., he drove through the park's camping area. Near the shower facility, a Department of Natural Resources park ranger waved him down to warn him that his speed, though less than the posted limit, posed a danger to campers based on the circumstances then existing in the park. The ranger detected the smell of alcohol on Moore, and she called for help from the state patrol. A state trooper arrived on the scene and arrested Moore for operating while intoxicated. Moore filed a motion to suppress, urging that the ranger did not have a reasonable belief that he was violating or had violated any law or that he posed a specific threat to anyone's safety. The court denied his motion, and he was convicted of second-offense operating while intoxicated. Moore appeals. **OPINION HOLDS:** We agree that the ranger was acting within her legal authority in stopping Moore's vehicle, pursuant to either or both Iowa Code sections 321.285 and 461A.3 (1997). The park ranger could have reasonably concluded Moore's driving posed a threat to the safety of other persons in the park. We affirm the district court judgment.

No. 98-1636. VIGILANT INS. CO. v. ALLIED PROPERTY & CAS. INS. CO.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J. (6 pages $2.40)

Brian J. McGrath crossed a road median and struck an oncoming car driven by Melinda Walker, killing both. Walker's estate sued McGrath's estate in a wrongful death action in federal district court. Brian's vehicle was owned by his father, Joseph McGrath, and was insured by a primary insurer. Brian was also covered by Allied's "personal auto policy" issued to his mother and her husband. Allied's policy had a limit of $500,000 per accident. The third policy involved, written by Vigilant, was an excess liability or "umbrella" policy with $1,000,000 in coverage issued to Joseph. Vigilant commenced a declaratory judgment action, claiming that its umbrella policy applied only after the primary insurer and Allied policies were exhausted. Allied claimed Vigilant's umbrella coverage is excess only as to the primary policy and that Allied's coverage applied only after both the primary and Vigilant policies were exhausted. The district court granted Vigilant summary judgment. Allied appeals. **OPINION HOLDS:** Vigilant's umbrella policy is excess as to all other policies, including Allied's. Viewing the policy as a whole, Vigilant's policy language in question, which provides coverage in excess of "your underlying insurance," does not refer only to insurance for which Joseph is a named insured. It should be interpreted to mean the policy is excess as to any insurance that applies to a covered event that will serve to reduce the amount of the umbrella insurer's exposure. Allied's policy would qualify as underlying insurance under that definition because it would reduce any damages Vigilant might be called on to pay, up to Allied's liability limit of $500,000. We conclude Allied's policy is "underlying insurance" for purposes of applying Vigilant's umbrella coverage and therefore affirm the summary judgment for Vigilant.

No. 98-1470. CITY OF HIAWATHA v. CITY DEV. BD.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. **AFFIRMED ON BOTH APPEALS.** Considered en banc. Opinion by Larson, J. (8 pages $3.20)

Property owners near the City of Robins submitted an "80/20" application for voluntary annexation to Robins under Iowa Code chapter 368 (1995). The Robins city council voted to annex the land and sought approval from the City Development Board. Shortly thereafter, the City of Hiawatha filed an involuntary annexation petition that included some of the same land. Hiawatha then filed another proposal for voluntary annexation of two parcels that were also contained in Robins' petition. The board deleted those parcels from Robins' petition and approved their annexation to Hiawatha. The board then approved the remainder of Robins' annexation petition. Hiawatha sought

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No. 98-1470. CITY OF HIAWATHA v. CITY DEV. BD. (continued)

judicial review. Robins intervened but did not seek judicial review of the board's decision on the two parcels annexed by Hiawatha. After the case was submitted, Hiawatha asked the district court to withhold ruling until missing portions of the agency record could be obtained. The court affirmed the board's decision but did not address the matter of the omitted record. Hiawatha appealed and Robins cross-appealed. **OPINION HOLDS:** I. Substantial evidence supports the board's findings that section 368.7(4)'s requirements for voluntary annexations were met. A reasonable person could have concluded Robins was capable of providing sufficient services to the territory to be annexed. II. Substantial evidence supports the board's conclusion that Robins' annexation was not contrary to the best interests of the urbanized area. III. We reject Hiawatha's claim that the board erroneously applied the presumption of validity of section 368.6 and the preference for voluntary annexation provided by section 368.7(4). IV. Even if the district court erred in ruling on the judicial review petition without reopening the record, any error was harmless. V. Robins waived its challenge regarding the parcels annexed by Hiawatha by failing to petition for judicial review. We affirm on both appeals.

No. 98-1907. CARROLL v. MARTIR.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, George Bergeson, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered en banc. Opinion by Lavorato, J. (15 pages $6.00)

In January 1996, William Carroll, Jr. was rear-ended in Polk County, Iowa, by a tractor-trailer driven by Rizaldo Martir. E & E Investment Co. and C.R. England & Sons, Inc. owned Martir's vehicle. Settlement negotiations ensued between C.R. England and Carroll's Mississippi counsel. On December 11, 1997, shortly before expiration of the statute of limitations, attorney Jerry Foxhoven filed in Iowa a personal injury lawsuit on behalf of Carroll against Martir, E & E Investment, and C.R. England. Settlement negotiations continued. On June 5, 1998, Foxhoven moved for leave to extend time for service of process. The district court entered an ex parte order sustaining the motion for good cause, authorizing an extension until June 26, 1998. On June 24 Foxhoven served all three defendants pursuant to the nonresident motorist statute. Defendants moved to dismiss, alleging the 195-day delay between the petition's filing and service of the original notice was presumptively abusive in violation of Iowa Rule of Civil Procedure 49. Following a hearing, the district court dismissed the action against all defendants. Carroll appealed and the case was transferred to the court of appeals, which reversed and remanded, finding the district court's decision was not supported by substantial evidence. We granted further review. **OPINION HOLDS:** I. The district court properly considered matters outside the

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No. 98-1907. CARROLL v. MARTIR. (continued)

pleadings in granting defendants' motion to dismiss. II. We decide this appeal under the cases interpreting rule 49 as it existed before its recent amendment, as neither party has preserved error on the issue of whether the amendment should apply. III. We reject Carroll's contention that the district court could not revisit the issue of delay in service after having previously granted the extension and after Carroll complied with the order. We have long recognized the court's power to correct its own perceived errors, so long as it has jurisdiction of the case and the parties involved. The authority to do so is particularly appropriate when, as here, the initial ruling is made ex parte. IV. There was substantial evidence to support the court's finding that inadequate justification existed for the delay in service on each party, which no one disputes was presumptively abusive. Martir was eventually served under the same name and address shown in the 1996 police accident report, and Carroll has offered no excuse for the delay in service. As to C.R. England, Carroll received a fax from the company's claims representative with its name and address less than a month after the accident. Also, Carroll's Mississippi counsel clearly had this information, and the law imputes counsel's knowledge to Carroll. Carroll, not his counsel, is ultimately responsible for accomplishing service. As to both C.R. England and E & E Investment, Carroll had the burden to show he tried to serve them in a reasonably short period of time after the petition was filed, yet he waited nearly 175 days before asking for the extension. The court could reasonably infer Carroll had done nothing until then to serve them. Additionally, Carroll might have effectuated service simply by using the nonresident motorist statute immediately, using the companies' addresses from the accident report which, though not identical, were similar to the actual address. We vacate the court of appeals decision and affirm the district court judgment.

No. 98-1242. ORGANIC TECHS. CORP. v. STATE ex rel. IOWA DEP'T OF NAT'L RESOURCES.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge. **AFFIRMED.** Considered en banc. Opinion by Lavorato, J. (23 pages $9.20)

Organic Technologies Corporation (OTC) operates a composting facility in Warren County. It began operation as a yard-waste-only composting facility, but the Department of Natural Resources (DNR) issued OTC developmental permits allowing OTC to experiment with other composting. The DNR also issued to OTC a permit for "storm water discharge," and in April 1994, a regular waste disposal permit based on OTC's Comprehensive Solid Waste Management Plan. The DNR issued the permit authorizing the operation according to the plan with any deviations to be approved by the DNR. In July 1994, in response to complaints from residents near the facility, the DNR inspected it and issued an order requiring OTC to properly operate (continued)

No. 98-1242. ORGANIC TECHS. CORP. v. STATE ex rel. IOWA DEP'T OF NAT'L RESOURCES. (continued)

and maintain the facility and to comply with the permit conditions and the DNR rules. This order was subject to continuing negotiations between the parties. In September 1995 OTC changed owners and the DNR issued a new permit to OTC reflecting this. In November 1995 and again in 1996 the DNR investigated the facility and prepared reports finding noncompliance with the permit, the operating plan, and the Iowa Administrative Code. During subsequent negotiations, the DNR agreed with a proposed OTC plan as an interim plan with the understanding that OTC would cease using the site for mixed solid waste by the end of March 1997. The DNR continued to inspect the facility. In November 1996 it issued another administrative order, finding continuing violations and stating the DNR intended to (1) revoke OTC's permit, (2) restrict OTC's composting operation to yard waste and direct it to move mixed compost material already on site; (3) require a fifty percent reduction of all yard waste by July 1, 1997; and (4) require removal of all waste by January 1, 1998. The order also assessed a $10,000 civil penalty. OTC appealed. Following a contested hearing, an administrative law judge (ALJ) affirmed the penalty and the permit revocation. The Environmental Protection Commission affirmed the ALJ's decision, and this decision was in turn affirmed by the district court on judicial review. OTC appealed. **OPINION HOLDS:** I. The ALJ correctly concluded that the new owners are subject to the former owners' operating plans as amended. This was required under the terms of their permit, which they never formally objected to or sought to amend. The ALJ also correctly rejected OTC's argument that the interim operating plan superseded the previous owners' operating plan. Substantial evidence supports the finding that the DNR never approved this plan and that, at best, it was only temporary. II. Substantial evidence supports the findings that: (A) OTC violated its permit conditions for water quality, the storm water discharge permit, and the Iowa Administrative Code; (B) Seed corn bags were solid waste and not salvageable material and their storage at the site violated an administrative rule; (C) OTC violated permit conditions clearly requiring construction of concrete composting pads; and (D) OTC's failure to construct a covered facility was a violation of the permit. III. Substantial evidence supports the finding that the penalties were appropriate and reasonable given the large number of repeated violations, even after notice, from the date the current owners purchased the corporation until the hearing. IV. Substantial evidence supports the finding OTC failed to comply with the terms of (1) its original operating plan (as amended), and (2) its solid waste disposal permit, both of which required OTC to construct facilities to house its composting operation. Such failure alone was a sufficient ground to revoke the permit. However, this also constituted a violation of administrative rules warranting revocation. We affirm the district court's decision.

No. 97-2053. BIRKHOFER v. BIRKHOFER.

Appeal from the Iowa District Court for Muscatine County, David J. Sohr, Judge. **AFFIRMED.** Considered en banc. Opinion by Lavorato, J.
(6 pages $2.40)

Elizabeth Birkhofer conveyed a farm to her son, James Birkhofer. Elizabeth's guardian and conservator brought an action against James, his wife, and a bank that held a mortgage against the farm to void the conveyance. The parties reached a settlement agreement under which James and his wife agreed to accept financial responsibility for Elizabeth's nursing home care and pay for her attorney's fees. Elizabeth's daughter, Marilyn Brammeier, objected to the settlement agreement. The district court ruled Marilyn had no standing to object and approved the settlement. Marilyn appeals. **OPINION HOLDS:** I. We could affirm the district court ruling on the basis that Marilyn was neither a party nor an intervenor in the action. However, because there was no objection to the manner in which the district court proceeded, we will address the issue of standing. II. Marilyn has failed to establish standing to contest the proposed settlement. There is no law that makes her legally liable for her mother's medical expenses, and she has no legal interest in the litigation that will be injuriously affected. Additionally, Marilyn has only a statutory intestate interest in her mother's estate that can be eliminated by will or transfer. The mere intestate claim of a daughter in the potential estate of her living mother is too contingent to constitute a legal interest sufficient to establish standing.

No. 98-0713. CITY OF HIAWATHA v. CITY DEV. BD.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J.
(11 pages $4.40)

A group of Linn County property owners submitted an "80/20" voluntary annexation application to the City of Cedar Rapids under Iowa Code Chapter 368 (1995). The Cedar Rapids City Council voted to annex the land and filed a request for approval of annexation with the City Development Board. The City of Hiawatha then filed a petition for involuntary annexation concerning some of the same land. Following a public hearing, the board approved the Cedar Rapids voluntary application, and the district court upheld the board's ruling on judicial review. Hiawatha appeals, claiming the board erred in (1) using nonconsenting properties to attain the required contiguity between Cedar Rapids and the territory to be annexed, (2) finding the Cedar Rapids annexation was not contrary to the best interests of the annexed area, and (3) incorrectly applying Iowa Code section 368.6's presumption of validity of voluntary annexation proceedings. **OPINION HOLDS:** I. We reject the intervenors' claim that the district court lacked jurisdiction on judicial review because Hiawatha allegedly failed to serve all required parties. II. The petition was not flawed for lack of contiguity between Cedar Rapids and the area to be annexed because nonconsenting tracts may provide the
(continued)

No. 98-0713. CITY OF HIAWATHA v. CITY DEV. BD. (continued)

necessary nexus. III. The board did not err in finding the annexation was not contrary to the best interests of the "urbanized area," under section 368.7(4). "Urbanized area" includes land within two miles of a city but does not include land within the city itself. IV. The board did not improperly apply the preference for voluntary annexations or the presumption in favor of their validity. We affirm.

No. 99-393. STATE v. ARTZER.

Appeal from the Iowa District Court for Webster County, Allan L. Goode, Judge. **AFFIRMED.** Considered en banc. Opinion by Cady, J. Concurrence in part and dissent in part by Snell, J. (11 pages $4.00)

Larry Artzer and William Kolacia were drinking together in a tavern when Artzer's wife, Barbara, arrived and they had a disagreement. Artzer left, and Kolacia followed him after Barbara expressed concern that Artzer might damage her car. Kolacia was found shot to death in the parking lot, and Artzer later confessed to the crime. Artzer was initially charged and tried for first-degree murder, but after the district court granted a new trial for an error during jury deliberations, the State amended the trial information to charge Artzer with second-degree murder. A month before the new trial, substitute counsel entered an appearance and unsuccessfully moved for a continuance. The jury subsequently found Artzer guilty as charged. Artzer moved for a new trial prior to sentencing and retained different counsel, who moved to continue sentencing because Artzer wanted to allege grounds of ineffective assistance of trial counsel. The district court denied the motion and sentenced Artzer to a term of incarceration not to exceed fifty years and ordered him to pay statutory restitution of $150,000 to the victim's estate. Artzer appeals. **OPINION HOLDS:** I. Sufficient evidence, including evidence of a confrontation between the two men prior to the shooting, and evidence Kolacia was shot with a handgun, supports a finding of malice aforethought and a conviction for second-degree murder. II. The trial court acted within its discretion in denying the motions to continue the trial and sentencing. III. Artzer was not denied effective assistance of counsel by counsel's failure to offer expert testimony regarding Artzer's prior mental problems, and failure to raise the defense of intoxication. The defenses of diminished capacity and intoxication are not defenses to the crime of second-degree murder, which has no specific intent element. IV. The restitution award of $150,000 does not violate the Excessive Fine and Double Jeopardy Clauses of our state and federal constitutions. *See State v. Izzolena*, ___ N.W.2d ___, ___ (Iowa 2000). We also determine the trial court was without discretion in applying that section to the felony conviction in this case. *See State v. Klawonn*, ___ N.W.2d ___, ___ (Iowa 2000). V. Because we determined the arguments have no merit individually, we find Artzer's cumulative error argument has no merit. VI. We affirm Artzer's conviction and sentence for second-degree murder.

(continued)

No. 99-393. STATE v. ARTZER. (continued)

CONCURRENCE IN PART AND DISSENT IN PART ASSERTS: I concur excepting the division concerning excessive fines to which I dissent for the reasons expressed by Justice Lavorato's dissent in *State v. Izzolena*, ___ N.W.2d ___ (Iowa 2000), in which I joined. I would vacate the restitution order and remand so that the district court could then determine the amount of restitution in a meaningful hearing.

No. 98-689. HENDRICKS v. GREAT PLAINS SUPPLY CO.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge. **AFFIRMED ON APPEAL, REVERSED ON CROSS-APPEAL, AND REMANDED WITH DIRECTIONS.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Snell, J. (16 pages $6.40)

Robert and Sandra Hendricks' newly built home was destroyed by fire. Great Plains Supply Company and Colony Plumbing & Heating performed work on the home. The Hendricks' insurer, State Farm Fire & Casualty Company, retained a fire investigator, John Woodland, and an engineer, James Belina, to investigate. Dick Seifers, an adjuster for Colony's insurer, also investigated the scene. At some point, Woodland indicated to Seifers it did not appear Colony was responsible for the fire. State Farm eventually paid the Hendricks' claim and the remnants of the home were demolished to make way for new construction. The Hendricks and State Farm sued Great Plains, attributing the fire to its negligence in installing insulation in the attic. Great Plains counterclaimed alleging the Hendricks breached a contract to procure fire and extended coverage (builder's risk) insurance with Great Plains as an insured. Great Plains filed a third-party petition against Colony, attributing the fire to Colony's installation of the fireplace and chimney flue. The Hendricks filed a cross-petition against Colony asserting a similar claim. Great Plains later filed a third-party cross-petition against State Farm, alleging it had negligently misrepresented the existence of builder's risk insurance and should be estopped from denying coverage. Following a bench trial, the district court found Great Plains and Colony were each fifty percent at fault and entered judgment against them. The court dismissed all other claims. Great Plains and Colony separately appeal and the Hendricks cross-appeal. **OPINION HOLDS:** I. There was sufficient evidence to support the trial court's findings of causation. II. We agree with the trial court's assessment that there was no intentional destruction of evidence. The plaintiffs were not required to preserve the fire scene indefinitely, and Woodland and Belina extensively photographed the scene and preserved portions of the flue pipe, wire, and insulation. Moreover, both Colony and Great Plains were aware of the fire, and nothing precluded them from conducting an additional investigation. III. The Hendricks did not breach a contract with Great Plains to acquire builder's risk insurance. They did purchase such coverage. They were not, however, contractually required to name Great Plains as an insured in their policy.

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No. 98-689. HENDRICKS v. GREAT PLAINS SUPPLY CO. (continued)

Additionally, even if Great Plains had been an insured, the builder's risk coverage had ceased by the time of the fire through Great Plains' acquiescence in Hendricks' occupation of the home. IV. We reject Great Plains' negligent misrepresentation claim against State Farm for the same reason. V. We agree with the trial court's rejection of Colony's equitable estoppel claim. Woodland was not retained by State Farm to adjust or compromise a claim, but merely to investigate the cause of the fire. Nothing in the record supports a finding that State Farm conferred actual authority upon him, or held him out to possess such authority, to make binding representations about the liability of potential defendants. VI. The district court erred by failing to award the Hendricks damages for the replacement cost of their home. We remand for entry of judgment in accordance with this opinion.

No. 99-683. STATE v. IZZOLENA.

Appeal from the Iowa District Court for Polk County, Larry Eisenhauer, Judge. **AFFIRMED.** Considered en banc. Opinion by Cady, J. Dissent by Lavorato, J. (24 pages $9.60)

Anne Izzolena was charged with vehicular homicide under Iowa Code sections 707.6A(1) (Supp. 1997) and 707.6A(2)(a) (Supp. 1997). After she waived her right to jury trial, the district court found her guilty of unintentionally causing the death of another by operating a motor vehicle in a reckless manner in violation of section 707.6A(2)(a) and sentenced her to an indeterminate term of incarceration not to exceed ten years. The court also imposed a $150,000 victim restitution award payable to the estate under section 910.3B (Supp. 1997) of $150,000. Izzolena appeals, claiming the restitution award imposed violates the Double Jeopardy, Excessive Fines, and Due Process Clauses of the United States and Iowa Constitutions. **OPINION HOLDS:** I. Considering the nature of the offense, resulting harm, and the great deference afforded the legislature, we conclude section 910.3B does not on its face violate the Excessive Fines Clause of our state and federal constitutions. The minimum fine of $150,000 is not grossly disproportionate to the gravity of the offenses covered under the statute. II. We find because restitution was not imposed in a subsequent proceeding, but rather as a function of the original sentencing process, the Double Jeopardy Clause was not implicated. III. Iowa Code section 910.7 (1997) provides the defendant due process through the opportunity for a restitution hearing at any time during the pendency of the restitution plan. In rejecting the due process claim, we balance the defendant's monetary interests against the risk of erroneous deprivation of her interest and the administrative burden and societal costs. Additionally, we do not feel the award under section 910.3B "shocks the sense of fair play" such that defendant is denied any due process rights. We affirm the district court's sentence. **DISSENT ASSERTS:** I believe the $150,000 (continued)

No. 99-683. STATE v. IZZOLENA. (continued)

fine is excessive and unconstitutional under the Eighth Amendment of the United States Constitution and article I, section 17 of the Iowa Constitution. Determining what is grossly disproportional and therefore excessive *must* be done on a case-by-case basis by the sentencing court pursuant to the standard of gross disproportionality articulated in cruel-and unusual punishment precedents under the Eighth Amendment. The majority's approach that the $150,000 fine is per se constitutionally acceptable is contrary to proportionality principles and is also unfair. I would vacate the restitution order and remand for a *meaningful* hearing on the $150,000 restitution order, at which the court, using the analysis of *United States v. Bajakajian*, 524 U.S. 321, 327, 118 S. Ct. 2029, 2033, 141 L. Ed. 2d 314, 325 (1998), should determine the constitutionally appropriate amount of restitution.

No. 99-631. STATE v. KLAWONN.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED**. Considered en banc. Opinion by Cady, J. Concurrence in part and dissent in part by Snell, J. (13 pages $5.20)

Ryan Klawonn was speeding when he struck Nathaniel Boykin's vehicle. Boykin died as a result of the accident. Klawonn pled guilty to involuntary manslaughter in violation of Iowa Code section 707.5(1)(1997). As part of his sentence, Klawonn was required to make restitution to the victim's estate in the amount of $150,000 pursuant to section 910.3B (Supp. 1997). He appeals, claiming the restitution award violates his rights under the Excessive Fines, Double Jeopardy, and Due Process Clauses of the United States and Iowa Constitutions. He also claims the trial court failed to exercise discretion in making the award. **OPINION HOLDS**: I. In *State v. Izzolena*, ___ N.W.2d ___ (Iowa 2000), we found the restitution award under section 910.3B does not violate the Excessive Fines Clauses of the United States and Iowa Constitutions. We conclude the $150,000 restitution award is not grossly disproportionate to the gravity of the offense of involuntary manslaughter involving the reckless operation of a motor vehicle. II. We have previously determined that a restitution award pursuant to 910.3B does not violate the Double Jeopardy Clause of our state and the federal constitutions. *See id.* III. We rejected the same procedural due process challenge in *Izzolena*. *See id.* Klawonn argues that the restitution award not only bears no reasonable relationship to a legitimate government interest, but that portion of the statute which precludes him from denying the elements of the offense in any subsequent civil action impermissibly undercuts his right to enter an *Alford* plea. The government interests in restitution awards under section 910.3B are both compensation to the family and punishment for the defendant. We find the award pursuant to section 910.3B is a "reasonable fit" between the government interests and the means through which the legislature has chosen to accomplish them. We also conclude section 910.3B(3) does not conflict (continued)

No. 99-631. STATE v. KLAWONN. (continued)

with the Due Process Clause by effectively depriving an offender of the ability to enter an *Alford* plea. IV. We conclude the use of the word "shall" in section 910.3B(1) clearly indicates the restitution award of at least $150,000 payable to the estate is mandatory once the offender's actions result in the loss of human life. We affirm Klawonn's sentence. **CONCURRENCE IN PART AND DISSENT IN PART ASSERTS:** I concur in the majority's opinion excepting for the division on excessive fines. I dissent to that division for the reasons stated in Justice Lavorato's dissent in *State v. Izzolena*, __ N.W.2d __ (Iowa 2000), where I joined his dissent.

No. 98-1133. OWENS v. BROWNLIE.

Appeal from the Iowa District Court for Benton County, David M. Remley, Judge. **AFFIRMED.** Considered en banc. Opinion by Cady, J. (17 pages $6.80)

Dean Owens inherited the southern 100 acres of a 200-acre tract of land in Benton County. His sister, Donna Brownlie, inherited the northern 100 acres. Donna's husband, John, farms this land. A creek runs diagonally across the 200-acre tract from the northeast corner to the western half of the southern border. Public roads abut the eastern and southern borders. Farm land owned by third parties borders the tract to the west and the north. The Brownlies instituted a condemnation proceeding alleging the western portion of their property was land locked. They sought to acquire a public way over Owens' land for the purpose of ingress and egress. Owens filed a petition seeking declaratory judgment that the Brownlies were not authorized to condemn the land. Owens also sought permanent and temporary injunctive relief. He claimed the Brownlies had reasonable access to the land west of the creek by simply crossing through it. The court denied the request for injunctive and declaratory relief. Owens appeals. **OPINION HOLDS:** I. Owens had the burden of proof by a preponderance of the evidence to show the Brownlies were not authorized under the statute to condemn land as a public way because their property was not land locked. II. We believe the language and purpose of our condemnation statute, Iowa Code section 6A.4(2), reveals a landowner is authorized to condemn land when any portion of the entire tract of land has no public or private way. We reject Owens' claim that the Brownlies' land west of the creek cannot be considered land locked because there is public access to land east of the creek. III. Land is inaccessible for condemnation purposes of section 6A.4(2) when the land in its existing state has no reasonable access and the cost of making the land reasonably accessible is disproportionate to the value of the land. Upon our review of all the evidence, we find Owens failed to prove the Brownlies' property is not land locked. IV. The Brownlies allegations in the application that their property was "land locked" and that they needed "ingress and egress" constituted sufficient compliance with the requirements of Iowa Code (continued)

No. 98-1133. OWENS v. BROWNLIE. (continued)

section 6B.3. for the chief judge to determine the Brownlies were authorized to condemn the land. V. Owens was not denied due process when he was not given under the statutory condemnation scheme an opportunity to argue his opposition to the condemnation prior to the decision by the chief judge to permit condemnation to proceed. Owens was afforded ample notice and opportunity to submit his opposition to the proposed condemnation, and he did so. Owens was afforded the due process to which he was entitled.

No. 98-1550. STATE v. ROHM.
Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge. **AFFIRMED**. Considered en banc. Opinion by Cady, J. Dissent by Snell, J. Dissent by Ternus, J. (18 pages $7.20)

Katherine Rohm appeals from her conviction of involuntary manslaughter and supplying alcohol to a minor after a fourteen-year-old boy, Justin, died from consuming a large quantity of liquor during an evening gathering of teens and young adults in the basement of her home. She challenges the sufficiency of evidence to support the convictions and claims the restitution award violates the federal and state constitutions. **OPINION HOLDS**: I. Rohm claims there was insufficient evidence to find that she "knowingly or recklessly encouraged" Justin to consume liquor. We conclude Rohm encouraged Justin to possess liquor through her actions in purchasing liquor and permitting the liquor to remain in the possession of her sons in an area of the house she knew would be occupied by underage persons. This evidence also supports a finding of recklessness. Rohm not only purchased a large quantity of alcohol, but also purchased 190-proof grain alcohol. We find substantial evidence that Rohm acted in a reckless manner. II. Rohm claims there was insufficient evidence that she sold, gave or otherwise supplied Justin with liquor or that she delivered the liquor to him. Rohm knew the boys continued to have access to the liquor and there is evidence to suggest that she knew it was consumed by underage guests. We find that she knowingly and affirmatively delivered liquor to minors, including Justin. III. Rohm claims that recklessness must be included as an element of the felony offense of supplying alcohol to a minor because the offense is a particularized version of the crime of involuntary manslaughter. Unlike the crime of involuntary manslaughter, the language of this crime does not apply to a broad range of general activity that requires an element to separate negligence from recklessness. Thus, a recklessness element is not necessary. IV. Rohm argues that the $150,000 restitution fine violates her constitutional rights against excessive fines. We have recently addressed this issue in *State v. Izzolena*, ___ N.W.2d ___ (Iowa 2000). For the same reasons we found in that decision, we find the award under section 910.3B (Supp. 1997) does not constitute an excessive fine. She claims the award is grossly disproportionate to her conduct. We recently addressed this very issue in *State v. Klawonn*, __ N.W.2d __ (Iowa

(continued)

No. 98-1550. STATE v. ROHM. (continued)

2000). For the reasons expressed in *Klawonn*, we conclude the financial burden visited upon Rohm, regardless of whether her conduct was passive or active, would not make the restitution award grossly disproportionate to this serious offense. V. Rohm argues section 910.3B violated her due process rights by failing to provide a procedure to challenge the imposition or the amount of this award. We recently decided in *Izzolena* that section 910.3B does not constitute a violation of procedural due process. We affirm. **DISSENT ASSERTS:** I join the majority to affirm the conviction but believe that the restitution order should be vacated and the case remanded for a hearing on the issue of excessive fines. **SECOND DISSENT ASSERTS:** I would reverse the defendant's convictions because I do not believe the defendant's passive conduct of allowing alcohol to remain accessible to minors constitutes encouragement or an affirmative delivery so as to render the defendant criminally responsible for Justin's death under Iowa Code section 707.5(1).

No. 98-1482. STATE v. WALKER.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. **AFFIRMED.** Considered en banc. Opinion by Neuman, J.

(5 pages $2.00)

Russell Walker punched Ed Trogden several times in the face. Trogden fell backwards, hitting the ground with force. Walker then kicked him at least twice in the head. Trogden died. The State charged Walker with first-degree murder. Following plea negotiations with defense counsel, the State filed an amended and substituted trial information, charging him with willful injury and voluntary manslaughter. At the plea hearing, Walker furnished a factual basis for each charge. The district court sentenced him to two consecutive, ten-year terms of imprisonment. Walker appeals, claiming his conviction for willful injury should have merged with his conviction for voluntary manslaughter. **OPINION HOLDS:** Walker knowingly pled to, and the record minimally supports a factual basis for, two separate crimes. Because the record establishes more than one assault, we conclude the court was authorized to impose more than one sentence. We affirm the district court judgment.

No. 97-2118. MILLER v. THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **AFFIRMED.** Considered en banc. Opinion by Neuman, J. (14 pages $5.60)

The Iowa State Board of Medical Examiners charged osteopathic physician Dennis Miller, of Wellman, Iowa, with substandard treatment of patients under his care following a peer review committee's concerns regarding Miller's drug prescription practices. Following a contested case proceeding, a three-member panel of the board concluded Miller deviated from applicable medical standards of care. The board placed Miller on two-years probation and he was ordered to attend sixty hours of continuing education. On judicial review, the district court affirmed the board's ruling. Miller has appealed. **OPINION HOLDS:** I. We reject Miller's claim that the composition of the disciplinary panel, as authorized by Iowa Code section 147.103A(6) (1997), violated the equal protection clauses of the Iowa and United States Constitutions. We find there is a two-fold rational basis for section 147.103A(6): (1) a legislative intent to increase lay participation on the medical board to promote public health and safety, and (2) an intent to reduce the number of physicians required to sit on each panel in order to expedite disciplinary hearings. The district was correct in concluding there was a rational basis for the statute. II. Although we conclude that under the facts of the present case Miller was not prejudiced by the board's destruction of investigative files, we find such practice disturbing and potentially prejudicial. We believe that section 272C.6(4) requires the disclosure of investigative files once disciplinary proceedings are initiated. III. We reject Miller's argument that the peer review process violated his due process rights. There is no record that Miller attempted to meet personally with the peer review committee as provided for in Iowa Administrative Code section 653—12.50(5). We also find no support for Miller's claim that rule 653—12.50(5) entitles him to exercise all the options it contains. IV. We reject Miller's claim the board's proceedings were barred by the doctrine of laches. The time spent on investigation and peer review was not unreasonable. We likewise reject his claim the board lacked authority to discipline him since no patients complained. We affirm the district court's judgment.

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