IOWA ADMINISTRATIVE BULLETIN

JUL 13 2000

Published Biweekly VOLUME XXIII July 12, 2000 NUMBER 1 Pages 1 to 100

CONTENTS IN THIS ISSUE

Pages 12 to 96 include **ARC 9948A** to **ARC 9984A**

Continued on page 3

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.

Subscriptions and Distribution	Telephone:	(515)242-5120
	Fax:	(515)242-5974
KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor		(515)281-8157
	Fax:	(515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly.

July 1, 2000, to June 30, 2001 $264.00 plus $15.84 sales tax

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

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

Iowa Administrative Code - $1,210.31 plus $72.62 sales tax

(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin.)

Iowa Administrative Code Supplement - $425.61 plus $25.54 sales tax

(Subscription expires June 30, 2001)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

Customer Service Center
Department of General Services
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
Jan. 5 '01	Jan. 24 '01	Feb. 13 '01	Feb. 28 '01	Mar. 2 '01	Mar. 21 '01	Apr. 25 '01	July 23 '01

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
3	**Friday, July 21, 2000**	**August 9, 2000**
4	**Friday, August 4, 2000**	**August 23, 2000**
5	**Friday, August 18, 2000**	**September 6, 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
BANKING DIVISION[187]		
Confidential records—shareholder lists, 7.13(2), 7.15(8) IAB 6/28/00 **ARC 9895A**	Conference Room 200 E. Grand Ave. Des Moines, Iowa	July 18, 2000 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
One-year conditional license, 14.15 IAB 6/28/00 **ARC 9927A**	Conference Room 3 South Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 27, 2000 1 p.m.
Two-year conditional license, 14.16 IAB 6/28/00 **ARC 9929A**	Conference Room 3 South Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 27, 2000 2 p.m.
Elementary and secondary school counselor competencies, 14.20 IAB 6/28/00 **ARC 9920A**	Conference Room 3 South Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 27, 2000 3:30 p.m.
General science endorsement, 14.21(17) IAB 6/28/00 **ARC 9928A**	Conference Room 3 South Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 27, 2000 3 p.m.
Administrative endorsements—elementary and secondary school principals, 14.23 IAB 6/28/00 **ARC 9923A**	Conference Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 1, 2000 10 a.m.
	Conference Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 6, 2000 1 p.m.
Two-year administrator exchange license, 14.25 IAB 6/28/00 **ARC 9921A**	Conference Room 3 South Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 27, 2000 2:30 p.m.
Mentor endorsement, 14.34, 14.35 IAB 6/28/00 **ARC 9930A**	Conference Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 1, 2000 8 a.m.
ELDER AFFAIRS DEPARTMENT[321]		
Senior living coordinating unit, 16.1 to 16.5 IAB 6/28/00 **ARC 9892A**	North Conference Room—3rd Floor Clemens Bldg. 200 Tenth St. Des Moines, Iowa	August 1, 2000 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality; emissions standards, 22.1, 22.3. 22.4(1), 22.100, 22.106, 23.1, 23.2(3), 23.3(2), 24.1, 25.1(9) IAB 6/14/00 **ARC 9885A**	Conference Rooms 5-8 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 20, 2000 1 p.m.
Drinking water standards; laboratory certification, amendments to chs 40 to 43, 83 IAB 6/14/00 **ARC 9888A**	Helen Wilson Gallery Washington Public Library 120 E. Main Washington, Iowa	July 14, 2000 10 a.m.
	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	July 18, 2000 10 a.m.
	Delaware County Community Center 200 E. Acres (at fairgrounds) Manchester, Iowa	July 19, 2000 10 a.m.
	Hansen Room, Siebens Forum Buena Vista University 4th and Grand Ave. Storm Lake, Iowa	July 20, 2000 10 a.m.
Operator certification: public water supply systems and wastewater treatment and collection systems, ch 81 IAB 6/14/00 **ARC 9886A**	Helen Wilson Gallery Washington Public Library 120 E. Main Washington, Iowa	July 14, 2000 10 a.m.
	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	July 18, 2000 10 a.m.
	Delaware County Community Center 200 E. Acres (at fairgrounds) Manchester, Iowa	July 19, 2000 10 a.m.
	Hansen Room, Siebens Forum Buena Vista University 4th and Grand Ave. Storm Lake, Iowa	July 20, 2000 10 a.m.

INSURANCE DIVISION[191]

Contraceptive coverage, 35.39, 71.14(6), 71.24, 75.10(4), 75.18 IAB 7/12/00 **ARC 9983A**	330 Maple St. Des Moines, Iowa	August 1, 2000 10 a.m.

MEDICAL EXAMINERS BOARD[653]

Selling of goods or services by members of the board or IPRC, 10.11 IAB 6/28/00 **ARC 9932A**	Suite C 400 SW 8th St. Des Moines, Iowa	July 18, 2000 1 p.m.
Licensure of acupuncturists, 14.1 to 14.30 IAB 6/28/00 **ARC 9924A**	Suite C 400 SW 8th St. Des Moines, Iowa	July 18, 2000 10 a.m.

NATURAL RESOURCE COMMISSION[571]

Wildlife refuges—Spring Run and Henderson areas, 52.1(2) IAB 6/28/00 **ARC 9946A**	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	July 19, 2000 10 a.m.

NURSING BOARD[655]

Nurse licensure compact, 2.3(2), 2.6(2), 3.1, 3.2, 3.5, 3.6(1), 6.1, 6.5(5), 7.1, ch 16 IAB 6/28/00 **ARC 9917A** (Also see **ARC 9915A**)	Ballroom Kirkwood Civic Center Hotel Fourth and Walnut Des Moines, Iowa	September 7, 2000 5 p.m.
Identification badge, 6.2(5), 6.3(9) IAB 7/12/00 **ARC 9962A**	Ballroom Kirkwood Civic Center Hotel Fourth and Walnut Des Moines, Iowa	September 6, 2000 5:30 p.m.

PERSONNEL DEPARTMENT[581]

IPERS, 21.1, 21.4(3), 21.5 to 21.13, 21.16, 21.19(1), 21.22, 21.24, 21.30 to 21.32 IAB 7/12/00 **ARC 9972A** (Also see **ARC 9971A** herein)	600 E. Court Ave. Des Moines, Iowa	August 1, 2000 9 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Massage therapy examiners, 130.1 to 130.4, 130.7 to 130.10, 131.1 to 131.5, 131.18, 131.19, ch 132 IAB 6/28/00 **ARC 9931A**	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	July 18, 2000 9 to 11 a.m.
Psychology examiners, 240.10(2), 240.100 to 240.109, 240.212, ch 241 IAB 7/12/00 **ARC 9984A**	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	August 2, 2000 9 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Residential occupancies; bed and breakfast inns, 5.800 to 5.810, 5.820 IAB 7/12/00 **ARC 9970A**	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 9:30 a.m.
Fire service training bureau, ch 53 IAB 7/12/00 **ARC 9964A** (Also see **ARC 9968A** herein)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 10 a.m.
Firefighter certification, ch 54 IAB 7/12/00 **ARC 9965A** (Also see **ARC 9969A** herein)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 10:15 a.m.

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)

Volunteer emergency services provider death benefits, ch 59 IAB 7/12/00 **ARC 9966A** (Also see **ARC 9967A** herein)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 10:30 a.m.

RACING AND GAMING COMMISSION[491]

General, 4.7, ch 6, 8.1, 8.2(3), 8.4, 8.5, 10.4(2); rescind chs 12, 13 IAB 7/12/00 **ARC 9948A**	Suite B 717 E. Court Des Moines, Iowa	August 1, 2000 9 a.m.

SECRETARY OF STATE[721]

Electronic voting equipment, 22.261 IAB 6/28/00 **ARC 9890A** (Also see **ARC 9891A**)	Second Floor Hoover State Office Bldg. Des Moines, Iowa	July 18, 2000 1:30 p.m.
Refund of corporate filing fees—pilot project, 40.4 IAB 6/28/00 **ARC 9893A** (Also see **ARC 9894A**)	O'Connor Conference Room Second Floor Hoover State Office Bldg. Des Moines, Iowa	July 18, 2000 10 a.m. (If requested)

UTILITIES DIVISION[199]

Natural gas marketer certification, 2.2(17), 19.13(6), 19.14 to 19.16, IAB 7/12/00 **ARC 9976A**	Board Hearing Room 350 Maple St. Des Moines, Iowa	August 23, 2000 10 a.m.
Restoration of agricultural lands during and after pipeline construction, ch 9 IAB 6/14/00 **ARC 9878A**	Board Hearing Room 350 Maple St. Des Moines, Iowa	July 19, 2000 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
- Alcoholic Beverages Division[185]
- Banking Division[187]
- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Division[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
  - Real Estate Appraiser Examining Board[193F]
- Savings and Loan Division[197]
- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
- Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]
- Arts Division[222]
- Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
- City Development Board[263]
- Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]
- Educational Examiners Board[282]
- College Student Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- Libraries and Information Services Division[286]
- Public Broadcasting Division[288]
- School Budget Review Committee[289]

EGG COUNCIL[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
GENERAL SERVICES DEPARTMENT[401]
HUMAN INVESTMENT COUNCIL[417]
HUMAN RIGHTS DEPARTMENT[421]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services Division[429]
- Persons With Disabilities Division[431]
- Latino Affairs Division[433]
- Status of African-Americans, Division on the[434]
- Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
- Employment Appeal Board[486]
- Foster Care Review Board[489]
- Racing and Gaming Commission[491]
- State Public Defender[493]

LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
- Appeal Board, State[543]
- City Finance Committee[545]
- County Finance Committee[547]

NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
- Energy and Geological Resources Division[565]
- Environmental Protection Commission[567]
- Natural Resource Commission[571]
- Preserves, State Advisory Board[575]

PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
- Emergency Management Division[605]
- Military Division[611]

PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
- Substance Abuse Commission[643]
- Professional Licensure Division[645]
- Dental Examiners Board[650]
- Medical Examiners Board[653]
- Nursing Board[655]
- Pharmacy Examiners Board[657]

PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
- Archaeologist[685]

REVENUE AND FINANCE DEPARTMENT[701]
- Lottery Division[705]

SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
- Railway Finance Authority[765]

TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
- Labor Services Division[875]
- Workers' Compensation Division[876]
- Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 9980A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

These proposed rules are intended to implement a voluntary chronic wasting disease (CWD) surveillance program for Cervidae. The surveillance program is being adopted at the request of the Iowa Elk Breeders Association. Chronic wasting disease (CWD) is a form of transmissable spongiform encephalopathy that is fatal to Cervidae. Numerous states have developed voluntary and mandatory surveillance programs, and many states have import restrictions for Cervidae originating in states without a surveillance program. Cervidae as defined in these proposed rules means elk, red deer, fallow deer, sika deer, and related species and hybrids of these species.

Any interested person may make written suggestions or comments on the following proposed rules prior to 4:30 p.m. on August 1, 2000. Such written material should be directed to Dr. John Schiltz, State Veterinarian, Animal Industry Bureau, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments can also be submitted by fax to (515)281-4282 or by E-mail to John.Schiltz@idals.state.ia.us.

These rules are intended to implement Iowa Code chapter 163.

The following amendment is proposed.

Amend 21—Chapter 64 by adopting the following **new** rules:

CHRONIC WASTING DISEASE (CWD)

21—64.171(163) Definitions. Definitions used in rules 64.171(163) through 64.187(163) are as follows:

"Accredited veterinarian" means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1 of the Code of Federal Regulations, revised as of January 1, 2000, to perform functions required by cooperative state/federal animal disease control and eradication programs.

"Adjacent herd" means one of the following:

1. A herd of Cervidae occupying premises that border an affected herd, including herds separated by roads or streams.
2. A herd of Cervidae occupying premises that were previously occupied by an affected herd within the past four years as determined by the designated epidemiologist.

"Affected cervid herd" means a cervid herd from which any animal has been diagnosed as affected with CWD and which has not been in compliance with the control program for CWD as described in rules 64.171(163) through 64.187(163).

"Approved laboratory" means an American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or the National Veterinary Services Laboratory, Ames, Iowa.

"Certificate" means an official document, issued by a state veterinarian or federal animal health official or an accredited veterinarian at the point of origin, containing information on the individual identification of each animal being moved, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, and any other information required by the state veterinarian.

"Certified CWD cervid herd" means a herd of Cervidae that has met the qualifications for and has been issued a certified CWD cervid herd certificate signed by the state veterinarian.

"Cervidae" means elk, red deer, fallow deer, sika deer, and related species and hybrids of these species.

"Cervid CWD surveillance identification program" or "CCWDSI program" means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae over 18 months of age including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of approved laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

"Cervid dealer" means any person who engages in the business of buying, selling, trading, or negotiating the transfer of Cervidae, but not a person who purchases Cervidae exclusively for slaughter on the person's own premises or buys and sells as part of a normal livestock production operation.

"Cervid herd" means a group of Cervidae or one or more groups of Cervidae maintained on common ground or under common ownership or supervision that are geographically separated but can have interchange or movement.

"Cervid herd of origin" means a cervid herd, or any farm or other premises, where the animals were born or where they currently reside.

"Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

"CWD affected" means a designation applied to Cervidae diagnosed as affected with CWD based on laboratory results, clinical signs, or epidemiologic investigation.

"CWD exposed" or "exposed" means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past four years.

"CWD suspect" means a designation applied to Cervidae for which laboratory evidence or clinical signs suggest a diagnosis of CWD but for which laboratory results are inconclusive.

"Designated epidemiologist" means a veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian.

"Group" means one or more Cervidae.

"Individual herd plan" means a written herd management and testing plan that is designed by the herd owner, the own-

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

er's veterinarian, if requested, and a designated epidemiologist to identify and eradicate CWD from an affected, exposed, or adjacent herd.

"Monitored CWD cervid herd" means a herd of Cervidae that is in compliance with the CCWDSI program as defined in this rule. Monitored herds are defined as one-year, two-year, three-year, and four-year monitored herds in accordance with the time in years such herds have been in compliance with the CCWDSI program.

"Official cervid CWD test" means an approved test to diagnose CWD conducted at an official laboratory.

"Official cervid identification" means a USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of January 1, 2000.

"Permit" means an official document that is issued by the state veterinarian or USDA area veterinarian-in-charge or an accredited veterinarian for movement of affected, suspect, or exposed animals.

"Quarantine" means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

"State" means any state of the United States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; or Guam.

"Traceback" means the process of identifying the herd or origin of CCWDSI-positive animals, including herds that were sold for slaughter.

21—64.172(163) Supervision of the Cervidae CWD program. The state veterinarian's office will conduct an annual inventory of Cervidae in a herd enrolled in the CCWDSI program.

21—64.173(163) Surveillance procedures. For cervid herds enrolled in this voluntary certification program, surveillance procedures shall include the following:

64.173(1) Slaughter establishments. All slaughtered Cervidae over 18 months of age must have brain tissue submitted at slaughter and examined for CWD by an approved laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

64.173(2) Cervid herds. All cervid herds must be under continuous surveillance for CWD as defined in the CCWDSI program.

21—64.174(163) Official cervid tests. The following are recognized as official cervid tests for CWD:

1. Histopathology.
2. Immunohistochemistry.
3. Western blot.
4. Negative stain electron microscopy.
5. Bioassay.
6. Any other tests performed by an official laboratory to confirm a diagnosis of CWD.

21—64.175(163) Investigation of CWD-affected animals identified through surveillance. Traceback must be performed for all animals diagnosed at an approved laboratory as affected with CWD.

All herds of origin and all adjacent herds having contact with affected animals as determined by the CCWDSI program must be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals must be quarantined.

21—64.176(163) Duration of quarantine. Quarantines placed in accordance with these rules shall be removed as follows:

1. For herds of origin, quarantines shall be removed after four years of compliance with rules 64.171(163) through 64.187(163).
2. For herds having contact with affected or exposed animals, quarantines shall be removed after four years of compliance with rules 64.171(163) through 64.187(163).
3. For adjacent herds, quarantines shall be removed as directed by the state veterinarian in consultation with the epidemiologist.

21—64.177(163) Herd plan. The herd owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating CWD in each affected herd. The plan must be designed to reduce and then eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. The herd plan must be developed and signed within 60 days after the determination that the herd is affected.

The plan must address herd management and adhere to rules 64.171(163) through 64.187(163). The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain certified CWD cervid herd status.

21—64.178(163) Identification and disposal requirements. Affected and exposed animals must remain on the premises where they are found until they are identified and disposed of in accordance with direction from the state veterinarian.

21—64.179(163) Cleaning and disinfecting. Premises must be cleaned and disinfected under state supervision within 15 days after affected animals have been removed.

21—64.180(163) Methods for obtaining certified CWD cervid herd status. Certified CWD cervid herd status must include all Cervidae under common ownership. They cannot be commingled with other cervids that are not certified, and a minimum geographic separation of 30 feet between herds of different status must be maintained in accordance with the USDA Uniform Methods and Rules as defined in APHIS manual 91-45-011, revised as of January 22, 1999. A herd may qualify for status as a certified CWD cervid herd by one of the following means:

64.180(1) Purchasing a certified CWD cervid herd. Upon request and with proof of purchase, the department shall issue a new certificate in the new owner's name. The anniversary date and herd status for the purchased animals shall be the same as for the herd to which the animals are added; or if part or all of the purchased herd is moved directly to premises that have no other Cervidae, the herd may retain the certified CWD status of the herd of origin. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

64.180(2) Upon request and with proof by records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI program for a period of four years.

21—64.181(163) Recertification of CWD cervid herds. A herd is certified for 12 months. Annual inventories conducted by state veterinarians are required every 9 to 15 months from the anniversary date. For continuous certification, adherence to the provisions in these rules and all other

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated if CWD affected or exposed animals are determined to originate from that herd.

21—64.182(163) Movement into a certified CWD cervid herd.

64.182(1) Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd.

64.182(2) Animals originating from noncertified herds that are moving into certified CWD cervid herds cannot be certified until they remain in the certified CWD cervid herd for four years.

64.182(3) Animals originating from CWD monitored herds cannot be certified until a combination of the years in CWD monitored status and the years present in the certified CWD herd totals four years.

21—64.183(163) Movement into a monitored CWD cervid herd.

64.183(1) Animals originating from a monitored CWD cervid herd may move into another monitored CWD cervid herd of the same status.

64.183(2) Animals originating from a herd which is not a monitored CWD cervid herd or from a lower status monitored CWD cervid herd will progress annually in status level on an individual animal basis until completion of CWD certification.

21—64.184(163) Recognition of monitored CWD herds. The state veterinarian shall issue a monitored CWD cervid herd certificate, including CWD monitored herd status as CWD monitored Level A during the first calendar year, CWD monitored Level B during the second calendar year, CWD monitored Level C during the third calendar year, CWD monitored Level D during the fourth calendar year, and CWD certification at the fifth year and thereafter.

21—64.185(163) Recognition of certified CWD cervid herds. The state veterinarian shall issue a certified CWD cervid herd certificate when the herd first qualifies for recertification. The state veterinarian shall issue a renewal form annually.

21—64.186(163) Intrastate movement requirements.

64.186(1) All intrastate movements of Cervidae other than to a state or federally inspected slaughter establishment shall be accompanied by an intrastate movement certificate of veterinary inspection signed by a licensed, accredited veterinarian.

64.186(2) Such intrastate movement certificate shall include all of the following:

a. Consignor's name and address.

b. Consignee's name and address.

c. Individual identification of each animal by an official ear tag.

d. The following statement: "There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year."

21—64.187(163) Import requirements.

64.187(1) All Cervidae entering Iowa must be accompanied by all of the following:

a. An official certificate of veterinary inspection.

b. A permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the state veterinarian prior to movement.

c. One of the following statements must appear on the certificate:

"All Cervidae on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year"; or

"All Cervidae on this certificate originate from a CWD monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year."

64.187(2) If the Cervidae listed on the certificate are enrolled in a CWD program, the anniversary date and program status for each individual animal must be listed.

ARC 9978A

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 239B.4(4), the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," Chapter 9, "Public Records and Fair Information Practices," Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," Chapter 42, "Unemployed Parent," Chapter 43, "Alternate Payees," Chapter 45, "Payment," Chapter 46, "Overpayment Recovery," and Chapter 93, "PROMISE JOBS Program," appearing in the Iowa Administrative Code.

These amendments:

- Eliminate the quarterly report listing the names and addresses of Family Investment Program (FIP), Medicaid, and State Supplementary Assistance (SSA) recipients. Iowa Code section 217.30(4)"c" required the Department to make a quarterly report listing the names and addresses of families receiving FIP, Medicaid, and SSA available for public viewing. The Department's Welfare Reform Advisory Group recommended elimination of the report to protect the confidentiality of families receiving assistance. Eliminating the report also protects the safety and privacy of assistance program recipients who are victims of domestic violence. 2000 Iowa Acts, Senate File 2368, section 1, granted the Department's request to eliminate the quarterly report and implement the group's recommendation.
- Exempt persons who are not U.S. citizens and are not qualified aliens as defined in 8 United States Code Section 1641 from participation in PROMISE JOBS and the family investment agreement.

Federal law prohibits federal Temporary Assistance for Needy Family (TANF) funds from being used to provide PROMISE JOBS services to nonqualified aliens without legal status and nonqualified aliens with one of the following legal statuses:

1. Nonimmigrants under the Immigration and Nationality Act (INA).

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. Aliens paroled into the United States under Section 212(d)(5) of the INA for less than one year.

3. Temporary residents under the Immigration Reform and Control Act.

4. Aliens with protected status, such as PRUCOLS (permanently residing in the United States under color of law).

5. Aliens in deferred action status.

Federal law does allow use of state-only maintenance of effort (MOE) funds to serve aliens without legal status if the state passes a law specifically allowing this. The state could also use state-only MOE funds to serve nonqualified aliens with legal status in categories "1" and "2," above. However, federal law does not allow the state to use any state funds to serve legal nonqualified aliens in categories "3" through "5" above.

The Department believes that serving some nonqualified aliens and not serving others would be very confusing to citizens, applicants and recipients, and to staff. There would be a great likelihood of error. Also, some of these aliens are not allowed to work in the United States. Therefore, the Department proposed an amendment to Iowa Code section 239B.8 to exempt all nonqualified aliens from PROMISE JOBS and family investment agreement activities. 2000 Iowa Acts, Senate File 2368, section 3, implements the Department's proposed amendment.

- Prohibit persons who are not U.S. citizens and are not qualified aliens as defined in federal law from voluntary participation in PROMISE JOBS. The limitations described in the preceding topics also affect the voluntary participation in PROMISE JOBS by persons who are nonqualified aliens. The Department proposed an amendment to Iowa Code section 239B.18 that prohibits nonqualified aliens from voluntary PROMISE JOBS participation to bring the Department into compliance with federal law. 2000 Iowa Acts, Senate File 2368, section 8, implements the Department's proposed amendment.
- Correct existing rules regarding aliens' qualification for FIP assistance and also rescind obsolete rules on deeming alien sponsors' income and resources. The proposed rule correction regarding aliens' qualification for FIP brings the Department into compliance with federal and state law. Under the corrected rule, some aliens who are currently eligible will no longer be eligible for FIP, e.g., aliens who are permanently residing in the U.S. under color of law (PRUCOLS). Included in the correction is the elimination of administrative rules on deeming sponsors' income and resources that were in effect under the former Aid to Families With Dependent Children (AFDC) program that became obsolete with the implementation of TANF. According to a recent update from the United States Department of Health and Human Services (DHHS), revised deeming policies are still under debate. The Department will submit administrative rules on deeming income and resources of alien sponsors upon release of pertinent instructions from DHHS.
- Revise provisions regarding the 60-month limit on FIP assistance. Specifically, the rules revise the definition of "assistance," exclude stepparents who are in the home but not on the FIP grant from the 60-month limit, and revise the definition of Alaskans and Natives in Indian Country who are excluded from the 60-month FIP limit.

Under current rules, a month of "assistance" for the purpose of the 60-month limit on FIP assistance is defined as a month for which the adult receives a FIP grant or a payment for PROMISE JOBS expense allowances. Final federal TANF regulations allow states the option of excluding PROMISE JOBS expense allowance payments from consideration toward the 60-month FIP limit. The Department opted to remove PROMISE JOBS payments from the definition of "assistance" and avoid having to subject the payments to child support assignment.

Under current rules, FIP assistance received by a household that includes a stepparent is counted toward the 60-month limit regardless of whether the stepparent is included in the FIP grant. Final federal TANF regulations prohibit application of the 60-month FIP limit to stepparents who are in the home but are excluded from the FIP grant. Although the Department has the option to apply the 60-month state limit to ineligible stepparents, the Department opted to follow TANF regulations as most FIP families with an ineligible stepparent in the home are already subject to the 60-month limit because of the presence of the stepparent's spouse, i.e., the parent of the FIP child.

The definition of adults living in Indian Country or in a Native Alaskan village who are excluded from the 60-month FIP limit is revised to be in compliance with federal TANF law. The revised definition has no impact on FIP applicants and participants because Iowa does not have any established Indian Country or Native Alaskan villages.

- Revise the definition of "reasonable distance" for participating in a PROMISE JOBS activity to specify that travel time from home to the work site includes travel time to take a child to the child care provider. Federal TANF regulations mandate that states cannot reduce or terminate assistance based on a parent's refusal to participate in work activities if the parent demonstrates the unavailability of needed child care for young children.

Federal regulations further require that states develop procedures for determining if a parent has demonstrated the unavailability of child care. To meet the federal mandate, Iowa must define the availability of child care within "reasonable distance" from the parent's home to the work site. Under current rules, an acceptable instance for excusing a parent from a PROMISE JOBS activity is when the required travel time from home to the activity exceeds one hour each way, excluding the additional travel time necessary to take children to a child care provider. However, current practice defines reasonable distance of one hour to include travel time necessary to take the child to a child care provider. The proposed rule brings the Department into compliance with current practice by defining "reasonable distance" of one hour to include the travel time necessary to take a child to a child care provider.

- Incorporate the new Spanish version of the Public Assistance Eligibility Report form.
- Update legal references, form numbers and language in existing rules, including names of other state agencies (e.g., replace "Employment Services" with "Workforce Development").

These amendments do not provide for waivers in specified situations because the amendments on the quarterly report and alien eligibility are required by state law. However, if the amendments on alien eligibility would help a client, individuals may request a waiver of current policy under the Department's general rule on exceptions at rule 441—1.8(217) until the proposed amendments become effective.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before August 2, 2000.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 217.30(4) and chapter 239B as amended by 2000 Iowa Acts, Senate File 2368, sections 1, 3, and 8.

The following amendments are proposed.

ITEM 1. Amend subrule **7.7(2)**, paragraph **"k,"** as follows:

k. The agency terminates, reduces, or suspends benefits or makes changes based on the completed ~~monthly report, which can be either~~ Form 470-0455 *or Form 470-3719(S)*, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, as described at ~~40.7(1)"b."~~ *441—paragraph 40.27(1)"b."*

ITEM 2. Amend subrule **9.4(6)** by rescinding and reserving paragraph **"c."**

ITEM 3. Amend rule 441—9.10(17A,22) as follows:

Amend subrule **9.10(4)**, paragraph **"e,"** as follows:

e. ~~To meet federal requirements under the Family Support Act of 1988, the~~ *The* agency has entered into ~~agreements~~ *an agreement* with the department of ~~employment services and the department of economic development~~ *workforce development* under which ~~these two agencies~~ *the agency* will provide services to ~~aid to dependent children~~ *family investment program* clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with ~~these agencies~~ *the agency*, as well as with the *agency's* subcontractors ~~who administer the Job Training Partnership Act (JTPA) program on behalf of the department of economic development~~.

Rescind and reserve subrule **9.10(15)**.

ITEM 4. Amend subrule **9.12(2)**, paragraph **"c,"** subparagraph **(4)**, as follows:

(4) The ~~departments of economic development and employment services~~ *department of workforce development* to verify employment of participants in the PROMISE JOBS program.

ITEM 5. Amend rule **441—40.21(239B)** by rescinding the definition of "X-PERT."

ITEM 6. Amend rule 441—40.22(239B) as follows:

Amend the introductory paragraphs as follows:

441—40.22(239B) Application. ~~For cases selected for the X-PERT system, the application for the family investment program shall be initiated by submitting Form 470-3112, Application for Assistance, Part 1, or Form 470-3122 (Spanish). Applicants whose cases are selected for the X-PERT system but whose eligibility cannot be determined through the X-PERT system may be requested to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). Form 470-3112 or Form 470-3122 shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf.~~

~~For cases not selected for the X-PERT system, the~~ *The* application for the family investment program shall be submitted on *the* Public Assistance Application, Form ~~PA-2207-0~~ *470-0462* or Form ~~PA-2230-0~~ *470-0466* (Spanish). ~~When submitting Application for Assistance, Part 1, Form 470-3112 or Form 470-3122 (Spanish), the applicant shall also be required to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), no later than at the time of the required face-to-face interview.~~ Form ~~PA-2207-0~~ *470-0462* or Form ~~PA-2230-0~~ *470-0466* (Spanish) shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and a stepparent, are in the home, both shall sign the application.

Amend subrule **40.22(5)**, paragraph **"c,"** as follows:

c. When eligibility factors are met, assistance shall be reinstated when a completed Public Assistance Eligibility Report, Form ~~PA-2140-0~~ *470-0455 or Form 470-3719(S)*, or a Review/Recertification Eligibility Document, Form 470-2881, is received by the county office within ten days of the date a cancellation notice is sent to the recipient because the form was incomplete or not returned.

ITEM 7. Amend rule 441—40.23(239B), introductory paragraph, as follows:

441—40.23(239B) Date of application. The date of application is the date an identifiable Public Assistance Application, Form 470-0462 or Form 470-0466 (Spanish), ~~Form 470-3112, Application for Assistance, Part 1, or Form 470-3122 (Spanish),~~ is received in any local or area office or by an income maintenance worker in any satellite office or by a designated worker who is in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. The disproportionate share hospital, federally qualified health center or other facility will forward the application to the department office which is responsible for the completion of the eligibility determination. An identifiable application is an application containing a legible name and address that has been signed.

ITEM 8. Amend rule 441—40.24(239B) as follows:

Amend subrule 40.24(2), introductory paragraph, as follows:

40.24(2) In processing an application, the county office or the designated worker as described in rule 441—40.23(239B) who is in a disproportionate share hospital, federally qualified health center, or other facility in which outstationing activities are provided shall conduct at least one face-to-face interview with the applicant prior to approval of the application for assistance. ~~In addition, at the conclusion of the interview, applicants whose cases are selected for the X-PERT system shall be provided the Summary of Facts, Form 470-3114, for review. The applicant shall also sign and return to the county office the Summary Signature Page, Form 470-3113 or Form 470-3123 (Spanish), within the time frame described at 40.24(1). Form 470-3113 or Form 470-3123 (Spanish) shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and stepparent are in the home, both shall sign the form.~~ The worker shall assist the applicant, when requested, in providing information needed to determine eligibility and the amount of assistance. The application process shall include a visit, or visits, to the home of the child and the person with whom the child will live during the time assistance is granted under the following circumstances:

Amend subrule 40.24(3) as follows:

40.24(3) The applicant who is subject to monthly reporting as described in 40.27(1) shall become responsible for completing Form ~~PA-2140-0~~ *470-0455 or Form 470-3719(S)*, Public Assistance Eligibility Report, after the time of the face-to-face interview. This form shall be issued and returned according to the requirements in 40.27(4)"b." The application process shall continue as regards the initial two months of eligibility, but eligibility and the amount of payment for the third month and those following are dependent

HUMAN SERVICES DEPARTMENT[441](cont'd)

on the proper return of these forms. The county office shall explain to the applicant at the time of the face-to-face interview the applicant's responsibility to complete and return this form.

ITEM 9. Amend rule 441—40.27(239B) as follows:

Amend subrule 40.27(1), introductory paragraph and paragraph **"b,"** as follows:

40.27(1) Eligibility factors shall be reviewed at least every six months for the family investment program. A semiannual review shall be conducted using information contained in and verification supplied with Form ~~PA-2140-0~~ *470-0455 or Form 470-3719(S)*, Public Assistance Eligibility Report. A face-to-face interview shall be conducted at least annually at the time of a review using information contained in and verification supplied with Form 470-2881, Review/Recertification Eligibility Document. When the client has completed ~~Form PA-2207-0,~~ *a* Public Assistance Application, *Form 470-0462* or Form ~~PA-2230-0~~ *470-0466* (Spanish), for another purpose required by the department, this form may be used as the review document for the semiannual or annual review.

b. The assistance unit subject to monthly reporting shall complete a Public Assistance Eligibility Report, Form ~~PA-2140-0~~ *470-0455 or Form 470-3719(S)*, for each budget month, unless the assistance unit is required to complete Form 470-2881, Review/Recertification Eligibility Document, for that month. The Public Assistance Eligibility Report shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents or a parent and a stepparent are in the home, both shall sign the form.

Amend subrule 40.27(3) as follows:

40.27(3) Information for semiannual reviews shall be submitted on Form ~~PA-2140-0~~ *470-0455 or Form 470-3719(S)*, Public Assistance Eligibility Report. Information for the annual face-to-face determination interview shall be submitted on Form 470-2881, Review/Recertification Eligibility Document. When the client has completed Form ~~PA-2207-0~~ *470-0462 or Form 470-0466 (Spanish)*, Public Assistance Application, for another purpose, this form may be used as the review document for the semiannual or annual review. The review form shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents, or a parent and a stepparent, are in the home, both shall sign the Public Assistance Eligibility Report, the Review/Recertification Eligibility Document, or the Public Assistance Application.

Amend subrule **40.27(4)**, paragraph **"b,"** as follows:

b. The recipient shall complete Form ~~PA-2140-0~~ *470-0455 or Form 470-3719(S)*, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, when requested by the county office in accordance with these rules. ~~Either~~ *The* form ~~will~~ *shall* be supplied as needed to the recipient by the department. The department shall pay the cost of postage to return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the seventh day *of the month* after the date it is mailed by the department. The county office shall supply the recipient with Form ~~PA-2140-0~~ *470-0455 or Form 470-3719(S)*, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, on request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the last day of the budget month and accompanied by verification as required in 441—~~paragraph~~ *paragraphs* 41.27(1)"~~i~~," and 41.27(2)"q."

ITEM 10. Rescind and reserve rule **441—40.29(239B)**.

ITEM 11. Amend subrule **41.21(5)**, paragraph **"c,"** subparagraphs **(1)** and **(2)**, as follows:

(1) The determination of incapacity shall be supported by medical or psychological evidence. The evidence may be submitted either by *a* letter from the physician or on Form ~~PA-2126-5~~ *470-0447*, Report on Incapacity.

(2) When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on Form ~~PA-5113-0~~ *470-0502*, Authorization for Examination and Claim for Payment.

ITEM 12. Amend subrule **41.22(9)**, paragraphs **"a"** and **"c,"** as follows:

a. Prior to requiring cooperation, the ~~local~~ *county* office shall notify the applicant or recipient on Form ~~CS-1105-5~~ *470-0169*, Requirements of Support Enforcement, of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination. One copy of this form shall be given to the applicant or recipient and one copy shall be signed by the applicant or recipient and the worker and filed in the case record.

c. When the applicant or recipient makes a claim of good cause or requests additional information regarding the right to file a claim of good cause, the ~~local~~ *county* office shall issue a second notice, Form ~~CS-1106-5~~ *470-0170*, Requirements of Claiming Good Cause. When the applicant or recipient chooses to claim good cause, Form ~~CS-1106-5~~ *470-0170* shall be signed and dated by the client and returned to the ~~local~~ *county* office. This form:

(1) to (6) No change.

ITEM 13. Amend rule 441—41.23(239B) as follows:

Rescind and reserve subrule **41.23(4)**.

Amend subrule 41.23(5), catchwords and paragraph **"a,"** as follows:

41.23(5) Citizenship and alienage ~~for persons entering the United States on or after August 22, 1996~~.

a. A family investment program assistance grant may include the needs of:

~~(1) A~~ *a* citizen or national of the United States, *or a qualified alien as defined at 8 United States Code Section 1641. A person who is a qualified alien as defined at 8 United States Code Section 1641 is not eligible for family investment program assistance for five years. The five-year period of ineligibility begins on the date of the person's entry into the United States with a qualified alien status as defined at 8 United States Code Section 1641.*

EXCEPTIONS: The five-year prohibition from family investment program assistance does not apply to qualified aliens described in 8 United States Code Section 1612, or to qualified aliens as defined at 8 United States Code Section 1641 who entered the United States before August 22, 1996. A person who is not a United States citizen or is not a qualified alien as defined at 8 United States Code Section 1641 is not eligible for the family investment program regardless of the date the person entered the United States.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(2) Refugees admitted under Section 207 of the Immigration and Nationality Act (INA).~~

~~(3) Asylees admitted under Section 208 of the INA.~~

~~(4) Aliens whose deportation has been withheld under Section 243(h) of the INA.~~

~~(5) Veterans of the United States Armed Forces who were honorably discharged for reasons other than alienage, their spouses, and dependent children.~~

~~(6) Active duty personnel of the United States Armed Forces, their spouses, and dependent children.~~

~~(7) An alien who entered the United States on or after August 22, 1996, and who has resided in the United States for a period of at least five years.~~

ITEM 14. Amend rule 441—41.24(239B) as follows:

Amend subrule **41.24(1)**, paragraph **"c,"** as follows:

c. ~~Persons~~ *Except for persons described at paragraph 41.24(2)"f," persons* determined exempt from referral, including applicants, may volunteer for PROMISE JOBS.

Amend subrule **41.24(2)**, by adding the following **new** paragraph **"f"**:

f. A person who is not a United States citizen and is not a qualified alien as defined in 8 United States Code Section 1641.

Amend subrule **41.24(3)**, paragraphs **"a"** and **"b,"** as follows:

a. ~~Parents~~ *Unless exempt as described at subrule 41.24(2), parents* aged 18 or 19 are referred to PROMISE JOBS as follows:

(1) to (3) No change.

b. ~~Parents~~ *Unless exempt as described at subrule 41.24(2), parents* aged 17 or younger are referred to PROMISE JOBS as follows:

(1) and (2) No change.

Amend subrule 41.24(6) as follows:

41.24(6) Volunteers. ~~Any~~ *Except for persons described at paragraph 41.24(2)"f," any* applicant and any recipient may volunteer for referral. The income maintenance worker shall not refer an applicant to the program when it appears that the applicant shall be ineligible for FIP.

ITEM 15. Amend rule 441—41.25(239B) as follows:

Rescind and reserve subrule **41.25(6)**.

Amend subrule 41.25(7) as follows:

41.25(7) Time limit for receiving assistance.

a. Assistance shall not be provided to a FIP applicant or recipient family that includes an adult who has received assistance for 60 calendar months under any state program in Iowa or in another state that is funded by the Temporary Assistance for Needy Families (TANF) block grant. The 60-month period need not be consecutive. An "adult" is any person who is a parent of the FIP child ~~or that child's sibling (of whole or half-blood or adoptive)~~ in the home, ~~stepparent of the FIP child,~~ or included as an optional member under subparagraphs 41.28(1)"b"(1), ~~and~~ (2) *and (3)*. In two-parent households, the 60-month limit is determined when either parent has received assistance for 60 months. "Assistance" shall include any month for which the adult receives a FIP grant ~~or payment for PROMISE JOBS expense allowances~~. Assistance received for a partial month shall count as a full month.

b. In determining the number of months an adult received assistance, the department shall consider toward the 60-month limit:

(1) Assistance received even when the parent is excluded from the grant unless the parent is an SSI recipient.

(2) Assistance received by an optional member of the eligible group as described in subparagraphs 41.28(1)"b"(1) and (2). However, once the person has received assistance for 60 months, the person is ineligible but assistance may continue for other persons in the eligible group. *The entire family is ineligible for assistance when the optional member who has received assistance for 60 months is the incapacitated stepparent on the grant as described at subparagraph 41.28(1)"b"(3).*

c. In determining the number of months an adult received assistance, the department shall not consider toward the 60-month limit any month for which FIP ~~and PROMISE JOBS~~ assistance was not issued for the family, such as:

(1) A month of suspension.

(2) A month for which no grant is issued due to the limitations described in rules 441—45.26(239B) and 441—45.27(239B).

(3) When all assistance for the month is returned.

(4) When all assistance for the month is reimbursed via child support collection or overpayment recovery.

d. No change.

e. The department shall not consider toward the 60-month limit months of assistance received by an adult while living ~~on an~~ *in* Indian ~~reservation~~ *country (as defined in 18 United States Code Section 1151)* or ~~in an~~ *a Native* Alaskan ~~Native~~ village ~~if, during the month, at least 1,000 persons lived there and~~ *where* at least 50 percent of the adults ~~living there~~ *were* ~~unemployed~~ *not employed.*

Amend subrule **41.25(8)**, paragraph **"f,"** introductory paragraph, as follows:

f. If the department receives written notification from a school truancy officer under ~~1997 Iowa Acts, House File 597, section 5,~~ *Iowa Code section 299.12* that a child receiving family investment program assistance is deemed to be truant, the child's family shall be subject to sanction as provided in paragraph "g." The sanction shall continue to apply until the department receives written notification from the school truancy officer of any of the following:

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code ~~chapter~~ *chapters* 239B and ~~1997 Iowa Acts, House File 597~~ *299*.

ITEM 16. Amend rule 441—41.26(239B) as follows:

Amend subrule **41.26(1)**, paragraph **"e,"** as follows:

e. A reserve of other property, real or personal, not to exceed $2000 for applicant assistance units and $5000 for recipient assistance units. EXCEPTION: Applicant assistance units with at least one member who was a recipient in Iowa in the month prior to the month of application are subject to the $5000 limit. The exception includes those persons who did not receive an assistance grant due to the ~~$10 grant limitation~~ *limitations* described at ~~rule~~ *rules* 441—45.26(239B) *and 45.27(239B)* and persons whose grants were suspended as in 41.27(9)"f" in the month prior to the month of application.

Resources of the applicant or the recipient shall be determined in accordance with subrule 41.26(2).

Amend subrule **41.26(2)** by rescinding and reserving paragraphs **"f"** and **"g."**

Rescind and reserve subrule **41.26(9)**.

ITEM 17. Amend rule 441—41.27(239B) as follows:

Amend subrule **41.27(1)**, paragraph **"i,"** as follows:

i. The applicant or recipient shall cooperate in supplying verification of all unearned income, as defined at rule 441—40.21(239B). When the information is available, the county office shall verify job insurance benefits by using information supplied to the department by the department of

HUMAN SERVICES DEPARTMENT[441](cont'd)

workforce development. When the county office uses this information as verification, job insurance benefits shall be considered received the second day after the date that the check was mailed by workforce development. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the county office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment. The client must report the discrepancy prior to the payment month or within ten days of the date on the Notice of Decision, Form ~~PA-3102-0~~ *470-0485(C) or 470-0486(M)*, applicable to the payment month, whichever is later, in order to receive a payment adjustment.

Amend subrule **41.27(8)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) ~~Treatment of income when the parent is a citizen or an alien other than those described in 41.23(4)"a"(3).~~ A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, the 50 percent work incentive deduction described at 41.27(2)"a" and "c," and diversions described at 41.27(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at 41.27(11). All remaining ~~nonexempt~~ income of the parent shall be applied against the needs of the eligible group.

Further amend subrule **41.27(8)**, paragraph **"a,"** by rescinding and reserving subparagraph **(2)**.

Rescind and reserve subrule **41.27(10)**.

ITEM 18. Amend **441—Chapters 42, 43, 45** and **46** by changing the parenthetical implementation statutes "239," "249C," and "77GA,SF516" to "239B" wherever they appear.

ITEM 19. Amend **441—Chapter 42**, implementation clause, as follows:

These rules are intended to implement Iowa Code ~~sections 239.2, 239.5 and 239.17~~ *section 239B.2*.

ITEM 20. Amend 441—Chapter 43 by rescinding the implementation clauses following rules **43.21(239B)** and **43.22(239B)** and amending the implementation clause following rule **441—43.24(239B)** as follows:

~~This rule is~~ *These rules are* intended to implement Iowa Code section ~~239.5~~ *239B.13*.

ITEM 21. Amend subrule 43.23(4) as follows:

43.23(4) The ~~local~~ *county* office shall send the vendor two copies of Form ~~PA-3157-5~~ *470-0493*, Authorization for *FIP* Vendor Payment. The vendor shall complete and return one copy of the form to the ~~local~~ *county* office along with a copy of the billing, invoice or statement.

ITEM 22. Amend **441—Chapter 45**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections ~~239.2 and 239.5~~ *239B.2, 239B.3, and 239B.7*.

ITEM 23. Amend rule **441—46.21(239B)** as follows:

Amend the definition of "client error" as follows:

"Client error" means and may result from:

False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent Notice of Decision, Form ~~PA-3102-0~~ *470-0485(C) or 470-0486(M)*, or the receipt of a duplicate grant; or

Failure to refund to the child support recovery unit any nonexempt payment from the absent parent received after the date the decision on eligibility was made.

~~False or misleading statements regarding the existence of a sponsor or the income or resources of the sponsor and the sponsor's spouse, when a sponsor is financially responsible for an alien according to 441—subrules 41.25(6) and 41.27(10).~~

Rescind the definitions of "good cause" and "without fault."

ITEM 24. Rescind and reserve subrule **46.24(5)**.

ITEM 25. Amend rule 441—46.25(239B) as follows:

Amend the introductory paragraph as follows:

441—46.25(239B) Source of recoupment. Recoupment shall be made from basic needs ~~or in accordance with 46.24(5) above~~. The minimum recoupment amount shall be the amount prescribed in 46.25(3). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the department of inspections and appeals, or have repayment withheld from the grant. The client shall sign ~~either~~ Form ~~PA-3164-0, Agreement to Repay Overpayment~~ *470-0495, Repayment Contract*, ~~or Form PA-3167-0, Agreement to Repay Overpayment after Probation,~~ when requested to do so by the department of inspections and appeals. When the client fails to make the agreed upon payment, the agency shall reduce the grant. ~~Recoupment, whether it be by a lump sum payment, periodic installment payments, or withholding from the grant, can be made from one or both of the following sources:~~

Rescind and reserve subrule **46.25(4)**.

ITEM 26. Amend subrule 46.27(5) as follows:

46.27(5) Collection. Recoupment for overpayments shall be made from the parent or nonparental relative who was the caretaker relative, as defined in 441—subrule 41.22(3), at the time the overpayment occurred~~, except as provided in 46.24(5)~~. When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

ITEM 27. Amend **441—Chapter 46**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections ~~239.2, 239.5, 239.6, 239.14 and 239.17~~ *239B.2, 239B.3, 239B.7, and 239B.14*.

ITEM 28. Amend **441—Chapter 93**, Preamble, as follows:

PREAMBLE

This chapter implements the PROMISE JOBS* program which is designed to increase the availability of employment and training opportunities to family investment program (FIP) recipients. It implements the family investment agreement (FIA) as directed in legislation passed by the Seventy-

HUMAN SERVICES DEPARTMENT[441](cont'd)

fifth General Assembly and signed by the governor on May 4, 1993, and approved under federal waiver August 13, 1993. The program also implements the ~~federal Job Opportunities and Basic Skills (JOBS) program of the Family Support Act of 1988~~ *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Title I—Block Grants for Temporary Assistance for Needy Families (TANF).*

The program assigns responsibility for the provision of services to the *Iowa* department of workforce development ~~(DWD)~~ *(IWD)* ~~and the department of economic development (DED) as the administrative entity for the Job Training Partnership Act (JTPA) program, Iowa's two primary providers of employment-oriented services~~ *and IWD's subcontractors as appropriate.* In addition, the bureau of refugee services (BRS) of the department of human services is assigned the responsibility of providing program services, to the extent compatible with resources available, to all refugees.

PROMISE JOBS services, which are also FIA options, include orientation, assessment, job-seeking skills training, group and individual job search, classroom training programs ranging from basic education to postsecondary education opportunities, *entrepreneurial training,* PROMISE JOBS on-the-job training, work experience, unpaid community service, parenting skills training, *life skills training,* monitored employment, the FIP-unemployed parent work program, referral for family planning counseling, *volunteer mentoring,* FaDSS, and other family development services. In addition, participants have access to all services offered by ~~the~~ *IWD and its subcontractor* provider agencies. Persons in other work and training programs outside of PROMISE JOBS or not approvable by PROMISE JOBS can use those as FIA options.

ITEM 29. Amend subrules 93.104(1) and 93.104(2) as follows:

93.104(1) All registrants may volunteer for services~~.~~ *except for persons described at 441—paragraph 41.24(2)"f."*

93.104(2) ~~Applicants~~ *Except for persons described at 441—paragraph 41.24(2)"f," applicants* for FIP assistance may volunteer for and are eligible to receive job placement services prior to approval of the FIP application. Applicants who participate in the program shall receive a transportation allowance, as well as payment of child care, if required. The transportation allowance shall be paid at the start of participation. The income maintenance worker shall not refer an applicant to the program when it appears that the applicant will be ineligible for FIP.

ITEM 30. Amend subrule 93.111(5) as follows:

93.111(5) Retention of a training slot. Once a person has been assigned a PROMISE JOBS training slot, that person retains that training slot until FIP eligibility is lost for more than four consecutive months, an LBP chosen after completing an FIA is in effect, or the person becomes exempt from PROMISE JOBS and the person *who is eligible to volunteer* does not choose to volunteer to continue to participate in the program.

ITEM 31. Amend rule 441—93.122(239B), introductory paragraph, as follows:

441—93.122(239B) FIP-UP work program. When required to meet the federal requirements as described at 93.105(1)"c," one parent from any FIP-UP case shall be enrolled into the FIP-UP work program upon call-up as described at 93.105(2), as one of the FIA options. When both parents are mandatory PROMISE JOBS participants or when one parent is a mandatory participant and one is a volunteer, the PROMISE JOBS worker shall consult with the parents before responsibility is assigned for the FIP-UP work program participation. When one parent is mandatory and one is exempt, the mandatory parent shall fulfill the responsibility for the FIP-UP work program. However, the exempt parent, *except for persons described at 441—paragraph 41.24(2)"f,"* may volunteer for PROMISE JOBS in order to fulfill the responsibility for the FIP-UP work program participation. The parent obligated or chosen to fulfill this responsibility shall be known as the designated parent and the FIA shall include the appropriate FIP-UP work program activities for the designated parent. The designated parent shall complete Form 470-3282, FIP-UP Work Program Designated Parent Declaration, acknowledging that the information in this rule has been provided and that the LBP has been described.

ITEM 32. Amend subrule **93.133(2)**, paragraph **"a,"** as follows:

a. Required travel time from home to the job or available work experience or unpaid community service site exceeds one hour each way. This ~~does not include~~ *includes* additional travel time necessary to take a child to a child care provider.

ARC 9979A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," and Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code.

These amendments eliminate monthly reporting and retrospective budgeting for categorically needy FMAP-related Medicaid applicants and recipients. The six-month review is eliminated for categorically needy FMAP-related Medicaid recipients and for FMAP-related and CMAP-related medically needy recipients with a zero spenddown. The changes a categorically needy FMAP-related Medicaid recipient will be required to report between annual reviews are being limited to changes in household composition, living or mailing address, sources of income, and health insurance coverage. In addition, these amendments revise the nonrecurring lump sum rules and the rules specifying that deposits into an individual development account (IDA) are exempt as income and as a resource.

Each month that a client is required to report, the client is subject to potential cancellation if the form is not returned on time, if all questions are not answered, if the form is not signed, and if all required verification is not submitted with the form. Ensuring that the client has complied with all these requirements requires a significant amount of time each month. Nationally, it is recognized that monthly reporting is one of the main reasons that Medicaid-eligible people do not

stay in the Medicaid program. For example, in Iowa 6,672 new children were added to the Medicaid program in April. (New children are children who did not receive Medicaid during the prior month, in this example, March.) However, during April 6,524 children dropped off the Medicaid program. While there is no actual proof, the Department believes the reason that many of the children dropped off Medicaid was due to monthly reporting issues.

Retrospective budgeting bases a person's eligibility for Medicaid on their income and circumstances two months prior to the month for which eligibility is being determined. For example, Medicaid eligibility for May is based on the actual income received during the month of March. Eliminating monthly reporting without eliminating retrospective budgeting would still require the client to report each month the income the client received in the previous month, but without a form. This rule change replaces retrospective budgeting with prospective budgeting. Prospective budgeting takes into consideration both the circumstances of past months and the anticipated circumstances in future months. Also, by replacing retrospective budgeting with prospective budgeting, the need to allow for a month of suspension when one-time changes in income or circumstances occur is eliminated. Because prospective budgeting bases income eligibility on the client's recent income history, or on a projection of anticipated income, or on a combination of the recent income history and a projection of anticipated income, one-time changes in income will not affect the income projection.

The six-month non-face-to-face review is a duplication of the process a worker completes each time a client reports a change in circumstances. Requiring recipients to complete a form and requiring that workers evaluate and process these forms when the client has reported no change does not seem to be a fair and equitable policy for clients and it is not an efficient use of staff time.

Limiting the changes a client is required to report reduces the potential for the client to forget to report a change, which could result in penalties such as an overpayment or in cancellation. Additionally, it reduces the frequency with which workers must redetermine eligibility.

The time saved by workers no longer performing the tasks noted above will be refocused toward ensuring accuracy in the Food Stamp program.

These amendments do not provide for waivers in specified situations because they confer a benefit on clients by reducing paperwork and reporting requirements.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before August 2, 2000.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—75.1(249A) as follows:

Amend subrule **75.1(28)**, paragraph **"a,"** subparagraph **(2)**, as follows:

(2) Moneys received as a ~~nonrecurring~~ lump sum, except as specified in subrules 75.56(4) and 75.56(7) and paragraphs 75.57(8)"b" and "c," shall be treated in accordance with ~~this subparagraph.~~ *paragraph 75.57(9)"c."* ~~Nonrecurring lump sum income shall be considered as income in the budget month and considered in the eligibility determination for the benefit month, unless the income is exempt. Nonrecurring lump sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. The lump sum shall be prorated and considered in the eligibility determination by dividing the nonrecurring lump sum plus other countable income received in the month the lump sum was received by the standard of need in effect for the household size in accordance with subrule 75.58(1). The resulting number of months shall be called the "proration period." Any income remaining after this calculation shall be applied as income to the first month following the proration period and disregarded as income thereafter.~~

~~The proration period shall be shortened in accordance with the provisions of subparagraph 75.57(9)"c"(2) unless otherwise specified.~~

Amend subrule **75.1(35)**, paragraphs **"i"** and **"j,"** as follows:

i. Reviews. Reviews of eligibility shall be made for SSI-related, *CMAP-related, and FMAP-related* medically needy recipients with a zero spenddown as often as circumstances indicate but in no instance shall the period of time between reviews exceed 12 months.

SSI-related, *CMAP-related, and FMAP-related* medically needy persons shall complete Form 470-3118, Medically Needy Recertification/State Supplementary and Medicaid Review, as part of the review process when requested to do so by the county office.

j. Redetermination. When an SSI-related, *CMAP-related, or FMAP-related* recipient who has had ongoing eligibility because of a zero spenddown has income that exceeds the MNIL, a redetermination of eligibility shall be completed to change the recipient's eligibility to a two-month certification with spenddown. This redetermination shall be effective the month the income exceeds the MNIL or the first month following timely notice.

(1) and (2) No change.

ITEM 2. Amend rule **441—75.25(249A)**, definitions of "certification period" and "ongoing eligibility," as follows:

"Certification period" for medically needy shall mean the period of time ~~not to exceed six consecutive months in which a person is eligible without a spenddown obligation, or~~ not to exceed two consecutive months in which a person is conditionally eligible ~~for Medicaid as medically needy~~.

"Ongoing eligibility" for medically needy shall mean that eligibility continues for an SSI-related, *CMAP-related, or FMAP-related* medically needy person with a zero spenddown.

ITEM 3. Amend rule **441—75.50(249A)** as follows:

Adopt the following **new** definition in alphabetical order:

"Application period" means the months beginning with the month in which the application is considered to be filed, through and including the month in which an eligibility determination is made.

Rescind the definitions of "report month," "retrospective budgeting," and "suspension."

ITEM 4. Amend rule 441—75.51(249A) as follows:

441—75.51(249A) Reinstatement of eligibility. Eligibility for the family medical assistance program (FMAP) and FMAP-related programs shall be reinstated without a new application when all necessary information is provided at least three working days before the effective date of cancellation and eligibility can be reestablished, except as provided in

HUMAN SERVICES DEPARTMENT[441](cont'd)

the transitional Medicaid program in accordance with subparagraph 75.1(31)"j"(2).

Assistance may be reinstated without a new application when all necessary information is provided after the third working day but before the effective date of cancellation and eligibility can be reestablished before the effective date of cancellation.

When all eligibility factors are met, assistance shall be reinstated when a completed ~~Public Assistance Eligibility Report, Form PA-2140-0, or a~~ Review/Recertification Eligibility Document, Form 470-2881, is received by the county office within ten days of the date a cancellation notice is sent to the recipient because the form was incomplete or not returned.

ITEM 5. Amend rule 441—75.52(249A) as follows:

Amend subrules 75.52(1) and 75.52(3) as follows:

75.52(1) Reviews. Eligibility factors shall be reviewed at least ~~every six months~~ *annually* for the family medical assistance program and family medical assistance-related programs. ~~A semiannual review shall be conducted using information contained in and verification supplied with Form 470-0455, Public Assistance Eligibility Report.~~ A face-to-face interview shall be conducted at least annually at the time of a review for adults using information contained in and verification supplied with Form 470-2881, Review/Recertification Eligibility Document.

~~a. Any assistance unit with one or more of the following characteristics shall report monthly:~~

~~(1) The assistance unit contains any member with earned income unless the income is either exempt or the only earned income is from annualized self-employment.~~

~~(2) The assistance unit contains any member with a recent work history. A recent work history means the person received earned income during either one of the two calendar months immediately preceding the budget month, unless the income was either exempt or the only earned income was from annualized self-employment.~~

~~(3) The assistance unit contains any member receiving nonexempt unearned income, the source or amount of which is expected to change more often than once annually, unless the income is from job insurance benefits or interest; or unless the assistance unit's adult members are 60 years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; or unless all adults, who would otherwise be members of the assistance unit, are receiving Supplemental Security Income (SSI) including state supplementary assistance (SSA).~~

~~(4) The assistance unit contains any member residing out of state on a temporary basis.~~

~~b. The assistance unit subject to monthly reporting shall complete a Public Assistance Eligibility Report (PAER), Form PA-2140-0, for each budget month, unless the assistance unit is required to complete Form 470-2881, Review/Recertification Eligibility Document (RRED) for that month. The PAER shall be signed by the recipient, the recipient's authorized representative or, when the recipient is incompetent or incapacitated, someone acting responsibly on the recipient's behalf. When both parents or a parent and a stepparent are in the home, both shall sign the form.~~

75.52(3) Forms. ~~Information for semiannual reviews shall be submitted on Form PA-2140-0, Public Assistance Eligibility Report (PAER).~~ Information for the annual face-to-face determination interview shall be submitted on Form 470-2881, Review/Recertification Eligibility Document (RRED). When the client has completed Form ~~PA-2207-0~~ *470-0462*, Public Assistance Application, for another purpose, this form may be used as the review document for the semiannual or annual review.

Amend subrule 75.52(4), introductory paragraph and paragraph **"b,"** as follows:

75.52(4) Recipient responsibilities. ~~Responsibilities of recipients (including individuals in suspension status).~~ For the purposes of this subrule, recipients shall include persons who received assistance subject to recoupment because the persons were ineligible.

b. The recipient shall complete ~~Form PA-2140-0, Public Assistance Eligibility Report (PAER), or~~ Form 470-2881, Review/Recertification Eligibility Document (RRED), when requested by the county office in accordance with these rules. ~~Either~~ *The* form ~~will~~ *shall* be supplied as needed to the recipient by the department. The department shall pay the cost of postage to return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the seventh day after the date it is mailed by the department. The county office shall supply the recipient with a ~~PAER or a~~ RRED upon request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the first day of the budget month and accompanied by verification as required in paragraphs 75.57(1)"f" and 75.57(2)"l."

Amend paragraph **75.52(4)"c"** by amending the introductory paragraph and adopting **new** subparagraph **(10)** as follows:

c. The recipient~~, or an individual being added to the existing eligible group,~~ shall ~~timely~~ report any change in the following circumstances *at the annual review or upon the addition of an individual to the eligible group*:

(10) Health insurance premiums or coverage.

Further amend subrule **75.52(4)** by rescinding paragraphs **"d"** and **"e,"** and adopting the following **new** paragraphs **"d"** to **"h"**:

d. All recipients shall timely report any change in the following circumstances at any time:

(1) Members of the household.

(2) Change of mailing or living address.

(3) Sources of income.

(4) Health insurance premiums or coverage.

e. Recipients described at subrule 75.1(35) shall also timely report any change in income from any source and any change in care expenses at any time.

f. A report shall be considered timely when made within ten days from the date:

(1) A person enters or leaves the household.

(2) The mailing or living address changes.

(3) A source of income changes.

(4) A health insurance premium or coverage change is effective.

(5) Of any change in income.

(6) Of any change in care expenses.

g. When a change is not reported as required in paragraphs 75.52(4)"c" through "e," any excess Medicaid paid shall be subject to recovery.

h. When a change in any circumstance is reported, its effect on eligibility shall be evaluated and eligibility shall be redetermined, if appropriate, regardless of whether the report of the change was required in paragraphs 75.52(4)"c" through "e."

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule **75.52(5)**, paragraph **"a,"** as follows:

a. ~~Any change not reported prospectively in the budget month and reported on the Public Assistance Eligibility Report (PAER), Form PA-2140-0, or the Review/Recertification Eligibility Document (RRED), Form 470-2881, shall be effective for the corresponding benefit month.~~ When the change creates ineligibility ~~for more than one month~~, eligibility under the current coverage group shall be canceled and an automatic redetermination of eligibility shall be completed in accordance with rule 441—76.11(249A).

Further amend subrule **75.52(5)** by rescinding and reserving paragraph **"b."**

Amend subrule **75.52(5)**, paragraph **"c,"** as follows:

c. When an individual included in the eligible group becomes ineligible, that individual's needs shall be removed ~~prospectively~~ effective the first of the next month unless the action must be delayed due to timely notice requirements at rule 441—7.6(217).

ITEM 6. Amend rule 441—75.57(249A) as follows:

Amend the introductory paragraph as follows:

441—75.57(249A) Income. When determining initial and ongoing eligibility for the family medical assistance program (FMAP) and FMAP-related Medicaid coverage groups, all unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered ~~in determining initial and continuing eligibility~~. Unless otherwise specified at rule 441—75.1(249A), the determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income received by the eligible group and available to meet the current month's needs is no more than 185 percent of living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 1); (2) the countable net earned and unearned income is less than the schedule of living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 2); and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the schedule of basic needs as identified at subrule 75.58(2) for the eligible group (Test 3). The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 1); and (2) countable net unearned and earned income is less than the schedule of basic needs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 2). Child support assigned to the department in accordance with 441—subrule 41.22(7) shall be considered unearned income for the purpose of determining continuing eligibility, except as specified at paragraphs 75.57(1)"e," 75.57(6)"u," and 75.57(7)"o." Expenses for care of children or disabled adults, deductions, and diversions shall be allowed when verification is provided. The county office shall return all verification to the applicant or recipient.

Amend subrule **75.57(6)**, paragraph **"ab,"** as follows:

ab. Deposits into an individual development account (IDA) when determining eligibility. The amount of the deposit is exempt as income and shall not be used in the 185 percent eligibility test. ~~The deposit~~ *Deposits* shall be deducted from nonexempt earned and unearned income ~~that the client receives in the same budget month~~ *beginning with the month following the month* in which ~~the deposit is made~~ *verification that deposits have begun is received.* ~~To allow a deduction, verification of the deposit shall be provided by the end of the report month or the extended filing date, whichever is later.~~ The client shall be allowed a deduction only when the deposit is made from the client's money. The earned income deductions at paragraphs 75.57(2)"a," "b," and "c" shall be applied to nonexempt earnings from employment or net profit from self-employment that remains after deducting the amount deposited into the account. Allowable deductions shall be applied to any nonexempt unearned income that remains after deducting the amount of the deposit. If the client has both nonexempt earned and unearned income, the amount deposited into the IDA account shall first be deducted from the client's nonexempt unearned income. Deposits shall not be deducted from earned or unearned income that is exempt.

Amend subrule **75.57(7)** by rescinding and reserving paragraphs **"o," "p," "r,"** and **"aa."**

Further amend subrule **75.57(7)**, paragraph **"v,"** as follows:

v. ~~Retrospective income~~ *Income* attributed to an unmarried, underage parent in accordance with paragraph 75.57(8)"c" effective the first day of the month following the month in which the unmarried, underage parent turns age 18 or reaches majority through marriage. When the unmarried, underage parent turns 18 on the first day of a month, the ~~retrospective~~ income of the self-supporting parents becomes exempt as of the first day of that month.

Amend subrule **75.57(9)** as follows:

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

a. Initial *and ongoing* eligibility. *Both initial and ongoing eligibility shall be based on a projection of income based on the best estimate of future income.*

(1) ~~At the time of~~ *Upon* application *for which a face-to-face interview is completed pursuant to 441—subrule 76.2(1),* all earned and unearned income received ~~and anticipated to be received~~ by the eligible group during the ~~month the decision is made~~ *30 days prior to the interview* shall be ~~considered to determine eligibility, except income which is exempt~~ *used to project future income unless the applicant provides verification that those 30 days are not indicative of future income. Upon application for which a face-to-face interview is not completed pursuant to 441—subrule 76.2(1), all earned and unearned income received by the eligible group during the 30 days prior to the application date shall be used to project future income unless the applicant provides verification that those 30 days are not indicative of future income. If the applicant provides verification that the 30-day period specified above is not indicative of future income, income from a longer period or verification of anticipated income from the income source may be used to project future income.* ~~When income is prorated in accordance with subparagraph 75.57(9)"c"(1) and paragraph 75.57(9)"i," the prorated amount is counted as income received in the month of decision.~~ Allowable work expenses ~~during the month of decision~~ shall be deducted from earned income, except when determining eligibility under the 185 percent test defined at rule 441—75.57(249A). The determination of *initial* eligibility ~~in the month of decision~~ is a three-step process as described at rule 441—75.57(249A).

(2) When countable gross nonexempt earned and unearned income ~~in the month of decision, or in any other month after assistance is approved,~~ exceeds 185 percent of the schedule of living costs (Test 1), as identified at subrule 75.58(2) for the eligible group, eligibility does not exist under any coverage group for which these income tests apply. Countable gross income means nonexempt gross income, as

defined at rule 441—75.57(249A), without application of any disregards, deductions, or diversions. When the countable gross nonexempt earned and unearned income ~~in the month of decision~~ equals or is less than 185 percent of the schedule of living costs for the eligible group, initial eligibility under the schedule of living costs (Test 2) shall then be determined. Initial eligibility under the schedule of living costs is determined without application of the 50 percent earned income disregard as specified at paragraph 75.57(2)"c." All other appropriate exemptions, deductions and diversions are applied. Countable income is then compared to the schedule of basic needs (Test 3) for the eligible group. When countable net earned and unearned income ~~in the month of decision~~ equals or exceeds the schedule of basic needs for the eligible group, eligibility does not exist under any coverage group for which these income tests apply.

(3) When the countable net income ~~in the month of decision~~ is less than the schedule of living costs (Test 2) for the eligible group, the 50 percent earned income ~~disregards~~ *disregard* at paragraph 75.57(2)"c" shall be applied when there is eligibility for ~~these disregards~~ *this disregard*. When countable net earned and unearned income ~~in the month of decision~~, after application of the earned income disregards at paragraph 75.57(2)"c" and all other appropriate exemptions, deductions, and diversions, equals or exceeds the schedule of basic needs (Test 3) for the eligible group, eligibility does not exist under any coverage group for which these tests apply. When the countable net income ~~in the month of decision~~ is less than the payment standard for the eligible group, the application shall be approved.

(4) The family ~~composition for any month before the month of decision~~ *circumstances* shall be considered ~~individually~~, based upon the ~~family composition~~ *anticipated circumstances* during each month.

(5) ~~Eligibility shall be calculated prospectively for the initial two months with one exception: Income for the first and second months of eligibility shall be considered retrospectively when the applicant was a recipient for the two immediately preceding eligibility months.~~

(6) ~~Income considered for prospective budgeting shall be the best estimate, based on knowledge of current and past circumstances and reasonable expectations of future circumstances.~~ *When income received weekly or biweekly (once every two weeks) is projected for future months, it shall be projected by adding all income received in the time period being used and dividing the result by the number of instances of income received in that time period. The result shall be multiplied by four if the income is received weekly, or by two if the income is received biweekly, regardless of the number of weekly or biweekly payments to be made in future months.*

(7) Work expense for care, as defined at paragraph 75.57(2)"b," shall be the *average* allowable care expense expected to be billed or otherwise expected to become due during ~~the budget~~ *a* month. The 20 percent earned income deduction for each wage earner, as defined at paragraph 75.57(2)"a," and the 50 percent work incentive deduction, as defined at paragraph 75.57(2)"c," shall be allowed.

(8) When a change in circumstances that is required to be timely reported by the client pursuant to paragraphs 75.52(4)"d" and "e" is not reported as required, eligibility shall be redetermined beginning with the month following the month in which the change occurred. When a change in circumstances that is required to be reported by the client at annual review or upon the addition of an individual to the eligible group pursuant to paragraph 75.52(4)"c" is not reported as required, eligibility shall be redetermined beginning with the month following the month in which the change was required to be reported. All other changes shall be acted upon when they are reported or otherwise become known to the department, allowing for a ten-day notice of adverse action, if required.

Rescind and reserve paragraph **"b."**

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

c. Lump sum income.

(1) ~~Lump~~ *Recurring lump* sum income ~~other than nonrecurring~~. Recurring lump sum earned and unearned income, except for the income of the self-employed, shall be prorated over the number of months for which the income was received and applied to the eligibility determination for the same number of months. Income received by an individual employed under a contract shall be prorated over the period of the contract. Income received at periodic intervals or intermittently shall be prorated over the period covered by the income and applied to the eligibility determination for the same number of months, except periodic or intermittent income from self-employment shall be treated as described at paragraph 75.57(9)"i." When the lump sum income is earned income, appropriate disregards, deductions and diversions shall be applied to the monthly prorated income. Income is prorated when a *recurring* lump sum is received *at any time* ~~before the month of decision and is anticipated to recur; or a lump sum is received during the month of decision or any time during receipt of assistance~~.

(2) Nonrecurring lump sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 75.56(4) and 75.56(7) and at paragraphs 75.57(8)"b" and "c," shall be treated in accordance with this rule. *Nonrecurring lump sum income includes an inheritance, an insurance settlement or tort recovery, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance, or workers' compensation.* Nonrecurring lump sum income shall be considered as income in the ~~budget~~ month *of receipt* and counted in computing eligibility ~~in the benefit month~~, unless the income is exempt. When countable income exclusive of ~~the~~ *any* family investment program grant but including countable lump sum income exceeds the needs of the eligible group under their current coverage group, the countable lump sum income shall be prorated. The number of full months for which a monthly amount of the lump sum shall be counted as income in the eligibility determination is derived by dividing the *total of the lump sum* income *and any other countable income received in the month the lump sum was received* by the schedule of living costs, as identified at subrule 75.58(2), for the eligible group. This period of time is referred to as the period of proration.

Any income remaining after this calculation shall be applied as income to the first month following the period of ~~ineligibility~~ *proration* and disregarded as income thereafter. *The period of proration shall begin with the month following a ten-day notice of adverse action when the receipt of the lump sum was timely reported. The period of proration shall begin with the month following the receipt of the lump sum when the receipt of the lump sum was not timely reported.* The period of proration shall be shortened when the schedule of living costs as defined at subrule 75.58(2) increases. The period of proration shall be shortened by the amount which is no longer available to the eligible group due to ~~a~~ loss, ~~a~~ theft, or because the person controlling the lump sum no longer resides with the eligible group and the lump sum is no longer available to the eligible group.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The period of proration shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82, and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over $25 per incident; cost of replacement of exempt resources as defined in subrule 75.56(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump sum income, is less than the needs of the eligible group in accordance with the provisions of their current coverage group, the lump sum shall be counted as income for the ~~budget~~ month *of receipt.* For purposes of applying the lump sum provision, the eligible group is defined as all eligible persons and any other individual whose lump sum income is counted in determining the period of proration. During the period of proration, individuals not in the eligible group when the lump sum income was received may be eligible as a separate eligible group. Income of this eligible group plus income, excluding the lump sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility.

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

e. In any month for which an individual is determined eligible to be added to a currently active family medical assistance (FMAP) or FMAP-related Medicaid case, the individual's needs, *income, and resources* shall be included. ~~When adding an individual to an existing eligible group, any income of that individual shall be considered prospectively for the initial two months of that individual's eligibility and retrospectively for subsequent months. Any income considered in prospective budgeting shall be considered in retrospective budgeting only when the income is expected to continue.~~ The needs, *income, and resources* of an individual determined to be ineligible to remain a member of the eligible group shall be removed prospectively effective the first of the following month if the timely notice of adverse action requirements as provided at 441—subrule 76.4(1) can be met.

Rescind and reserve paragraph **"f."**

ITEM 7. Amend rule 441—76.2(249A) as follows:

Rescind and reserve subrule **76.2(4)**.

Amend subrule 76.2(5) as follows:

76.2(5) Reporting of changes. The applicant shall report no later than at the time of the face-to-face interview any change as defined at 441—paragraph 75.52(4)"c" which occurs after the application was signed. ~~Any change which occurs~~ *Changes that occur* after the face-to-face interview shall be reported by the applicant ~~within five days from the date the change occurred.~~ *in accordance with paragraph 75.52(4)"c."*

ITEM 8. Amend rule 441—76.7(249A) as follows:

441—76.7(249A) Reinvestigation. Reinvestigation shall be made as often as circumstances indicate but in no instance shall the period of time between reinvestigations exceed 12 months.

The recipient shall supply, insofar as the recipient is able, additional information needed to establish eligibility within five working days from the date a written request is issued. The recipient shall give written permission for the release of information when the recipient is unable to furnish information needed to establish eligibility. Failure to supply the information or refusal to authorize the county office to secure information from other sources shall serve as a basis for cancellation of Medicaid.

Eligibility criteria for persons whose eligibility for Medicaid is related to the family medical assistance program shall be reviewed according to policies ~~governing monthly and nonmonthly reporters~~ found in rule 441—75.52(249A) ~~except for pregnant women who establish eligibility under 441—subrule 75.1(15) or 75.1(28), or rule 441—75.18(249A). These pregnant women shall be exempt from the policies found in 441—subrule 75.52(1).~~

Persons whose eligibility for Medicaid is related to supplemental security income shall complete Form 470-3118, Medically Needy Recertification/State Supplementary and Medicaid Review, as part of the reinvestigation process when requested to do so by the county office.

The review for foster children or children in subsidized adoption shall be completed on Form 470-2914, Foster Care and Subsidized Adoption Medicaid Review, according to the time schedule of the family medical assistance program or supplemental security income program for disabled children, as applicable.

ITEM 9. Amend subrule 76.10(2) as follows:

76.10(2) An applicant or recipient eligible for Medicaid because of the family medical assistance program (FMAP) income and resource policies shall report changes in accordance with ~~subrule 76.2(5) and 441—paragraphs 75.52(5)"a" and "b."~~ *441—paragraphs 75.52(4)"c" through "e."* After assistance has been approved, changes occurring during the month are effective the first day of the next calendar month, provided the notification requirements at rule 441—76.4(249A) can be met.

ARC 9983A

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code 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 505.8 and 2000 Iowa Acts, Senate File 2126, the Insurance Division gives Notice of Intended Action to amend Chapter 35, "Accident and Health Insurance," Chapter 71, "Small Group Health Benefit Plans," and Chapter 75, "Iowa Individual Health Benefit Plans," Iowa Administrative Code.

The proposed amendments set forth the requirements for providing contraceptive coverage for prescription drugs and devices in large, small group, and individual health insurance plans regulated by the Iowa Insurance Division. Coverage of such prescription drugs and devices is a mandatory benefit in the large and small group health benefit plans. A mandatory offer of such coverage is required in the individual health benefit plans.

Any person may make written comments on the proposed amendments on or before August 1, 2000. Comments should be directed to Susan E. Voss, Deputy Insurance Commissioner, Insurance Division, 330 Maple Street, Des

INSURANCE DIVISION[191](cont'd)

Moines, Iowa 50319. Comments may also be transmitted by E-mail to susan.voss@comm6.state.ia.us or by fax to (515) 281-5692.

A public hearing will be held at 10 a.m. on August 1, 2000, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Susan Voss no later than July 31, 2000, to be placed on the agenda.

These amendments are intended to implement 2000 Iowa Acts, Senate File 2126.

The following amendments are proposed.

ITEM 1. Amend 191—Chapter 35 by adopting the following **new** rule:

191—35.39(514C) Contraceptive coverage.

35.39(1) A carrier or organized delivery system that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration.

35.39(2) A carrier or organized delivery system is not required to provide benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

35.39(3) A contraceptive drug or contraceptive device does not include surgical services intended for sterilization, including, but not limited to, tubal ligation or vasectomy.

35.39(4) A carrier or organized delivery system shall be required to provide benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

35.39(5) A carrier or organized delivery system shall provide benefits for a physical examination performed in the course of prescribing a contraceptive drug or contraceptive device. In the event a carrier or organized delivery system does not provide benefits for a routine physical examination, the carrier or organized delivery system shall determine that portion of a physical examination which relates solely to the contraceptive drug or contraceptive device and provide benefits for that portion of the physical examination.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126.

ITEM 2. Amend subrule 71.14(6) as follows:

71.14(6) ~~Oral~~ *Prescription oral* contraceptives *and contraceptive devices that are approved by the United States Food and Drug Administration* are to be covered in both policy forms. ~~Coverage for alternative forms of contraception is to be reviewed based upon medical necessity.~~

ITEM 3. Amend 191—Chapter 71 by adopting the following **new** rule:

191—71.24(514C) Contraceptive coverage.

71.24(1) A carrier or organized delivery system that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration.

71.24(2) A carrier or organized delivery system is not required to provide benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

71.24(3) A contraceptive drug or contraceptive device does not include surgical services intended for sterilization, including, but not limited to, tubal ligation or vasectomy.

71.24(4) A carrier or organized delivery system shall be required to provide benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

71.24(5) A carrier or organized delivery system shall provide benefits for a physical examination performed in the course of prescribing a contraceptive drug or contraceptive device. In the event a carrier or organized delivery system does not provide benefits for a routine physical examination, the carrier or organized delivery system shall determine that portion of a physical examination which relates solely to the contraceptive drug or contraceptive device and provide benefits for that portion of the physical examination.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126.

ITEM 4. Amend subrule 75.10(4) as follows:

75.10(4) ~~Oral~~ *Prescription oral* contraceptives *and contraceptive devices that are approved by the United States Food and Drug Administration* are to be covered in both policy forms. ~~Coverage for alternative forms of contraception is to be reviewed based upon medical necessity.~~

ITEM 5. Amend 191—Chapter 75 by adopting the following **new** rule:

191—75.18(514C) Contraceptive coverage.

75.18(1) A carrier or organized delivery system that provides benefits for outpatient prescription drugs or devices shall make available benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration.

75.18(2) A carrier or organized delivery system is not required to offer benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

75.18(3) A contraceptive drug or contraceptive device does not include surgical services intended for sterilization, including, but not limited to, tubal ligation or vasectomy.

75.18(4) A carrier or organized delivery system shall make available benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

75.18(5) A carrier or organized delivery system shall make available benefits for a physical examination performed in the course of prescribing a contraceptive drug or contraceptive device. In the event a carrier or organized delivery system does not provide benefits for a routine physical examination, the carrier or organized delivery system shall determine that portion of a physical examination which relates solely to the contraceptive drug or contraceptive device and make available benefits for that portion of the physical examination.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126.

ARC 9960A

NURSING BOARD[655]

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 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 2, "Nursing Education Programs," Iowa Administrative Code.

This amendment amends the academic qualifications and distribution of faculty teaching in master's programs with a nursing major.

Any interested person may make written comments or suggestions on or before August 1, 2000. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

This amendment is intended to implement Iowa Code section 152.5.

The following amendment is proposed.

Rescind subrule **2.6(2)**, paragraph **"c,"** subparagraph **(3)**, and insert in lieu thereof the following **new** subparagraph **(3)**:

(3) A registered nurse hired to teach in a master's program shall hold a master's or doctoral degree with a major in nursing at the time of hire. A registered nurse teaching in a clinical specialty area shall hold a master's degree with a major in nursing, advanced level certification by a national professional nursing organization approved by the board in the clinical specialty area in which the individual teaches, and current registration as an advanced registered nurse practitioner according to the laws of the state(s) in which the individual teaches. Faculty preparation at the doctoral or terminal degree level shall be consistent with the mission of the program.

ARC 9961A

NURSING BOARD[655]

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 147.76, the Board of Nursing hereby gives Notice of Intended Action to adopt amendments to Chapter 4, "Discipline," Iowa Administrative Code.

These amendments provide standards for the Board for the issuance of investigatory or contested case subpoenas.

Any interested person may make written comments or suggestions on or before August 1, 2000. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

These amendments are intended to implement Iowa Code chapters 17A, 147, 152 and 272C.

The following amendments are proposed.

ITEM 1. Rescind rule 655—4.3(17A,147,152,272C) and adopt in lieu thereof the following **new** rule:

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

4.3(1) The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

4.3(2) A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain the following:

a. The name and address of the person to whom the subpoena will be directed;

b. A specific description of the books, papers, records or other real evidence requested;

c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Each subpoena shall contain the following:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production or inspection and copying;

d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address and telephone number of the executive director or designee;

f. The date of issuance;

g. A return of service.

4.3(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such

NURSING BOARD[655](cont'd)

time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.3(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.3(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.3(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

ITEM 2. Rescind rule 655—4.25(17A) and adopt in lieu thereof the following **new** rule:

655—4.25(17A,272C) Issuance of subpoenas in a contested case.

4.25(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas may be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm that the conditions described in subrule 4.3(1) have been satisfied prior to the issuance of the subpoena.

4.25(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested;

f. The date, time and location for production or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.25(3) Each subpoena shall contain, as applicable, the following:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time and location for production or inspection and copying;

h. The time within which the motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the executive director or designee;

j. The date of issuance;

k. A return of service.

4.25(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

4.25(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.25(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.25(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.25(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

ARC 9962A

NURSING BOARD[655]

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 147.76, the Board of Nursing hereby gives Notice of In-

NURSING BOARD[655](cont'd)

tended Action to amend Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," Iowa Administrative Code.

These amendments require that nurses wear an identification badge which identifies the licensure status when providing direct patient care.

Any interested person may make written comments or suggestions on or before September 6, 2000. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at S.W. 8th Street, by appointment.

There will be a public hearing on September 6, 2000, at 5:30 p.m. in the Ballroom, Kirkwood Civic Center Hotel, Fourth and Walnut, Des Moines, Iowa. Persons may present their views at the public hearing 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 chapters 147 and 152.

The following amendments are proposed.

ITEM 1. Amend subrule **6.2(5)** by adopting the following **new** paragraph:

f. Wearing an identification badge which clearly identifies the licensure status when providing direct patient care.

ITEM 2. Amend subrule **6.3(9)** by adopting the following **new** paragraph:

d. Wearing an identification badge which clearly identifies the licensure status when providing direct patient care.

ARC 9963A

NURSING BOARD[655]

Notice of Termination

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on February 9, 2000, as **ARC 9675A**, to adopt a new Chapter 15, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

The Notice proposed to adopt a new Chapter 15 to establish uniform rules providing for waivers or variances from administrative rules, in compliance with Executive Order Number 11.

The Board is terminating the rule making commenced in **ARC 9675A** and will renotice the proposed rules to incorporate further changes and clarifications to requirements under Executive Order Number 11.

ARC 9972A

PERSONNEL DEPARTMENT[581]

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 97B.15, the Department of Personnel hereby gives Notice of Intended Action to amend Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

The proposed amendments include the following:

1. Amend subrule 21.1(3) and paragraph 21.1(5)"c" to give IPERS' new address.
2. Amend subrule 21.4(3), paragraph "a," to reflect the current maximum covered wage amount.
3. Amend subparagraph 21.5(1)"a"(19) to clarify that permanent, postsecondary school employees may take part-time classes at their own schools without being excluded from IPERS coverage.
4. Amend referee exclusion, subparagraph 21.5(1)"a"(49), to exclude referees who qualify as independent contractors at all levels of public school athletic activities.
5. Add patient advocates employed pursuant to Iowa Code section 229.19 as covered employees in new subparagraph 21.5(1)"a"(50). Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 69.
6. Amend subrule 21.6(2) to rescind the $1 minimum wage reporting requirement. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 24.
7. Amend subrule 21.6(9), paragraphs "b" and "c," to reflect new contribution rates certified by IPERS' actuary for special service members effective July 1, 2000; paragraph "d" is also amended, pursuant to 2000 Iowa Acts, Senate File 2411, section 39, to include a new group of airport safety officers as protection occupation employees.
8. Amend rule 581—21.7(97B) to reflect new minimum charge on late contributions. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 22.
9. Adopt new paragraph 21.8(4)"e" to reflect a new four-month severance requirement for recipients of refunds. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 63.
10. Adopt new subrule 21.8(9) granting involuntarily terminated employees who take a refund and subsequently have reinstated the right to repay such refunds at a reduced cost, if the request is made within 90 days after the reinstatement ruling is rendered. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 63.
11. Adopt new subrule 21.8(10) granting members who terminate due to a disability, take a refund, and subsequently qualify for social security disability benefits the right to repay such refunds at a reduced cost if the request is made 90 days after July 1, 2000, or the date the member's social security benefits begin if later. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 50.
12. Amend paragraph 21.9(1)"a" and adopt new paragraph 21.9(1)"c" to reflect that appeal procedures for special service members covered under 2000 Iowa Acts, Senate File 2411, section 51, are governed by new rule 581—

PERSONNEL DEPARTMENT[581](cont'd)

21.31(78GA,SF2411). Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 51.

13. Amend subrule 21.10(16) to indicate that no death benefit claim will be forfeited before January 1, 1988, the date that the federal minimum distribution laws became effective for governmental plans.

14. Adopt new subrule 21.10(18) to help staff deal with the legislatively mandated requirement that certain beneficiaries who have already received death benefits on or after January 1, 1999, may repay the prior death benefit and receive either a new lump sum amount or a monthly annuity based on the new lump sum amount. There will be tax consequences to some members who receive distributions under the old rules and then wish to receive the new retirement allowance in a subsequent calendar year. Some of these tax consequences cannot be altered by IPERS. These may include, for example, paying taxes on the original lump sum distribution and taxes on any retroactive payments used to offset a beneficiary's repayment obligation. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, sections 53 and 75.

15. Amend subrule 21.11(2) to make it easier for beneficiaries to provide acceptable identification when applying for benefits.

16. Amend subrule 21.11(6), first and second unnumbered paragraphs, primarily to clarify that, in addition to the other monthly retirement allowance options, a member may take a refund instead of the default option, if IPERS is contacted within 60 days after the first payment under the default option.

17. Adopt a new unnumbered paragraph at the end of subrule 21.11(9) modifying the period of severance requirements for bona fide retirement. Under the revised rule, a member must be out of all employment with covered employers for 30 days, and out of all covered employment an additional three months. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, sections 59 and 60.

18. Amend rule 581—21.12(97B) by adopting language that authorizes service credit for a third quarter in which no wages are reported if wages are reported in the preceding second quarter, or the individual was on an authorized leave of absence at the end of the preceding second quarter.

19. Adopt new paragraph 21.13(2)"e," which provides that, effective for retirement FMEs in January 2001 (or such later date certified by the actuary), early retirement reductions shall be calculated by determining the number of months that the early retirement precedes the earliest normal retirement date for that member based on the member's age and years of service, and multiplying that number by 0.25 percent. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, sections 48 and 80.

20. Amend paragraphs 21.13(6)"c," 21.13(10)"a," and 21.13(10)"e" to reflect that the applicable years for protection occupation members, currently 25, will be ratcheted down in several steps until they reach 22 effective July 1, 2002. The exact steps are described in new paragraph 21.13(6)"d." Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 37.

21. Adopt new paragraph 21.13(6)"d" to reflect the applicable years and applicable percentages for protection occupation members for the adjustment period July 1, 2000, through July 1, 2003. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, sections 36 and 37.

22. Amend paragraph 21.13(7)"a" to limit the covered wage smoothing period for highly compensated employees to January 1, 2002. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 16.

23. Amend paragraph 21.13(7)"b" to limit the wage smoothing period to January 1, 2002, to limit the number of years to be included in the wage smoothing calculation to six, and to increase the covered wage smoothing trigger amount to $65,000. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, sections 16 and 17.

24. Adopt new subrule 21.13(12) to provide that members aged 70 who begin their retirement allowances before July 1, 2000, while still working, and who terminate employment after January 1, 2000, will have their benefits recalculated under the benefit formula in place when they terminate, or when they apply for a recalculation, if later. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 74.

25. Amend subrule 21.16(5) to clarify that IPERS will accept as valid leaves of absence before November 27, 1996, during which the members took refunds, primarily because many employers and employees prior to that time did not realize that a member had to terminate employment to qualify for the refund.

26. Amend subrule 21.16(6), paragraph 21.24(2)"f," subrule 21.24(3), paragraph 21.24(5)"f," and paragraph 21.24(6)"d" to indicate that (1) if the actuary uses gender-distinct mortality tables in its valuation assumptions, the plan will use blended mortality tables in preparing service purchase costs, so that similarly situated males and females will not be paying different service purchase costs; and (2) service purchase costs are only valid for six months from the date they are delivered to members.

27. Amend subrule 21.19(1) to establish $14,000 as the maximum amount that a retiree under the age of 65 can earn in covered employment (unless the applicable social security limit is greater) before any reduction in benefits occurs. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 33.

28. Amend the catchwords in rule 581—21.22(97B) to distinguish it from new rule 581—21.31(78GA,SF2411).

29. Adopt new subrule 21.24(11) to permit vested and retired members to purchase service credit for periods of service in Iowa public employment for which no mandatory or optional coverage was provided. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 70.

30. Adopt new subrule 21.24(12) to permit vested or retired members to purchase service credit for periods of service as volunteers of the federal Peace Corps program, provided that the members make binding waivers of any rights to retirement credit under any other public retirement systems for such service. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 71.

31. Adopt new subrule 21.24(13) to permit vested or retired members to purchase service credit for periods of service with qualified Canadian educational institutions, provided that the members make binding waivers of any rights to retirement credit under any other public retirement systems for such service. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 68.

32. Adopt new subrule 21.24(14) to permit current and former patient advocates employed under Iowa Code section 229.19, in addition to amounts required for four quarters of wage adjustments, to purchase additional service credit for other periods of such service. The cost for each quarter of such service, if paid before July 1, 2002, will be determined under paragraphs 21.24(2)"b" through "e," and thereafter at the actuarial cost as determined under paragraph

PERSONNEL DEPARTMENT[581](cont'd)

21.24(2)"f." Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 69.

33. Amend subrule 21.30(3) to simplify the method for calculating FED payments. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 45.

34. Amend subrule 21.30(4) to provide that a potential FED recipient must be living in the month a FED payment is payable in order to qualify for the payment. This change is consistent with the method used for dividend payments to pre-July 1, 1990, retirees. Proposed pursuant to 2000 Iowa Acts, Senate File 2411, section 43.

35. Adopt new subrule 21.30(5) to provide that, in addition to the ten-year cap placed on the FED reserve by 2000 Iowa Acts, Senate File 2411, section 44, no transfer to the FED reserve can cause the system's unfunded liability amortization period to exceed the limit set by the system's funding policy in effect at the time of the proposed transfer.

36. Adopt new rule 581—21.31(78GA,SF2411) to implement the special service member disability benefit mandated by 2000 Iowa Acts, Senate File 2411, section 51. This new disability provision permits special service members to qualify for disability benefits without having to qualify for federal social security disability benefits. The provision also provides for alternative benefit formulas which may provide a greater retirement allowance than is available under the disability provisions of Iowa Code section 97B.50(2). IPERS staff will make special service member disability determinations based on the rules being adopted, in consultation with the University of Iowa Hospitals.

37. Adopt new rule 581—21.32(97B) to implement the qualified benefits arrangement authorized in Iowa Code section 97B.49I. This arrangement is designed to permit the payment of the full amount that would otherwise be payable under the plan but for the limitation of Internal Revenue Code Section 415.

There are no general waiver provisions in the proposed amendments because the amendments fall into one of the following categories: (1) there was no specific waiver authority granted in the statute being implemented; or (2) the amendments confer a benefit or remove a limitation.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 1, 2000. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator, IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515) 281-0020. Comments may also be submitted by fax to (515) 281-0055, or by E-mail to info@ipers.state.ia.us.

There will be a public hearing on August 1, 2000, at 9 a.m. at IPERS, 600 East Court Avenue, Des Moines, Iowa, 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 were also Adopted and Filed Emergency and are published herein as **ARC 9971A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 97B as amended by 2000 Iowa Acts, Senate File 2411.

ARC 9975A

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

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 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 11, "Remedial Claims," Iowa Administrative Code.

The proposed amendment is intended to provide regulation of claims by the Department of Natural Resources pursuant to Iowa Code section 455G.9, subsection 1, as amended by 2000 Iowa Acts, Senate File 2433, section 15. This section of the statute allows DNR to make a claim for up to $100,000 per site for further corrective action on sites where DNR has issued a No Further Action certificate after January 31, 1997.

Public comments concerning the proposed amendment will be accepted until 4 p.m. on August 1, 2000. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

This amendment does not mandate additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities that contract with political subdivisions to provide services.

This amendment is intended to implement Iowa Code section 455G.9(1) as amended by 2000 Iowa Acts, Senate File 2433, section 15.

The following amendment is proposed.

Adopt the following **new** rule:

591—11.9(455G) Payments to the department where a no further action certificate has been issued.

11.9(1) The department may make claim to the administrator for funding of corrective action in response to a high risk condition at a site which has received a no further action certificate from the department if all of the following conditions are met:

a. The no further action certificate was issued after January 31, 1997;

b. The condition necessitating the corrective action was not a result of a release that occurred after the issuance of the no further action certificate;

c. The site qualified for remedial benefits under Iowa Code section 455G.9 prior to the issuance of a no further action certificate;

d. All costs to be incurred for said corrective action will be subject to preapproval by the board or its administrator prior to being incurred.

11.9(2) No more than $100,000 shall be spent on any one eligible site under these rules.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

11.9(3) These rules do not confer a legal right to receive benefits to any owner or operator of petroleum-contaminated property or any other person.

ARC 9984A

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 147.76, the Board of Psychology Examiners hereby gives Notice of Intended Action to amend Chapter 240, "Board of Psychology Examiners," and adopt new Chapter 241, "Continuing Education for Psychologists," Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rule regarding grounds for discipline; amend cross references to rules that are no longer in use; and revise the current examination fee.

Any interested person may make written comments on the proposed amendments no later than August 2, 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 according to Executive Order Number 8. The Division sent ten letters to the public for comment, and five letters were received in return. Division staff also had input on these rules. The comments received were discussed by the Board and decisions were based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on August 2, 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 147.76 and chapter 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 240.10(2) as follows:

240.10(2) ~~Examination fee for license to practice psychology is $150. Effective May 1, 1993, the examination fee for a license to practice is $275.~~ *The fee for the Examination for Professional Practice in Psychology is $350. Effective July 1, 2001, the fee will be $450.*

ITEM 2. Rescind rule **645—240.100(272C)** and renumber rule **645—240.212(272C)** as **645—240.100(272C)**.

ITEM 3. Amend renumbered subrule 240.100(13) as follows:

240.100(13) Failure to report to the board as provided in ~~rule 645—240.201(272C)~~ *645—Chapter 13* any violation by another licensee of the reasons for the disciplinary action as listed in this rule.

ITEM 4. Rescind and reserve rules **645—240.101(272C)** to **645—240.109(272C)**.

ITEM 5. Adopt **new** 645—Chapter 241 as follows:

CHAPTER 241
CONTINUING EDUCATION FOR PSYCHOLOGISTS

645—241.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of psychology examiners.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of psychology examiners.

"Continuing education" means planned, organized learning acts 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 an approved continuing education activity.

"Inactive license" means the license of a person who is not 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 failed to meet stated obligations within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as a psychologist in the state of Iowa.

"Practice of psychology" means the application of established principles of learning, motivation, perception, thinking, psychophysiology and emotional relations to problems, behavior, group relations, and biobehavior, by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to, counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships. The practice of psychology also means measuring and testing personality, moodmotivation, intelligence/aptitudes, attitudes/public opinion, and skills; and the teaching of such subject matter; and the conducting of research on the problems relating to human behavior.

645—241.2(272C) Continuing education requirements.

241.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of even-numbered years and ending on June 30 of even-numbered years. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board. For the 2001 renewal cycle only, 50 hours of continuing education will be due by June 30, 2002. Continuing education credit earned from December 31, 2000, through June 30, 2001, may be used for either the 2001 renewal cycle or the following biennium. The licensee may use the earned continuing education credit hours only once.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Credit may not be duplicated for both compliance periods. This applies only for the renewal biennium of 2001 and the following renewal biennium. Continuing education hours will return to 40 hours each biennium at the end of this prorated compliance period.

241.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. 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 40 hours of continuing education per biennium for each subsequent license renewal.

241.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them.

241.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

241.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—241.3(272C) Standards for approval.

241.3(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:

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. The 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 presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours (one contact hour equals one hour of continuing education credit); and

(3) Official signature or verification by program sponsor.

241.3(2) Specific criteria.

a. Continuing education hours of credit may be obtained by:

(1) Attending programs/activities that are sponsored by the American Psychological Association and the Iowa Psychological Association.

(2) Completing academic coursework that meets the criteria set forth in the rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(3) Conducting scholarly research or other activities that integrally relate to the practice of psychology of which the results are published in a recognized professional publication.

(4) Preparing new courses that have received prior approval from the board.

(5) Completing home study courses that issue a certificate of completion.

(6) Completing courses that are electronically transmitted and issue a certificate of completion.

(7) Attending workshops, conferences, or symposiums that meet the criteria in 645—241.3(272C).

b. A combined maximum of 20 hours of credit per biennium may be used for scholarly research and preparation of new courses.

645—241.4(272C) 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.

241.4(1) The information on the form shall include:

a. Title of continuing education activity;

b. Date(s);

c. Sponsor of the activity;

d. Number of continuing education hours earned; and

e. Teaching method used.

241.4(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 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; and

(3) Certificate of attendance or verification indicating successful completion of the course.

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 the 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—241.5(272C) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after the 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 must 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 and statement of competence to the board;

2. Pays all the renewal fees then due;

3. Pays all the penalty fees which have been assessed by the board for failure to renew;

4. Pays the reinstatement fee; and

5. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

hours required for license reinstatement is computed by multiplying 40 by the number of bienniums since the license lapsed with a maximum of 80 hours. The continuing education hours must be completed within the prior two bienniums of date of application for reinstatement.

645—241.6(272C) Continuing education waiver for active practitioners. A psychologist licensed to practice psychology 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 psychologist.

645—241.7(272C) Continuing education waiver for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted a waiver of continuing education compliance and obtain a certificate of waiver upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after waiver. The application for a certificate of waiver shall be submitted upon forms provided by the board.

645—241.8(272C) Continuing education waiver for disability or illness. The board may, in individual cases involving 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 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 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—241.9(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and have obtained a certificate of waiver shall, prior to engaging in the practice of psychology in the state of Iowa, satisfy the following requirements for reinstatement.

241.9(1) Reinstatement of the inactive license may be granted by the board if the applicant:

a. Submits a written application for reinstatement to the board;

b. Pays all the renewal fees then due; and

c. Pays the reinstatement fee.

241.9(2) The applicant shall furnish in the application evidence of one of the following:

a. Full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of hours of approved continuing education computed by multiplying 40 by the number of bienniums that the certificate of exemption has been in effect for such applicant, with a maximum of 80 hours. The continuing education hours must be completed within the two most recent bienniums prior to the date of application for reinstatement.

645—241.10(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education activity for continuing education credit, the applicant or licensee 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 154B.

ARC 9970A

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 100.35, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," Iowa Administrative Code.

Item 1 contains amendments to existing rules for residential occupancies to coordinate with the new rule for bed and breakfast inns and to clarify the applications of rules for "existing" and "new" residential occupancies according to the dates on which they were first occupied. Iowa Code Supplement section 137C.35 exempts bed and breakfast inns from the fire safety regulations which apply generally to hotels and requires the Fire Marshal to adopt regulations which apply specifically to bed and breakfast inns. Item 2 of these proposed amendments contains the fire safety regulations for bed and breakfast inns (rule 661—5.820(100)).

A public hearing on these proposed amendments will be held on September 8, 2000, at 9:30 a.m., in the Third Floor Conference Room of the Wallace State Office Building, East 9th and 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 100 and Iowa Code Supplement section 137C.35.

The following amendments are proposed.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 1. Amend rule 661—5.800(100) as follows:

FIRE SAFETY RULES FOR RESIDENTIAL OCCUPANCIES

661—5.800(100) ~~New residential occupancies~~ *General provisions.*

5.800(1) ~~Application.~~ *Scope.* ~~The requirements within this chapter shall apply to all new residential occupancies, including additions, alterations, or modifications.~~ *Rules 661—5.801(100) through 661—5.806(100) apply to residential occupancies, except for bed and breakfast inns. In addition, rules 661—5.807(100) through 661—5.809(100) apply to residential occupancies, including bed and breakfast inns, and to all one- and two-family dwellings.*

~~**5.800(2)** "Residential occupancies" for purposes of rules 661—5.800(100) to 661—5.809(100) shall include hotels, motels, apartment houses, dormitories, lodging and rooming houses, convents and monasteries each accommodating more than ten persons. In addition, for purposes of rules 661—5.806(100) to 661—5.809(100), "residential occupancies" shall include all one- and two-family dwellings.~~

~~**5.800(3)** The state fire marshal shall, where local, state or federal codes are being enforced and are equivalent to or more restrictive than the rules promulgated herein, accept these codes as meeting the intent of this chapter.~~

~~NOTE: New residential occupancies constructed where the state building code applies shall follow the provisions of the state building code.~~

~~**5.800(4)** All electrical work shall meet the requirements set forth in the National Electrical Code (N.F.P.A. 70) 1988.~~

5.800~~(5)~~*(2)* Definitions. *The following definitions apply to rules 661—5.801(100) through 661—5.820(100).*

"Apartment house" is any building or portion thereof which contains three or more dwelling units.

"Atrium" is an opening through two or more floor levels other than enclosed stairways, elevators, hoistways, escalator, plumbing, electrical, air conditioning or other equipment which is closed at the top and not defined as a mall.

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests. Rule 661—5.820(100) shall not apply to bed and breakfast homes. However, a bed and breakfast home shall have a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor.

"Bed and breakfast inn" is a building or structure equipped, used, advertised, or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished for hire to transient guests and which has nine or fewer guest rooms.

"Convent or monastery" is a place of residence occupied by a religious group of people, especially monks or nuns.

"Dormitories" are buildings or spaces where group sleeping accommodations are provided for guests in a series of closely associated rooms under joint occupancy and single management, such as college dormitories, fraternity houses, sorority houses, with or without meals but without individual cooking facilities.

"Existing residential occupancy" is a residential occupancy placed in its current use prior to October 31, 1985.

"Guest" is any person hiring or occupying a room for living or sleeping purposes.

"Guest room" is any room or rooms used or intended to be used by a guest for sleeping purposes. Every hundred square feet of superficial floor area in a dormitory shall be considered to be a guest room.

"Hotel/motel" is any building containing six or more guest rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

"Lodging or rooming house" is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

"New residential occupancy" is a residential occupancy placed into its current use on or after October 31, 1985.

"Residential occupancies" include hotels, motels, apartment houses, dormitories, lodging and rooming houses, convents and monasteries each accommodating more than ten persons.

NEW RESIDENTIAL OCCUPANCIES

661—5.801(100) General requirements.

5.800~~(6)~~ ***5.801(1)*** Construction, height and allowable floor area.

a. General. Buildings or parts of buildings classed as residential occupancies shall be limited to the types of construction set forth in Table 5-B in rule 5.50(100) "Exits" and shall not exceed, in area or height, the limits specified in Table 8-B.

b. Special provisions. Residential occupancies more than two stories in height or having more than 3,000 square feet of floor area above the first story shall be limited to the types of construction and height in Table 8-B.

EXCEPTION: Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels when such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction may be constructed of:

1. Noncombustible materials or fire-retardant treated wood in buildings of any type of construction; or

2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or V construction.

Storage or laundry rooms that are within residential occupancies that are used in common by tenants shall be separated from the rest of the building by not less than one-hour fire-resistive occupancy separation.

5.800~~(7)~~ ***5.801(2)*** Light and ventilation. All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural light by means of exterior glazed openings with an area not less than one-tenth of the floor area of such rooms with a minimum of 10 square feet. All bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than one-twentieth of the floor area of the rooms with a minimum of 1½ square feet.

All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural ventilation by means of openable exterior openings with an area of not less than one-twentieth of the floor area of such rooms with a minimum of 5 square feet.

In lieu of required exterior openings for natural ventilation, an approved mechanical ventilating system may be provided. Such systems shall be capable of providing two air changes per hour in all guest rooms, dormitories, habitable rooms and public corridors. One-fifth of the air supply shall

PUBLIC SAFETY DEPARTMENT[661](cont'd)

be taken from the outside. In bathrooms, water closet compartments, laundry rooms and similar rooms, a mechanical ventilation system connected directly to the outside shall be capable of providing five air changes per hour.

For the purpose of determining light and ventilation requirements, any room may be considered as a portion of an adjoining room when one-half of the area of the common wall is open and unobstructed and provides an opening of not less than one-tenth of the floor area of the interior room or 25 square feet, whichever is greater.

Required exterior openings for natural light and ventilation shall open directly onto a street or public alley, yard or court located on the same lot as the building.

EXCEPTION: Required windows may open into a roofed porch where the porch:

1. Abuts a street, yard or court;
2. Has a ceiling height of not less than 7 feet; and
3. Has the longer side at least 65 percent open and unobstructed.

~~**5.800(8)**~~ ***5.801(3)*** Mixed occupancies general. When a building is used for more than one occupancy purpose, each part of the building comprising a distinct "Occupancy," as shown in the occupancy classification Table 8-A shall be separated from any other occupancy as specified in Table 8-C.

EXCEPTION: Gift shops, administrative offices and similar rooms not exceeding 10 percent of the floor area of the major use.

~~**5.800(9)**~~ ***5.801(4)*** Occupant load. For the purpose of establishing exit requirements, the occupant load of any building or portion thereof used for the purpose of rules ~~5.800(100)~~ *5.801(100)* to ~~5.802(100)~~ *5.803(100)* shall be determined by dividing the net floor area assigned to that use by the square feet per occupant as indicated in Table 5-A and rule 661—5.51(100).

~~**5.800(10)**~~ ***5.801(5)*** Dormitories. New dormitories shall comply with the requirements for new hotels within this chapter.

ITEM 2. Renumber rules **661—5.801(100)** to **661—5.809(100)** as **661—5.802(100)** to **661—5.810(100)**.

ITEM 3. Amend renumbered rule **661—5.802(100)**, catchwords, as follows:

661—5.802(100) Exit facilities *in new residential occupancies.*

ITEM 4. Amend renumbered subrule **5.802(8)**, paragraph **"b,"** as follows:

b. Rubbish and linen chutes. In *new residential* occupancies ~~covered by this code~~, rubbish and linen chutes shall terminate in rooms separated from the remainder of the building by a one-hour fire-resistive occupancy separation. Openings into the chutes and termination rooms shall not be located in exit corridors or stairways.

ITEM 5. Amend renumbered subrule **5.803(3)**, numbered paragraph **"2,"** as follows:

2. The building is equipped with smoke detectors installed in accordance with subrule ~~5.802(4)~~ *5.803(4)*.

ITEM 6. Amend renumbered subrule **5.804(1)** as follows:

5.804(1) Application. The requirements of ~~this chapter~~ *rules 661—5.804(100) through 661—5.807(100)* shall apply to existing hotels/motels, apartment houses, dormitories, lodging, ~~and~~ rooming houses, *convents accommodating more than ten persons, and monasteries accommodating more than ten persons.*

~~Existing convents and monasteries (each accommodating more than ten persons).~~

No building or structure housing existing residential occupancies shall be occupied in violation of rules ~~5.803(100) to 5.805(100)~~ *5.804(100) to 5.806(100)*.

ITEM 7. Amend renumbered subrule **5.808(6)**, paragraph **"a,"** as follows:

a. In new buildings and additions constructed after July 1, 1991, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke detectors may be solely battery operated when installed in existing buildings, or in buildings without commercial power, or in buildings which undergo alterations, repairs or additions regulated by subrule ~~5.807(2)~~ *5.808(2)*.

ITEM 8. Amend renumbered subrule 5.809(2) as follows:

5.809(2) Certification—single-family dwelling units. A person who files for homestead credit pursuant to Iowa Code chapter 425 shall certify that the single-family dwelling unit for which credit is filed has a smoke detector(s) installed in accordance with ~~5.807(6)~~ *5.808(6)* and ~~5.807(11)"a,"~~ *5.808(11)"a,"* or that such smoke detector(s) will be installed within 30 days of the date of filing for credit.

ITEM 9. Amend renumbered rule 661—5.810(100) and implementation sentence for renumbered rules 661—5.807(100) to 661—6.810(100) as follows:

661—5.810(100) Smoke detectors—new and existing construction.

5.810(1) New construction. All multiple-unit residential buildings and single-family dwellings which are constructed after July 1, 1991, shall include the installation of smoke detectors meeting the requirements of rule 661—~~5.806(100)~~ *5.807(100)* and rule 661—~~5.807(100)~~ *5.808(100)*.

5.810(2) Existing construction. All existing single-family units and multiple-unit residential buildings shall be equipped with smoke detectors as required in ~~5.807(11)"a."~~ *5.808(11)"a."*

Rules ~~5.806~~ *5.807(100)* to ~~5.809~~ *5.810(100)* are intended to implement Iowa Code section 100.18.

ITEM 10. Adopt the following **new** rule:

BED AND BREAKFAST INNS

661—5.820(100) Bed and breakfast inns.

5.820(1) Appliances. Heating, cooking and gas and electrical equipment and appliances must conform with nationally recognized codes and standards and be installed and maintained in accordance with manufacturer's recommendations. If the building has an operable solid fuel fireplace, all components must be cleaned and maintained in accordance with NFPA 211, 1996 edition.

5.820(2) Smoke detectors. Each bed and breakfast inn must be equipped with a system of interconnected smoke detectors. At least one detector must be located in each guest bedroom and at the top of each stairwell and at intervals not to exceed 30 feet in exit corridors. In existing buildings these smoke detectors may be battery operated. In buildings or additions for which construction is started after [effective date to be inserted upon adoption of rule], the smoke detector

PUBLIC SAFETY DEPARTMENT[661](cont'd)

system must include battery backup but receive primary power from the building's electrical wiring. Detectors must be installed and maintained in accordance with NFPA 72, 1998 edition.

5.820(3) Emergency lighting. Each bed and breakfast inn must be equipped with approved emergency lighting so located and directed in a manner that will illuminate the routes of travel from each guest-occupied room to the outside of the building.

5.820(4) Windows. Each bed and breakfast inn guest sleeping room must have at least one outside window that is openable without the use of tools or special knowledge. The window must be large enough that, when open and without breaking glass, it will permit the emergency egress of guests.

5.820(5) Exits. Each story that has one or more guest sleeping rooms must have two means of exit that are remote from each other and so arranged and constructed as to minimize any possibility that both may be blocked by any one fire or other emergency.

5.820(6) Exit door markings. Exit doors must be marked in accordance with 661—5.63(100), except internally illuminated exit signs are not required if the door is clearly illuminated by emergency lighting.

5.820(7) Fire extinguishers. Fire extinguishers must be installed and maintained in accordance with National Fire Protection Association Standard Number 10, 1998 edition.

5.820(8) Smoking prohibited. Smoking is not permitted in any sleeping room, and rooms shall be posted with plainly visible signs so stating.

5.820(9) Additional prohibitions. Candles, lamps or solid fuel fireplaces shall not be used in guest sleeping rooms.

5.820(10) Directions. Each bed and breakfast inn shall have clearly displayed in each guest bedroom printed directions and a diagram for emergency evacuation procedures. These directions must include the primary route to the outside and how to use the emergency egress window in the event the primary route cannot be traversed.

This rule is intended to implement Iowa Code Supplement section 137C.35.

ARC 9964A

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 2000 Iowa Acts, House File 2492, section 17, the Department of Public Safety hereby gives Notice of Intended Action to adopt Chapter 53, "Fire Service Training Bureau," Iowa Administrative Code.

Effective July 1, 2000, the Fire Service Institute of the Iowa State University Extension Service will be replaced by the new Fire Service Training Bureau of the Fire Marshal Division of the Iowa Department of Public Safety. Training programs of the Fire Service Institute will continue without interruption under the Fire Service Training Bureau as will other services of the Fire Service Institute, including distribution of publications produced within the Bureau as well as from national fire service organizations. These rules create a new chapter of administrative rules of the Department of Public Safety, Chapter 53, which describes the organization of the Fire Service Training Bureau, provides contact information for the Bureau, and provides for fees for services offered by the Bureau. One major service of the Bureau, the Iowa Fire Service Certification Program, is provided for separately in new Chapter 54, which was Adopted and Filed Emergency in a separate filing (**ARC 9969A** herein) and became effective July 1, 2000.

A public hearing on these proposed rules will be held on September 8, 2000, at 10 a.m. in the Third Floor Conference Room of the Wallace State Office Building, East 9th and 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 at least one day prior to the public hearing, or 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 the Bureau office at least one day prior to the public hearing.

Contemporaneous with the filing of this Notice, these rules were also Adopted and Filed Emergency and are published herein as **ARC 9968A**. The content of that submission is incorporated by reference.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

ARC 9965A

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 2000 Iowa Acts, House File 2492, section 17, the Department of Public Safety hereby gives Notice of Intended Action to adopt Chapter 54, "Firefighter Certification," Iowa Administrative Code.

Effective July 1, 2000, the Fire Service Institute of the Iowa State University Extension Service will be replaced by the new Fire Service Training Bureau of the Fire Marshal Division of the Iowa Department of Public Safety. One of the programs of the Fire Service Institute is the certification of firefighters in the state of Iowa. There are several different levels of certification, each based upon standards promulgated by the National Fire Protection Association. While certification is voluntary under state law, that is, state law does not require certification in order to work either for pay or as a volunteer in the fire service, some fire departments within the state of Iowa require certification of their members as a condition of employment. These rules provide ad-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ministrative procedures for the operation of the certification program, the standards for certification at various levels, and fees related to the certification program to be collected by the Fire Service Training Bureau.

A public hearing on these proposed rules will be held on September 8, 2000, at 10:15 a.m. in the Third Floor Conference Room of the Wallace State Office Building, East 9th and 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 at least one day prior to the public hearing, or 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 the Bureau office at least one day prior to the public hearing.

Contemporaneous with the filing of this Notice, these rules were also Adopted and Filed Emergency and are published herein as **ARC 9969A**. The content of that submission is incorporated by reference.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

ARC 9966A

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 17A.3, the Department of Public Safety hereby proposes to adopt a new Chapter 59, "Volunteer Emergency Services Provider Death Benefits," Iowa Administrative Code.

2000 Iowa Acts, Senate File 2452, section 97, provides that, effective July 1, 2000, the beneficiary of a volunteer emergency services provider who dies in the line duty will be eligible for payment of a $100,000 death benefit from the state of Iowa, subject to certain restrictions. These rules establish the death benefits program, including eligibility criteria in accordance with Senate File 2452, administrative procedures for the program, a definition of "beneficiary" for the purposes of the program, and a procedure for appeals of decisions made by the Department in administration of the program.

Language in 2000 Iowa Acts, Senate File 2452, provides that the lump-sum death benefit is to be paid to the "beneficiary" of the deceased volunteer emergency services provider, once eligibility has been established. The term "beneficiary" is not defined in the statute. In order to provide clear direction for the payment of benefits when eligibility has been established, the term "beneficiary" is defined in these rules in terms parallel to the provisions of the similar death benefit program for paid emergency services providers, which was established in 2000 Iowa Acts, Senate File 2411.

A public hearing on these proposed rules will be held on September 8, 2000, at 10:30 a.m. in the Third Floor Conference Room of the Wallace State Office Building, East 9th and 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 rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 9967A**. The content of that submission is incorporated by reference.

These rules are intended to implement 2000 Iowa Acts, Senate File 2452.

ARC 9948A

RACING AND GAMING COMMISSION[491]

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 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 4, "Contested Cases and Other Proceedings"; rescind Chapter 6, "Criteria for Granting Licenses and Determining Race Dates," and adopt a new Chapter 6, "Occupational and Vendor Licensing"; amend Chapter 8, "Mutuel Department," and Chapter 10, "Thoroughbred Racing"; and rescind Chapter 12, "Simulcasting," and Chapter 13, "Occupational and Vendor Licensing," Iowa Administrative Code.

Item 1 gives the gaming board and board of stewards the ability to revoke an occupational license.

Item 2 rescinds current Chapter 6 and adopts new Chapter 6 which incorporates rules on occupational and vendor licensing from Chapter 13, which is rescinded in Item 9. Many of the rules remain as they were in Chapter 13 but have been reorganized within new Chapter 6. Duplicative rules have been removed and some rules were rewritten to reflect current practice. Substantive changes from rescinded Chapter 13 incorporated into new Chapter 6 are as follows:

- The term "association" was changed to "facility" throughout the chapter.

- The terms "commission representative," "deceptive practice," "facility," and "theft" are defined in rule 491—6.1(99D,99F).

RACING AND GAMING COMMISSION[491](cont'd)

- Paragraph 6.2(1)"c" contains new information required on the occupational license application.
- Paragraph 6.2(1)"g" states that the facility will be directly billed for their employees' license/fingerprint fees. This is current policy of the Commission and is now being incorporated into this subrule.
- Subrule 6.2(6) clarifies when a fee free pass may be used.
- Subparagraph 6.5(1)"d"(3) adds possession of drug paraphernalia as a drug offense.
- Subparagraph 6.5(1)"d"(4) states that a license will be denied if an applicant has a conviction involving theft or fraudulent practice in excess of $100.
- Paragraph 6.5(3)"e" adds the term deceptive practice.
- Paragraph 6.5(3)"m" adds the term gambling game.
- Rule 491—6.6(99D,99F) outlines the conditions that must be satisfied before an individual who has had a license denied, revoked or suspended may reapply for a license.
- Subrule 6.9(2) requires the facility to provide a weekly list of new employees who currently hold a license. This is the current policy of the Commission and is now being incorporated into this rule.
- Paragraph 6.16(5)"b" clarifies that a temporary license is valid for a maximum of one start per horse in an official race.
- Subrule 6.23(2) is a new apprentice jockey rule to mirror the Association of Racing Commissioners International uniform rule.
- Rule 491—6.26(99D,99F) states that a practicing veterinarian must have an unrestricted license issued by the state of Iowa veterinary regulatory authority.
- Rule 491—6.27(99D,99F), which reflects a change in alcohol and drug testing, applies to restricted areas in racing facilities only.

Item 3 changes the title of Chapter 8 from "Mutuel Department" to "Wagering and Simulcasting."

Item 4 adds definitions for "authorized receiver," "guest association," "host association," "interstate simulcasting," "intrastate simulcasting," "pari-mutuel output date," and "sales transaction data" to rule 491—8.1(99D).

Item 5 clarifies the rule with a reference to paragraph 8.2(4)"g."

Item 6 incorporates into Chapter 8 rules about simulcasting from rescinded Chapter 12. No substantive changes were made to the rules.

Item 7 outlines a new jockey mount fee schedule.

Item 8 rescinds 491—Chapter 12.

Item 9 rescinds 491—Chapter 13.

These rules are not subject to a waiver, pending adoption of a uniform waiver rule.

These proposed amendments were sent out to all the licensees prior to their review before the Commission. No comments were received.

Any person may make written suggestions or comments on the proposed amendments on or before August 1, 2000. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on August 1, 2000, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Amend rule 491—4.7(99D,99F) as follows:

491—4.7(99D,99F) Penalties (gaming board and board of stewards). The board may remove the license holder, either from any racetrack or riverboat, under its jurisdiction, *revoke the license, or* suspend the license of the holder for up to 365 days from the date of the original suspension, or impose a fine of up to $1000, or both. The board may set the dates in which the suspension must be served. In addition, the board may order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing and gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission. All fines and suspensions imposed will be promptly reported to the riverboat or racetrack licensee and commission in writing.

ITEM 2. Rescind **491—Chapter 6** and adopt in lieu thereof the following **new** chapter:

CHAPTER 6
OCCUPATIONAL AND VENDOR LICENSING

491—6.1(99D,99F) Definitions.

"Applicant" means an individual applying for an occupational license.

"Beneficial interest" means any and all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

"Board" means either the board of stewards or the gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

"Commission" means the Iowa racing and gaming commission.

"Commission representative" means a gaming representative, steward, or any person designated by the commission or commission administrator.

"Deceptive practice" means any deception or misrepresentation made by the person with the knowledge that the deception or misrepresentation could result in some benefit to the person or some other person.

"Facility" means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

"Jockey" means a person licensed to ride a horse in a race.

"Kennel/stable name " means any type of name other than the legal name or names used by an owner or lessee and registered with the commission.

"Licensee" means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in pari-mutuel, racetrack enclosure, or excursion riverboat gambling in Iowa.

"Owner" means a person or entity that holds any title, right or interest, whole or partial, in a racing animal.

"Rules" means the rules promulgated by the commission to regulate the racing and gaming industries.

"Theft" includes, but is not limited to:

1. The act of taking possession or control of either facility property or the property of another without the express authorization of the owner;

2. The use, disposition, or destruction of property in a manner which is inconsistent with or contrary to the owner's rights in such property;

RACING AND GAMING COMMISSION[491](cont'd)

3. Misappropriation or misuse of property the person holds in trust for another; or

4. Any act which constitutes theft as defined by Iowa Code chapter 714. No specific intent requirement is imposed by rule 6.5(99D,99F) nor is it required that there be any showing that the licensee received personal gain from any act of theft.

"Year" means a calendar year.

491—6.2(99D,99F,252J) Occupational licensing.

6.2(1) All persons participating in any capacity at a racing or gaming facility, with the exception of certified law enforcement officers while they are working for the facility as uniformed officers, are required to be properly licensed by the commission.

a. License applicants under 70 years of age may be required to furnish to the commission a set of fingerprints and may be required to be refingerprinted or rephotographed periodically.

b. License applicants must supply current photo identification and proof of their social security number and date of birth.

c. License applicants must complete and sign the application form prescribed and published by the commission. The application shall state the full name, social security number, residence, date of birth, and other personal identifying information of the applicant that the commission deems necessary. The application shall include, in part, whether the applicant has any of the following:

(1) A record of conviction of a felony or misdemeanor;

(2) An addiction to alcohol or a controlled substance;

(3) A history of mental illness or repeated acts of violence;

(4) Military convictions;

(5) Adjudication of delinquency; or

(6) Overdue income taxes, fines, court-ordered legal obligations, or judgments.

d. License applicants for designated positions of higher responsibility may be required to complete a division of criminal investigation (DCI) background form.

e. A fee set by the commission shall be assessed to each license applicant. Once a license is issued, the fee cannot be refunded.

f. License applicants must pay an additional fee set by the Federal Bureau of Investigation (FBI) and by the department of public safety, (DCI and bureau of identification) to cover the cost associated with the search and classification of fingerprints.

g. All racing and gaming commission fees for applications or license renewals must be paid by applicants or licensees before a license will be issued or renewed or, if the applicant is an employee of a facility, the commission fees will be directly billed to the facility.

h. An applicant who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

i. Participation in racing and gaming in the state of Iowa is a privilege and not a right. The burden of proving qualifications to be issued any license is on the applicant at all times. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action, as well as any financial loss that may result from action with respect to an application.

j. All licenses are conditional until completion of a necessary background investigation including, but not limited to, fingerprint processing through the DCI and the FBI and review of records on file with the Association of Racing Commissioners International, courts, law enforcement agencies, and the commission.

k. Any licensee who allows another person use of the licensee's license badge for the purpose of transferring any of the benefits conferred by the license may be suspended, fined, revoked, or any combination thereof. No license shall be transferable and no duplicate licenses shall be issued except upon submission of an application form and payment of the license fee.

l. It shall be the affirmative responsibility and continuing duty of each applicant to provide all information, documentation, and assurances pertaining to qualifications required or requested by the commission or commission representatives and to cooperate with commission representatives in the performance of their duties. A refusal by any person to comply with a request for information from a commission representative shall be a basis for fine, suspension, denial, revocation, or disqualification.

m. Non-U.S. citizens must also supply a work permit allowing them to work in the United States.

n. Portions of all completed applications accepted by the commission are confidential. The following persons have the explicit right to review all information contained on the application: the applicant, all commission officials and employees, the track steward, and DCI agents or other law enforcement officers serving in their official capacity.

o. A license may not be issued or held by an applicant who is unqualified, by experience or otherwise, to perform the duties required.

p. A license may not be issued to applicants who have not previously been licensed in the following categories except upon recommendation by the commission representative: trainers, assistant trainers, jockeys, apprentice jockeys, exercise persons, and other occupations the commission may designate. The commission representative may, for the purpose of determining a recommendation under this subrule, consult a representative of the facility, horsemen, or jockeys.

6.2(2) All facility board members shall undergo a background investigation and be licensed immediately upon appointment.

6.2(3) Multiple license restrictions.

a. A person may work outside the licensed occupation as long as the person is licensed in an equal or higher class.

b. In horse racing only, the following restrictions apply:

(1) A person licensed as a jockey, veterinarian, or farrier may not be licensed in another capacity.

(2) A person may not be licensed as an owner and a jockey agent.

(3) No racing official may serve or act in another capacity at a race meeting at which that person is licensed as an official except if there is no conflict of interest or duties as determined by the commission representative.

6.2(4) Application endorsements. The responsibility of licensing an employee rests with the employer. Therefore, a license may not be issued to any employee unless the application includes prior endorsement of the facility's authorized representative. All facilities must submit a list of representatives authorized to sign applications. This list shall not exceed six names. This authorization list shall be sent to the commission licensing office associated with each facility.

6.2(5) An employee of a facility who has not been licensed during the previous calendar year shall be considered a new applicant.

6.2(6) An employee hired during a time that the commission licensing office is closed may be issued and may work using a fee free pass as defined in 491—subparagraph

5.4(10)"b"(3). The fee free pass used for this purpose shall be effective only until the licensing office's next day of business.

491—6.3(99D,99F) Waiver of privilege. An applicant may claim a privilege afforded by the Constitution of the United States or of the state of Iowa in refusing to answer questions of the commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial.

491—6.4(99D,99F) License acceptance.

6.4(1) Occupational license (license). The license shall be displayed in a conspicuous manner on the licensee's clothing at all times while the licensee is on duty unless otherwise permitted by the commission representative. A licensee is prohibited from defacing, altering, or modifying a license.

6.4(2) Knowledge of rules. By acceptance of a license from the commission, the licensee agrees to follow and comply with the facility's system of internal controls, the rules of the commission, and Iowa statutes pertaining to racing and gaming, to report immediately to the commission representative any known irregularities or wrongdoing involving racing or gaming and to cooperate in subsequent investigations. Commission rules are available on the commission's Web site at www3.state.ia.us/irgc/.

6.4(3) Search and seizure. Acceptance of a license from the commission by any licensee is deemed consent to search and inspection by a commission or DCI representative and to the seizure of any prohibited medication, drugs, paraphernalia or devices.

6.4(4) Misuse of license. No person shall exercise or attempt to exercise any of the powers, privileges, or prerogatives of a license unless and until the appropriate licensing form has been executed and filed with the commission except under subrule 6.2(6). The commission shall exercise the power to regulate the conduct of all persons holding licenses or participating in racing or gaming.

491—6.5(99D,99F) Grounds for denial, suspension, or revocation of a license or issuance of a fine. The commission or commission representative shall deny an applicant a license or, if already issued, a licensee shall be subject to probation, fine, suspension, revocation, or other disciplinary measures, if the applicant or licensee:

6.5(1) Does not qualify under the following screening policy:

a. Applicants must be at least 18 years of age to work in areas where gaming or wagering is conducted.

b. Applicants must be at least 16 years of age to be eligible to be licensed to work for a trainer of racing animals.

c. A license shall be denied if an alias was used in connection with fraud within the last five years.

d. A license shall be denied if within the last five years, an applicant has had a conviction of:

(1) A felony.

(2) A drug-related offense.

(3) An offense involving possession of drug paraphernalia.

(4) An offense involving theft or fraudulent practice in excess of $100.

If the conviction did not occur within the last five years, a license shall not be issued unless the commission representative determines that sufficient evidence of rehabilitation exists.

e. A license shall be denied if an applicant has a conviction of a serious or aggravated misdemeanor or the equivalent unless the commission representative determines that sufficient evidence of rehabilitation exists.

f. A license shall be denied if an applicant has multiple convictions of simple misdemeanors or alcohol-related offenses unless the commission representative determines that sufficient evidence of rehabilitation exists. In making that determination, the number of violations shall be considered.

g. A license may be denied if the applicant has been guilty of multiple offenses. The commission representative shall use the representative's judgment in making such a determination.

h. A license shall be temporarily denied or suspended until the outcome of any pending charges is known if conviction of those charges would disqualify the applicant.

i. A license shall be denied if the applicant has a current addiction to alcohol or a controlled substance, has a history of mental illness without sufficient evidence of rehabilitation, or has a history of repeated acts of violence without sufficient evidence of rehabilitation.

j. A license may be temporarily denied or a probationary license may be issued until outstanding, overdue court-ordered obligations are satisfied. These include, but are not limited to, criminal or civil fines, state or federal taxes, or conditions imposed upon a person by a court of law that the applicant has failed to meet in a timely manner.

k. A license shall be denied if an applicant owns, operates, or has an interest in any bookmaking or other illegal enterprise, or is or has been connected with or associated with any illegal enterprise within the past five years. If the applicant's association with the illegal enterprise occurred more than five years prior to the application, a license may be issued only if the commission representative determines that sufficient evidence of rehabilitation exists.

l. A license may be denied if an applicant is ineligible to participate in gaming in another state and it would not be in the best interest of racing or gaming to license the applicant in Iowa. A license shall be denied if an applicant is ineligible to participate in racing in another state whose regulatory agency is recognized by and reciprocates in the actions of this state.

m. A license shall be denied if an applicant has been denied patron privileges by order of this commission and not reinstated.

n. A license shall be denied if the applicant falsifies the application form and would be ineligible for licensure under paragraphs "a" through "m" above. In other cases of falsification, a license may be issued and the applicant shall be subject to a fine.

o. A license shall be denied if an applicant is not of good repute and moral character. Any evidence concerning a licensee's current or past conduct, dealings, habits, or associations relevant to that individual's character and reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

6.5(2) Has not demonstrated financial responsibility or has failed to meet any monetary obligation in the following circumstances connected with racing or gaming:

a. Issuance or passing of bad checks. No person shall write, issue, make, or present any check in payment for any license fee, nomination fee, entry fee, starting fee, or purse payment when that person knows or should reasonably know

that the check will be refused for payment by the bank upon which it is written, or that the account upon which it is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or nonexistent account.

b. Judgments. Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

c. Timely payment. Should an owner fail to make timely payment of any jockey fee, nomination fee, entry fee, starting fee, or any other reasonable charge normally payable to the facility, the facility shall notify the commission representatives who shall in turn give notice to the owner that a hearing will be held where the owner will be required to show cause why the license should not be suspended for failure to make the required payments.

6.5(3) Has been involved in any fraudulent or corrupt practices, including, but not limited to:

a. Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person licensed by the commission to violate these rules or the laws of the state related to racing or gaming.

b. Failing to report any bribe or solicitation as in 6.5(3)"a" above.

c. Soliciting by any licensee, except the facility, of bets by the public.

d. Violation of any law of the state or rule of the commission, or aiding or abetting any person in the violation of any such law or rule.

e. Theft or deceptive practice of any nature on the grounds of a facility.

f. Giving under oath any false statement or refusing to testify, after proper notice, to the commission representative about any matter regulated by the commission, except in the exercise of a lawful legal privilege.

g. Failing to comply with any request for information or any order or ruling issued by the commission representatives pertaining to a racing or gaming matter.

h. Disorderly or offensive conduct; use of profane, abusive, or insulting language to, or interference with, commission representatives or racing or gaming officials while they are discharging their duties.

i. Conduct in Iowa or elsewhere has been dishonest, undesirable, detrimental to, or reflects negatively on, the integrity or best interests of racing and gaming.

j. Illegal sale, possession, receipt, or use of a controlled substance or drug paraphernalia; intoxication; use of profanity; fighting; making threatening or intimidating statements; engaging in threatening or intimidating behavior; or any conduct of a disorderly nature on facility grounds.

k. Discontinuance of or ineligibility for activity for which the license was issued.

l. Possessing a firearm on facility property without written permission from the commission representative.

m. Improperly influencing or attempting to improperly influence the results of a race or a gambling game, singularly or in combination with any person.

n. Failing to report any attempt to improperly influence the result of a race or a gambling game as in 6.5(3)"m" above.

o. Having had two rulings related to attempts to affect a race result or odds (rulings for electrical devices, serious positives, for example) in a lifetime or one ruling within the last three years. A license may be issued if one ruling has occurred outside of three years if sufficient evidence of rehabilitation exists. A license may be denied if a lengthy record of rulings from other jurisdictions exists.

p. Possessing any equipment for hypodermic injection, any substance for hypodermic administration, or any container designed to hold an injectable substance (narcotics, medications, drugs, or substances which could be used to alter the speed of racing animals) by anyone other than a veterinarian licensed by the commission. Notwithstanding the provisions of this subrule, any person may have possession of any chemical or biological substance for the person's own treatment within a restricted area, provided that, if the chemical substance is prohibited from being dispensed without a prescription by any federal law or law of this state, the person is in possession of documentary evidence that a valid prescription has been issued to the person. Notwithstanding the provisions of this subrule, any person may have in possession within any restricted area any hypodermic syringe or needle for the purpose of self-administering to the person a chemical or biological substance, provided that the person has notified the commission representatives of the possession of the device, the size of the device, and the chemical substance to be administered and has obtained written permission for possession and use from the commission representative. A restricted area is a designated area for sample collection, paddock, racetrack, or any other area where officials carry out the duties of their positions.

q. Subjecting a racing animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise, bedding, sanitation, and shelter; or by neglect or intentional act causing a racing animal to suffer unnecessary pain.

r. Offering or receiving money or other benefit for withdrawing a racing animal from a race.

s. Making a wager for a jockey by any person other than the owner or trainer of the horse ridden by the jockey.

t. Making a wager for a jockey on a horse by an owner or trainer other than that ridden by the jockey. This shall not be construed to include bets on another horse in combination with the horse ridden by the jockey in multiple wagering bets.

u. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden.

v. Entering or starting a racing animal known or believed to be ineligible or disqualified.

w. Possessing any device designed to increase or decrease the speed of a racing animal during a race other than an ordinary riding whip without written permission from the commission representative.

491—6.6(99D,99F) Applications for license after denial, revocation, or suspension.

6.6(1) Any person whose license was denied or revoked may reapply for a license in accordance with the commission's rules governing applications. However, the applicant must satisfy the following conditions:

a. The applicant shall bear the burden of proof of establishing satisfaction with all license criteria and shall provide proof of satisfaction of any terms or conditions imposed as a part of the commission's order denying or revoking the license;

b. The applicant shall allege facts and circumstances establishing, to the commission's satisfaction, sufficient evidence of rehabilitation and that the basis for the denial or revocation no longer exists;

c. The applicant shall establish that the public interest and the integrity of racing and gaming would not be adversely affected if a license is granted; and

d. If the license was revoked, a new application shall not be filed until five years have elapsed from the date of the order of revocation.

6.6(2) Any person whose license was suspended for 365 days may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set out in 6.6(1) above.

491—6.7(99D,99F) Probationary license. The commission representative or a board may grant a probationary license. The terms of a probationary license shall include any conditions placed on the licensee and any penalty for failure to follow those conditions, including fine, suspension, denial, or revocation.

491—6.8(99D,99F) Duration of license. A license issued by the commission is valid until the end of the calendar year in which it was issued unless an extension is granted by the administrator.

491—6.9(99D,99F) Licensed employees moving from one location to another.

6.9(1) Once an applicant obtains an occupational license from the commission and is in good standing, the applicant is eligible to work at any of the facilities in the state of Iowa.

6.9(2) When a facility hires a person who is already in possession of a current occupational license, a list of the person(s) hired must be filed weekly with the local commission office. The list should contain the license number, name, social security number, and birth date of each person hired.

491—6.10(99D,99F) Required report of discharge of licensed employee. Upon discharge of any licensed employee by any licensed employer for violation of rules or laws within the jurisdiction of the commission, the employer must report that fact in writing, within 72 hours, to the local commission office including the name and occupation of the discharged licensee.

491—6.11(99D,99F,252J) Receipt of certificate of noncompliance from the child support recovery unit.

6.11(1) Upon the racing and gaming commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure 56.1.

6.11(2) The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.11(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the racing and gaming commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.11(4) Upon receipt of a withdrawal of a certificate of noncompliance from the child support recovery unit, the racing and gaming commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.11(5) All racing and gaming commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.12(99D,99F,261) Receipt of a certificate of noncompliance from the college student aid commission.

6.12(1) Upon the racing and gaming commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure 56.1.

6.12(2) The effective date of the suspension or revocation, or denial of the issuance or renewal of a license, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.12(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the racing and gaming commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.12(4) Upon receipt of a withdrawal of a certificate of noncompliance from the college student aid commission, the racing and gaming commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.12(5) All racing and gaming commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.13(99D,99F) Vendor's license.

6.13(1) A vendor's license is required of any entity not licensed as a manufacturer or distributor that conducts operations on site at a facility.

6.13(2) An applicant for a vendor's license must complete the appropriate commission form. An authorized representative from the facility for which the vendor wishes to do continuous business must sign the form. A letter from the facility authorizing the vendor to do business shall replace a signature on the application form.

6.13(3) Any employee who works for a licensed vendor and will be supplying the goods or services to the facility must have a vendor employee license. A vendor license must be issued before a vendor employee can be issued a license to represent that company. The authorized signature on the vendor employee's application must be the signature of the person authorized by the vendor application to sign vendor employee applications.

RACING AND GAMING COMMISSION[491](cont'd)

6.13(4) Vendors not meeting the above specifications but who do require entrance to the facility for their employees, such as for deliveries, shall utilize the fee free passes.

491—6.14(99D,99F) Applicability of rules—exceptions. Rules pertaining to and rulings against licensees shall apply in like force to the spouse and members of the immediate family or household of the licensee if the continuation of participation in racing or gaming by the affected person circumvents the intent of the rule or affects the ruling by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or a person ineligible to participate in a particular activity.

491—6.15(99D) Disclosure of ownership of racing animals. All entities of ownership (individual, lessee, lessor, general partnership, or corporation) and all trainers are responsible for making full and accurate disclosure of the ownership of all racing animals registered or entered for racing. Disclosure shall identify in writing all individuals or entities that, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in a racing animal, and those individuals or entities who by virtue of any form of interest might exercise control over the racing animal or may benefit from the racing of the animal. The degree and type of ownership held by each individual person shall be designated.

491—6.16(99D) Owners of racing animals.

6.16(1) Each owner must obtain an owner's license from the commission to enter an animal in a purse race at an Iowa racetrack.

6.16(2) Each owner is subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by a facility or upon making entry to run on its track. Owners shall accept the decision of the commission representative on any and all questions, subject to the owner's right of appeal to the commission.

6.16(3) An owner who is under the age of 18 must have a parent or guardian cosign any contractual agreements.

6.16(4) No person or entity that is not the owner of record of a properly registered racing animal that is in the care of a licensed trainer may be licensed as an owner.

6.16(5) Temporary horse owner license.

a. A temporary horse owner license may be issued at the discretion of the commission representative.

b. Any temporary horse owner license shall be effective for 15 calendar days from the date of issuance and shall be valid for a maximum of one start per horse in an official race.

c. Failure to obtain a permanent license within the designated 15 calendar days may result in the automatic revocation of license eligibility and may result in a fine or suspension for the licensee that has failed to comply.

d. Purses shall not be paid to the owner of any racing animal holding a temporary horse owner license. Payments shall be permitted only after the individual has obtained a permanent license.

e. The owner and trainer of a horse must be licensed at least one hour before post time of the race in which the horse is entered. In the case of absentee owners, the trainer must submit a properly executed temporary horse owner license application on behalf of the absentee owner(s) at least one hour before post time of the race in which the horse is entered.

491—6.17(99D) Kennel/stable name.

6.17(1) Licensed owners and lessees wishing to race under a kennel/stable name may do so by applying for a license with the commission on forms furnished by the commission.

6.17(2) A kennel/stable name license is only necessary if the kennel/stable name is a name other than the licensed owner's legal name (full name or last name only), the owner's full name followed by the word "kennel" or "stable," or a licensed partnership or corporation.

6.17(3) In applying to race under a kennel/stable name, the applicant must disclose the identities behind the name and, if applicable, comply with partnership and corporation rules. The application form must appoint one person to act as the agent for the kennel/stable name.

6.17(4) Changes in identities involved in a kennel/stable name must be reported immediately to and approved by the commission representative.

6.17(5) A licensed owner who has registered under a kennel/stable name may at any time cancel the kennel/stable name after giving written notice to the commission.

6.17(6) A kennel/stable name may be changed by registering a new name.

6.17(7) A licensed owner may not register a kennel/stable name that the commission determines to be either misleading to the public or unbecoming to the sport.

6.17(8) Neither sole owners nor partners, after adopting use of a kennel/stable name, may use their real names to reflect ownership that is reflected in the kennel/stable name.

6.17(9) A fee set by the commission shall be assessed for each application for a kennel/stable name license.

6.17(10) No person may register with any racing authority a stable name which has already been registered by another person, or which is the real name of another owner of race horses, or which is the real or stable name of any prominent person who does not own race horses, or which is not plainly distinguishable from that of another registered stable name.

6.17(11) Contract kennels must be licensed with the commission, on forms furnished by the commission, in the name of the kennel booking contract entered into between the contract kennel and the facility; this name shall be listed in the official program as "kennel."

6.17(12) A licensed kennel owner shall not be a party to more than one kennel name at the same facility.

491—6.18(99D) Leases (horse racing only).

6.18(1) No licensee shall lease a racing animal for the purpose of racing at facilities in this state without prior approval of the commission representatives.

6.18(2) Both lessor and lessee must be licensed as owners.

6.18(3) Each licensee who leases a racing animal must submit a copy of that lease to the commission representatives. The lease must contain the conditions of the lease arrangement and the names of all parties and racing animals related to the lease. Failure to submit accurate and complete information under this rule is a violation of these rules.

6.18(4) Both seller and purchaser, or their agents or representatives, of a racing animal that is sold after being registered for racing with a racing association shall immediately notify the commission representatives of the sale and transfer. The commission representatives may require a declaration of the facts of the sale and transfer under oath and penalty of perjury.

491—6.19(99D) Partnerships owning racing animals.

6.19(1) A partnership is defined as a formal or informal arrangement between two or more persons to own a racing

animal. All partnerships, excluding husband and wife, must be licensed with the commission on forms furnished by the commission.

6.19(2) The managing partner(s) listed on the application and all parties owning 5 percent or more must be licensed as individual owners.

a. The commission representative may request a partnership to have on file with the commission an agreement whereby the managing partner(s) is designated to be responsible for each racing animal. This agreement must be notarized and must be signed by all partners. A copy of this agreement must be attached to the registration certificate on file in the racing secretary's office.

b. It will be the responsibility of the managing partner(s) to make sure that all parties are eligible for licensure. The commission representative shall deny, suspend, or revoke the license of any partnership in which a member (either qualified or limited by rights or interests held, or controlled by any individual or entity) would be ineligible to be licensed as an owner or to participate in racing.

c. Any owner who is a member of a partnership may be required to list all racing animals that the owner intends to race in Iowa in which an interest is owned (either in whole or in part).

d. All parties to a partnership shall be jointly and severally liable for all stakes, forfeits, and other obligations.

e. An authorized agent may be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, entries, scratches, signing of claim slips, and other obligations in lieu of the managing partner(s).

6.19(3) A partnership name under which a racing animal races shall be considered a kennel/stable name for purposes of these rules. It will not be necessary for the partnership to obtain a kennel/stable name license.

6.19(4) Any partner's share or partial share of a partnership that owns a racing animal shall not be assigned without the written consent of the other partner(s), the commission representative's approval, and filing with the racing secretary. Any alteration in a partnership structure or percentages must be reported promptly in writing, notarized, signed by all members of the partnership, and filed with the commission.

6.19(5) The commission representative may review the ownership of each racing animal entered to race and shall ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owner(s). The commission representative may determine the validity for racing purposes of all liens, transfers and agreements pertaining to ownership of a racing animal and may call for adequate evidence of ownership at any time. The commission representative may declare any animal ineligible to race if its ownership, or control of its ownership, is in question.

6.19(6) A fee set by the commission shall be assessed for each application for a partnership license.

491—6.20(99D) Corporations owning racing animals.

6.20(1) All corporations must be duly licensed by the commission on forms furnished by the commission. In addition, any stockholder owning a beneficial interest of 5 percent or more of the corporation must be licensed as an owner. The corporation must submit a complete list of stockholders owning a beneficial interest of 5 percent or more.

6.20(2) The corporation stockholders owning less than 5 percent of the stock of a corporation need not be licensed; however, the commission may request a list of these stockholders. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. These stockholders shall not have access to the backstretch, to the paddock area, or to the winner's circle other than as guests of a facility, commission representatives, or designated licensees and may be required to submit additional information as requested by the commission representative, which may include a release for confidential information and submission of fingerprint cards; and the commission may assess costs, as required, for criminal history checks. This information shall be supplied to the commission representative within 30 days of the date of the request.

6.20(3) Any and all changes in either the corporation structure or the respective interest of stockholders as described above must be notarized and promptly filed with the commission representatives.

6.20(4) The corporate name under which the corporation does business in Iowa shall be considered a kennel/stable name for purposes of these rules. It shall not be necessary for the corporation to obtain a kennel/stable name license.

6.20(5) A corporation, in lieu of an executive officer, may appoint a racing manager or an authorized agent for the purposes of entry, scratches and the signing of claim slips, among other obligations.

6.20(6) The commission representative may deny, suspend, or revoke the license of a corporation for which a beneficial interest includes or involves any person or entity that is ineligible (through character, moral fitness or any other criteria employed by the commission) to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.

6.20(7) Any stockholder holding a beneficial interest of 5 percent or more of a corporation must, in addition to being licensed, list any interest owned in all racing animals in which any beneficial interest is owned.

6.20(8) The corporation must pay a prescribed fee to the commission.

491—6.21(99D) Authorized agents for owner entities of racing animals.

6.21(1) Any persons represented by a kennel name, stable name, corporation, partnership, or single person entity may assign an agent for the kennel name, stable name, corporation, partnership, or single person entity. The assigned agent is then authorized to handle matters pertaining to racing, which may include authorization to collect all purses or other moneys.

6.21(2) The application for a license as an authorized agent must be signed by the principal and clearly set forth the powers of the agent, including whether the agent is empowered to collect money from the facility. The application must be notarized and a copy must be filed with the facility.

6.21(3) Changes in an agent's powers or revocation of an agent's authority must be in writing, notarized, and filed with the commission's licensing office and the facility.

6.21(4) The authorized agent must pay a prescribed fee to the commission.

491—6.22(99D) Trainers and assistant trainers of racing animals.

6.22(1) All trainers and assistant trainers of racing animals and their employees are subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by the facility or upon making entry to run on its track. Trainers, assistant trainers, and their employees shall accept the decision of the commission representative on any

and all questions, subject to their right of appeal to the commission.

6.22(2) Licensing of trainers and assistant trainers. Eligibility:

a. An applicant must be at least 18 years of age to be licensed by the commission as a trainer or assistant trainer.

b. An applicant must be qualified, as determined by the commission representative, by reason of experience, background, and knowledge of racing. A trainer's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or more of the following:

(1) A written examination.

(2) An interview or oral examination.

(3) A demonstration of practical skills in a "barn test" (horse racing only).

c. An applicant must have a racing animal eligible to race and registered to race at the current race meeting.

491—6.23(99D) Jockeys and apprentice jockeys.

6.23(1) Eligibility.

a. An applicant must be at least 18 years of age to be licensed by the commission as a jockey.

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The commission representatives may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing, demonstration of riding ability, or temporary participation in races. An applicant may participate in a race or races, with the commission representative's prior approval for each race, not to exceed five races.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey or apprentice jockey.

6.23(2) Apprentice jockeys.

a. The conditions of an apprentice jockey license do not apply to quarter horse racing. A jockey's performance in quarter horse racing does not apply to the conditions of an apprentice jockey license.

b. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

c. An applicant for an apprentice jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have written consent of parent or guardian. Before such license is granted, the stewards shall ascertain that the applicant has suitable qualifications and aptitude to hold an apprentice jockey's license and that the applicant has not been previously licensed as a jockey under any jurisdiction.

d. Upon compliance with these requirements, the stewards may issue an apprentice jockey certificate allowing the holder to claim this allowance only in overnight races.

(1) An apprentice jockey shall ride with a five-pound weight allowance beginning with the first mount and for one full year from the date of the jockey's fifth winning mount.

(2) If, after riding one full year from the date of the fifth winning mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year or until the fortieth winner, whichever comes first. In no event shall a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.

(3) The stewards may extend the weight allowance of an apprentice jockey when, in the discretion of the stewards, the apprentice provides proof of incapacitation for a period of seven or more consecutive days. The allowance may be claimed for a period not to exceed the period such apprentice was unable to ride.

(4) The apprentice jockey must have the apprentice certificate with the jockey at all times and must keep an updated record of the first 40 winners. Prior to riding, the jockey must submit the certificate to the clerk of scales, who will record the apprentice's winning mounts.

6.23(3) Jockeys from foreign countries. Upon making application for a license in this jurisdiction, jockeys from a foreign country shall declare that they are holders of valid licenses in their countries, not under suspension, and bound by the rules and laws of this state. To facilitate this process, the jockey shall present a declaration sheet to the commission representative in a language recognized in this jurisdiction.

491—6.24(99D) Jockey agent.

6.24(1) An applicant for a license as a jockey agent shall:

a. Provide written proof of agency with at least one jockey licensed by the commission; and

b. Be qualified, as determined by the commission representative, by reason of experience, background, and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

(1) A written examination.

(2) An interview or oral examination.

c. An applicant not previously licensed as a jockey agent shall be required to pass a written and oral examination.

6.24(2) A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey.

491—6.25(99D) Driver. In determining eligibility for a driver's license, the board shall consider:

1. Whether the applicant has obtained the required U.S.T.A. license.

2. Evidence of driving experience and ability to drive in a race.

3. The age of the applicant. No person under 18 years of age shall be licensed by the commission as a driver.

4. Evidence of physical and mental ability.

5. Results of a written examination to determine qualifications to drive and knowledge of commission rules.

6. Record of rule violations.

491—6.26(99D) Practicing veterinarians. Every veterinarian practicing on facility premises must have an unrestricted and current license to practice veterinary science issued by the state of Iowa veterinary regulatory authority and shall be licensed by the commission in accordance with the commission rules governing occupational licensing.

491—6.27(99D,99F) Alcohol and drug testing.

6.27(1) Alcohol prohibition/preliminary breath test. Licensees whose duties require them to be in a restricted area of a racing facility shall not have present within their systems an amount of alcohol of 0.05 percent or more. A restricted area is a designated area for sample collection, paddock, racetrack, or other area where racing officials carry out the duties of their positions.

Acting with reasonable cause, a commission representative may direct the above licensees to submit to a preliminary breath test. A licensee shall, when so directed, submit to examination.

RACING AND GAMING COMMISSION[491](cont'd)

If the results show a reading of 0.05 percent alcohol content or more, the licensee shall not be permitted to continue duties for that day. For a second violation, the licensee shall not be permitted to continue duties for that day and then shall be subject to fine or suspension by the board or commission representative. For a subsequent violation the licensee may be subject to procedures following positive chemical analysis (see 6.27(3)).

If the results show a reading of 0.10 percent alcohol content or more, the licensee is subject to fine or suspension by the board or commission representative. For a subsequent violation the licensee may be subject to procedures following positive chemical analysis (see 6.27(3)).

6.27(2) Drug prohibition/body fluid test. Licensees whose duties require them to be in a restricted area, as defined in subrule 6.27(1), of a racing facility shall not have present within their systems any controlled substance as listed in Schedules I to V of U.S.C. Title 21 (Food and Drug Section 812), Iowa Code chapter 124 or any prescription drug unless it was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of professional practice. Acting with reasonable cause, a commission representative may direct the above licensees to deliver a specimen of urine or subject themselves to the taking of a blood sample or other body fluids at a collection site approved by the commission. In these cases, the commission representative may prohibit the licensee from participating in racing until the licensee evidences a negative test result. Sufficient sample should be collected to ensure a quantity for a split sample when possible. A licensee who refuses to provide the samples herein described shall be in violation of these rules and shall be immediately suspended and subject to disciplinary action by the board or commission representative. All confirmed positive test costs and any related expenses shall be paid for by the licensee. Negative tests shall be at the expense of the commission.

With reasonable cause noted, an on-duty commission representative may direct a licensee to deliver a test. The commission representative shall call the approved laboratory or hospital and provide information regarding the person who will be coming; that the licensee will have a photo ID; the name and number to call when the licensee arrives; to whom and where to mail the results; and who should be called with the results. The licensee will be directed to immediately leave the work area and proceed to an approved laboratory or hospital for testing with the following directions:

1. If under impairment, the licensee must have another person drive the licensee to the laboratory or hospital.
2. On arrival at the laboratory or hospital, the licensee must show the license to the admitting personnel for verification.
3. On arrival at the laboratory or hospital, the licensee shall be required to sign a consent for the release of information of the results to a commission representative.

6.27(3) Procedures following positive chemical analysis.

a. After professional evaluation, if the licensee's condition proves nonaddictive and not detrimental to the best interest of racing, and the licensee can produce a negative test result and agrees to further testing at the discretion of the commission representative to ensure unimpairment, the licensee may be allowed to participate in racing.

b. After professional evaluation, should the licensee's condition prove addictive or detrimental to the best interest of racing, the licensee shall not be allowed to participate in racing until the licensee can produce a negative test result and show documented proof of successful completion of a certified alcohol/drug rehabilitation program approved by the commission. The licensee must also agree to further testing at the discretion of the commission representative to ensure unimpairment.

c. For a second violation, a licensee shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the administrator and to apply for reinstatement only at the discretion of the administrator.

These rules are intended to implement Iowa Code chapters 99D and 99F.

ITEM 3. Amend **491—Chapter 8**, title, as follows:

CHAPTER 8
~~MUTUEL DEPARTMENT~~
WAGERING AND SIMULCASTING

ITEM 4. Amend rule **491—8.1(99D)** by adopting the following **new** definitions in alphabetical order:

"Authorized receiver" means a receiver that conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host associations.

"Guest association" means an association which offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same state or another jurisdiction.

"Host association" means the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

"Interstate simulcasting" means the telecast of live audio and visual signals of pari-mutuel racing sent to or received from a state outside the state of Iowa to an authorized racing or gaming facility for the purpose of wagering.

"Intrastate simulcasting" means the telecast of live audio and visual signals of pari-mutuel racing conducted on a licensed pari-mutuel track within Iowa sent to or received from an authorized pari-mutuel facility within Iowa for the purpose of pari-mutuel wagering.

"Pari-mutuel output data" means the data provided by the totalizator other than sales transaction data including, but not limited to, the odds, will pays, race results, and payoff prices.

"Sales transaction data" means the data between totalizator ticket-issuing machines and the totalizator central processing unit for the purpose of accepting wagers and generating, canceling and cashing pari-mutuel tickets and the financial information resulting from processing sales transaction data, such as handle.

ITEM 5. Amend subrule 8.2(3), introductory paragraph, as follows:

8.2(3) Pari-mutuel tickets. A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the association and is evidence of the obligation of the association to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The association shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold, and for a specified period after the last day of the meeting~~,~~ *as provided in paragraph 8.2(4)"g."*

ITEM 6. Amend 491—Chapter 8 by adopting the following **new** rules:

491—8.4(99D) Simulcast wagering.

8.4(1) General.

a. Rules. All simulcasting must be transmitted live and all wagering on simulcasting shall be made in accordance

with the commission rules on pari-mutuel wagering. Commission rules in effect during live racing shall remain in effect during simulcasting where applicable.

b. Transmission. The method used to transmit sales transaction and pari-mutuel output data must be approved by the commission, based upon the determination that provisions to secure the system and transmission are satisfactory.

c. Communication. A communication system between the host track and the receiving facility must be provided which will allow the totalizator operator and the commission representatives at the host track to communicate with the facility receiving the signal. The association is responsible during the racing program's operating hours for reporting any problems or delays to the public.

d. Approval.

(1) All simulcasting, both interstate and intrastate, must be preapproved by the commission or commission representative. Each association conducting simulcasting shall submit an annual written simulcast proposal to the commission with the application for license renewal required by 491—Chapter 1.

(2) The commission representative, upon written request, may grant modifications to the annual simulcast proposal. The commission representative may approve or disapprove simulcast requests at the representative's discretion. Factors that may be considered include, but are not limited to: economic conditions of an association, impact on other associations, impact on the Iowa breeding industry, other gambling in the state, and any other considerations the commission representative deems appropriate.

(3) Once simulcast authority has been granted by the commission or commission representative, it shall be the affirmative responsibility of the association granted simulcast authority to obtain all necessary permission from other states and tracks to simulcast the pari-mutuel races. In addition, the burden of adhering to state and federal laws concerning simulcasting rests on the association at all times.

8.4(2) Simulcast host.

a. Every host association, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast. All contracts governing participation in interstate or intrastate pools shall be submitted to the commission representative for prior approval. Contracts shall be of such content and in such format as required by the commission representative.

b. A host association is responsible for the content of the simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of each performance.

c. Unless otherwise permitted by the commission representative, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from which it emanates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

d. The host association shall maintain such security controls, including encryption over its uplink and communications systems, as directed or approved by the commission or commission representative.

e. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Reports shall be of such content and in such format as required by the commission representative.

8.4(3) Authorized receiver.

a. An authorized receiver shall provide:

(1) Adequate transmitting and receiving equipment of acceptable broadcast quality which shall not interfere with the closed circuit TV system of the host association for providing any host facility patron information.

(2) Pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmissions, and data communications between the host and guest associations.

(3) A voice communication system between each guest association and the host association providing timely voice contact among the commission representative, placing judges, and pari-mutuel departments.

b. The guest association and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.

c. Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests, the guest association shall initiate a test program of its transmitter, encryption and decoding, and data communication to ensure proper operation of the system.

d. The guest association shall, in conjunction with the host association(s) for which it operates pari-mutuel wagering, provide the commission representative with a certified report of its pari-mutuel operations as directed by the commission representative.

e. Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.

f. The mutuel manager shall notify the commission representative when the transfer of pools, pool totals, or calculations are in question, or if partial or total cancellations occur, and shall suggest alternatives for continued operation. Should loss of video signal occur, wagering may continue with approval from the commission representative.

491—8.5(99D) Interstate common-pool wagering.

8.5(1) General.

a. All contracts governing participation in interstate common pools shall be submitted to the commission representative for prior approval. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Contracts and reports shall be of such content and in such format as required by the commission representative.

b. Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.

c. Any surcharges or withholdings in addition to the takeout shall be applied only in the jurisdiction otherwise imposing such surcharges or withholdings.

d. In determining whether to approve an interstate common pool which does not include the host association or which includes contests from more than one association, the commission representative shall consider and may approve use of a bet type which is not utilized at the host association, application of a takeout rate not in effect at the host association, or other factors which are presented to the commission representative.

e. The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

8.5(2) Guest state participation in interstate common pools.

RACING AND GAMING COMMISSION[491](cont'd)

a. With the prior approval of the commission representative, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state, or with corresponding pools established by one or more other jurisdictions.

b. The commission representative may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that of the host association, or identical to that of other jurisdictions participating in a merged pool.

c. When takeout rates in the merged pools are not identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

d. Rules established in the state of the host association designated for a pari-mutuel pool shall apply.

e. The commission representative shall approve agreements made between the association and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

f. If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate common pool, the association shall make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere; except that, with the permission of the commission representative, the association may alternatively determine either to pay winning tickets at the payoff prices at the host association, or to declare such accepted bets void and make refunds in accordance with the applicable rules.

8.5(3) Host state participation in merged pools.

a. With the prior approval of the commission representative, an association licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari-mutuel wagering at guest facilities in other states and may also determine that pari-mutuel pools in guest states be combined with corresponding wagering pools established by it as the host association or comparable wagering pools established by two or more states.

b. When takeout rates in the merged pool are identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

c. Rules of racing established for races held in this state shall also apply to interstate common pools unless the commission representative shall specifically determine otherwise.

d. The commission representative shall approve agreements made between the association and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

e. Any contract for interstate common pools entered into by the association shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another state into the interstate common pool formed by the association or if, for any reason, the commission representative or association determines that attempting to effect transfer of pool data from the guest state may endanger the association's wagering pool, the association shall have no liability for any measure taken which may result in the guest's wagers not being accepted into the pool.

8.5(4) Takeout rates in interstate common pools.

a. With the prior approval of the commission representative, an association wishing to participate in an interstate common pool may change its takeout rate so as to achieve a common takeout rate with all other participants in the interstate common pool.

b. An association wishing to participate in an interstate common pool may request that the commission representative approve a methodology whereby host association and guest association states with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different states into an interstate common pool.

ITEM 7. Rescind subrule **10.4(2)**, paragraph **"d,"** subparagraph **(1)**, and adopt in lieu thereof the following **new** subparagraph **(1)**:

(1) Schedule. In the absence of a specific contract or special agreement, the following jockey mount fees apply:

Purse	Win	2nd	3rd	Unplaced
$599 and under	$33	$33	$33	$33
$600-$699	36	33	33	33
$700-$999	10% Win Purse	33	33	33
$1,000-$1,499	10% Win Purse	33	33	33
$1,500-$1,999	10% Win Purse	35	33	33
$2,000-$3,499	10% Win Purse	45	40	38
$3,500-$4,999	10% Win Purse	55	45	40
$5,000-$9,999	10% Win Purse	65	50	45
$10,000-$14,999	10% Win Purse	5% Place Purse	5% Show Purse	50
$15,000-$24,999	10% Win Purse	5% Place Purse	5% Show Purse	55
$25,000-$49,999	10% Win Purse	5% Place Purse	5% Show Purse	65
$50,000-$99,999	10% Win Purse	5% Place Purse	5% Show Purse	80
$100,000 and up	10% Win Purse	5% Place Purse	5% Show Purse	105

ITEM 8. Rescind and reserve **491—Chapter 12.**

ITEM 9. Rescind and reserve **491—Chapter 13.**

REVENUE AND FINANCE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue and Finance hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 1999 by each taxpayer to determine the tax due for each taxpayer in the 2000-2001 fiscal year.

2000 ELECTRIC DELIVERY TAX RATES
BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00008338
3201	Algona Municipal Utilities	0.00027701
3205	Alta Municipal Power Plant	0.00009747
3207	Ames Municipal Electric System	0.00000188
3209	Atlantic Municipal Utilities	0.00024840
3211	Bancroft Municipal Utilities	0.00101504
3213	Bellevue Municipal Utilities	0.00015474
3228	Bigelow Municipal Electric Utility	0.00240854
3229	Bloomfield Municipal Electric Utility	0.00002962
3216	Buffalo Municipal Electric System	0.00000360
3221	Cedar Falls Municipal Elec. Utility	0.00039541
3242	Corning Municipal Utilities	0.00035053
3243	Danville Municipal Electric Utility	0.00000413
3244	Denison Municipal Utilities	0.00001595
3256	Graettinger Municipal Light Plant	0.00045969
3258	Grand Junction Municipal Utilities	0.00000484
3263	Harlan Municipal Utilities	0.00137185
3267	Hopkinton Municipal Utilities	0.00000930
3271	Indianola Municipal Utilities	0.00001301
3233	Lake View Municipal Utilities	0.00020820
3274	Lamoni Municipal Utilities	0.00155795
3276	LaPorte City Utilities	0.00000943
3282	Manilla Municipal Elec. Utilities	0.00010590
3285	Maquoketa Municipal Electric	0.00005867
3293	Muscatine Municipal Utilities	0.00010393
3297	New Hampton Municipal Light Plant	0.00007789
3298	New London Municipal Utility	0.00068919
3304	Ogden Municipal Utilities	0.00006342
3307	Osage Municipal Utilities	0.00005151
3309	Panora Municipal Electric Utility	0.00009932
3311	City of Pella	0.00007414
3318	Rock Rapids Municipal Utilities	0.00000479
3321	Sioux Center Municipal Utilities	0.00000505
3326	State Center Municipal Light Plant	0.00034439
3327	Story City Municipal Electric Utility	0.00011571
3328	Sumner Municipal Light Plant	0.00021044
3330	Tipton Municipal Utilities	0.00149179
3332	Traer Municipal Utilities	0.00053468
3337	Villisca Municipal Power Plant	0.00020736
3338	Waverly Light & Power	0.00079900
3342	Webster City Municipal Utilities	0.00038453
3345	West Bend Municipal Power Plant	0.00113443
3346	West Liberty Municipal Electric Util.	0.00001182
3347	West Point Municipal Utility System	0.00027264
3351	Winterset Municipal Utilities	0.00138591
3237	Coon Rapids Municipal Utilities	0.00069896
3277	Laurens Municipal Utilities	0.00045044
3291	Milford Municipal Utilities	0.00015128
3324	Spencer Municipal Utilities	0.00014636
3245	Denver Municipal Electric Utility	0.00020566
3227	Anthon Municipal Electric Utility	0.00013893
3217	Burt Municipal Electric Utility	0.00000190
3236	Coggon Municipal Light Plant	0.00004827
3252	Fontanelle Municipal Utilities	0.00036448
3230	City of Fredericksburg	0.00000301
3231	Glidden Municipal Electric Utility	0.00000235
3232	Guttenberg Municipal Electric	0.00003664
3284	Mapleton Municipal Utilities	0.00010382
3288	McGregor Municipal Utilities	0.00000795
3234	Onawa Municipal Utilities	0.00010932
3315	Primghar Municipal Light Plant	0.00002288
3323	Southern Minnesota Mun. Power	0.00000000
3068	City of Afton	0.00000000
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3071	Anita Municipal Utilities	0.00000000
3072	City of Aplington	0.00000000
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00011374
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00165903
3077	Callendar Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00142089
3080	Corwith Municipal Utilities	0.00000000
3081	Dayton Light & Power	0.00000000
3082	City of Dike	0.00000000
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00149960
3087	Ellsworth Municipal Utilities	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3091	Fonda Municipal Electric	0.00000000
3092	Forest City Municipal Utilities	0.00000000
3093	Gowrie Municipal Utilities	0.00161035
3094	Grafton Municipal Utilities	0.00000000
3095	Greenfield Municipal Utilities	0.00127783
3096	Grundy Center Light & Power	0.00022883
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00011001
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000

REVENUE AND FINANCE DEPARTMENT(cont'd)

3108	City of Lehigh	0.00000000
3109	Lenox Mun. Light & Power	0.00038900
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3112	Manning Municipal Electric	0.00020927
3113	City of Marathon	0.00000000
3114	Montezuma Municipal Light & Power	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000
3116	Neola Light & Water System	0.00000000
3117	Orange City Municipal Utilities	0.00000000
3118	Orient Municipal Utilities	0.00000000
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000
3122	Preston Municipal Utilities	0.00000000
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00000000
3125	City of Renwick	0.00000000
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light & Plant	0.00000000
3129	City of Sergeant Bluff	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3132	Stanhope Municipal Utilities	0.00000000
3133	Stanton Municipal Utilities	0.00000000
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00143006
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3139	City of Westfield	0.00000000
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Muncipal Light & Power	0.00000000
3142	Woodbine Municipal Utilities	0.00000000
3143	City of Woolstock	0.00000000

CO. #	IOU's - ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00049316
7248	Eldridge Electric & Water Utilities	0.00077234
7272	Interstate Power	0.00112694
7270	IES Utilities	0.00253530
7289	MidAmerican Energy	0.00278584
7296	Nebraska Public Power District	0.00000000
7302	Northwestern Public Service Co.	0.00000000
7305	Omaha Public Power District	0.00151957
7334	Union Electric	0.00000000
7354	Geneseo Municipal Utilities	0.00000000
7359	BFC Electric Co. LC	0.00000000

CO. #	REC's	DELIVERY TAX RATE
4200	Southwest Iowa Service Coop	0.00289110
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison-Holt Electric Coop	0.00097519
4214	Boone Valley Electric Coop	0.00095212
4246	East-Central Iowa REC	0.00234065
4218	Butler County REC	0.00146712
4219	Calhoun County Electric Coop	0.00154802
4220	Cass Electric Coop	0.00004637
4223	Heartland Power Coop	0.00077206
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00116694
4235	Clarke Electric Coop	0.00312618
4240	Corn Belt Power Coop	0.00000000
4247	Eastern Iowa Light & Power	0.00089985
4249	Farmers Electric Coop - Kalona	0.00043783
4250	Farmers Electric Coop - Greenfield	0.00237767
4253	Franklin Rural Electric Coop	0.00087592
4255	Glidden Rural Electric Coop	0.00132896
4259	Grundy County REC	0.00076201
4260	Grundy Electric Cooperative	0.00055899
4261	Guthrie County REC	0.00254000
4262	Hancock County REC	0.00131670
4265	Harrison County REC	0.00142200
4266	Hawkeye Tri-County Electric Coop	0.00076862
4268	Humboldt County REC	0.00124397
4279	Linn County REC	0.00223621
4280	Lyon Rural Electric Coop	0.00082636
4286	Maquoketa Valley Electric Coop	0.00221287
4287	Marshall County Rural Electric Coop	0.00250237
4295	Nebraska Elec. G & T Coop	0.00000000
4299	Nishnabotna Valley REC	0.00095793
4336	United Electric Coop	0.00113198
4294	NW Electric Power Coop	0.00000000
4301	Northwest Iowa Power Coop	0.00000000
4300	North West Rural Electric Coop	0.00073490
4308	Osceola Electric Coop	0.00054754
4310	Pella Cooperative Electric	0.00218118
4313	Pleasant Hill Community Line	0.00032604
4316	Rideta Electric Coop	0.00310243
4319	S.E. Iowa Coop Electric Assn.	0.00084479
4320	Sac County Rural Electric Coop	0.00110413
4348	Western Iowa Power Coop	0.00101276
4322	Southern Iowa Electric Coop	0.00165227
4329	T.I.P. Rural Electric Coop	0.00230530
4352	Woodbury County Rural Electric Coop	0.00127894
4353	Wright County Rural Electric Coop	0.00054353
4251	Federated Rural Electric Association	0.00055753
4254	Freeborn-Mower Cooperative Services	0.00093016
4333	Tri County Electric Coop	0.00133788
4273	Iowa Lakes Electric Coop	0.00103630
4290	Midland Power Cooperative	0.00199594

2000 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.01415549
5335	United Cities Gas	0.00640727
5340	Wayland Municipal Gas	0.00319456
5349	Winfield Municipal Gas	0.00045468
5275	Lamoni Municipal Gas	0.00080185
5281	Manilla Municipal Gas	0.00409584
5283	Manning Municipal Gas	0.00015239
5306	Osage Municipal Gas	0.00003370
5241	Corning Municipal Gas	0.00000103
5238	Coon Rapids Municipal Gas	0.00002167
5344	West Bend Municipal Gas	0.00202550
5317	Rock Rapids Municipal Gas	0.00007831
5312	Peoples Natural Gas	0.00961232
5215	Brighton Gas	0.01228388

REVENUE AND FINANCE DEPARTMENT(cont'd)

5021	Bedford Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5026	City of Clearfield	0.00000000
5027	Emmetsburg Municipal Gas	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5064	Wellman Municipal Gas	0.00000000
5065	Whittemore Municipal Gas	0.00000000
5066	Woodbine Gas	0.00000000

CO. #	IOU's - GAS	DELIVERY TAX RATE
5272	Interstate Power	0.01583867
5270	IES Utilities	0.01261502
5289	MidAmerican Energy	0.01103529

ARC 9954A

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, 421.17 and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 7, "Practice and Procedure Before the Department of Revenue and Finance," Iowa Administrative Code.

Chapter 7 is amended to set forth a new Division III titled "Waiver or Variance." The purpose of this new division is to provide a rule that implements waiver and variance provisions pursuant to 2000 Iowa Acts, House File 2206.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code Supplement section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code Supplement section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than August 14, 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 this proposed amendment on or before August 11, 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 August 4, 2000.

This amendment is intended to implement 2000 Iowa Acts, House File 2206.

The following amendment is proposed.

Amend 701—Chapter 7 by adopting **new** Division III as follows:

DIVISION III
WAIVER OR VARIANCE

701—7.60(78GA,HF2206) Waiver or variance of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver or variance. See 7.60(3) and 7.60(4).

7.60(1) Definitions. The following terms apply to the interpretation and application of this rule:

"Discretionary rule" or "discretionary provisions in a rule" means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

"Interpretive rules" or "interpretive provisions in rules" means rules or provisions in rules which define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

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

"Waiver or variance" means an agency action, which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

7.60(2) Scope of rule. This rule creates generally applicable standards and a generally applicable process for granting individual waivers or variances from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers or variances. To the extent another more specific provision of law purports to govern the issuance of a waiver or variance from a particular rule, the more specific waiver or variance provision shall supersede this rule with respect to any waiver or variance from that rule.

The waiver or variance provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver or variance would be inconsistent with any applicable statute, constitutional provision or other provision of law.

7.60(3) Applicability of this rule. This rule applies only to waiver or variance of those departmental rules that are within the exclusive rule-making authority of the department. This chapter shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver or variance rule applies to discretionary rules and discretionary provisions in rules, and not to interpretive rules.

The application of this rule is strictly limited to petitions for waiver or variance filed outside of a contested case proceeding. Petitions for waiver or variance from a discretionary rule or discretionary provisions in rules filed after the commencement of a contested case as provided in 701—7.47(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

7.60(4) Authority to grant a waiver or variance. The director may not issue a waiver or variance under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and

b. The waiver or variance is consistent with statutes and other provisions of law. No waiver or variance from any mandatory requirement imposed by statute may be granted under this rule.

7.60(5) Criteria for waiver or variance. The director may, in the director's sole discretion, issue an order in response to a petition, granting a waiver or variance from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver or variance is consistent with subrules 7.60(3) and 7.60(4), and if all of the following criteria are also met:

a. The waiver or variance would not prejudice the substantial legal rights of any person;

b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;

c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver or variance is requested.

7.60(6) Director's discretion. The final decision to grant or deny a waiver or variance shall be vested in the director of revenue and finance. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

7.60(7) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver or variance based upon the criteria contained in subrule 7.60(5).

7.60(8) Contents of petition. A petition for waiver or variance must be in the following format:

Iowa Department of Revenue and Finance

Name of Petitioner	*	Petition for
Address of Petitioner	*	Waiver
Type of Tax at Issue	*	Docket No. ____

A petition for waiver or variance must contain all of the following, where applicable and known to the petitioner:

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

b. A description and citation of the specific rule or rule provisions from which a waiver or variance is being requested;

c. The specific waiver or variance requested, including a description of the precise scope and operative period for which the petitioner wants the waiver or variance to extend;

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

e. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver or variance, including audits, notices of assessment, refund claims, contested case hearings, or investigative reports relating to the activity within the last five years;

f. Any information known to the petitioner relating to the department's treatment of similar cases;

g. The name, address, and telephone number of any public agency or political subdivision which might be affected by the grant of a waiver or variance;

h. The name, address, and telephone number of any person or entity who would be adversely affected by the granting of the waiver or variance;

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance;

j. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver or variance;

k. If the petitioner seeks to have identifying details deleted, which deletion is authorized by statute, such details must be listed with the statutory authority for the deletion; and

l. Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

7.60(9) Filing of petition. A petition for waiver or variance must be filed with the clerk of the hearings section for the Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50309.

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

7.60(10) Additional information. Prior to issuing an order granting or denying a waiver or variance, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director's own motion, or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

7.60(11) Notice of petition for waiver or variance. The petitioner will provide, within 30 days of filing the petition for waiver or variance, a notice consisting of a concise summary of the contents of the petition for waiver or variance and stating that the petition is pending. Such notice will be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for variance or waiver, or the parties' representatives. The petitioner must then file written notice with the clerk of the hearings section for the department (address indicated above) attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

7.60(12) Ruling on a petition for waiver or variance. An order granting or denying a waiver or variance must conform to the following:

a. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based and a description of the narrow and precise scope and operative time period of a waiver or variance, if one is issued.

b. If a petition requested the deletion of identifying details, then the order must either redact the details prior to the placement of the order in the public record file referenced in subrule 7.60(17) or set forth the grounds for denying the deletion of identifying details as requested.

c. Conditions. The director may condition the grant of a waiver or variance on any conditions which the director deems to be reasonable and appropriate in order to protect the public health, safety and welfare.

7.60(13) Time period for waiver or variance; extension. Unless otherwise provided, an order granting a petition for waiver or variance will be effective for 12 months from the date the order granting the waiver or variance is issued. Renewal of a granted waiver or variance is not automatic. To renew the waiver or variance beyond the 12-month period, the petitioner must file a new petition requesting a waiver or variance. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or variance or extension of waiver or variance. Even if the order granting the waiver or variance was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver or variance. Granting the extension of the waiver or variance is at the director's sole discretion and must be based upon whether the factors set out in subrules 7.60(4) and 7.60(5) remain valid.

7.60(14) Time for ruling. The director shall grant or deny a petition for waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

7.60(15) When deemed denied. Failure of the director to grant or deny a waiver or variance within the 120-day or the extended time period shall be deemed a denial of that petition.

7.60(16) Service of orders. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

7.60(17) Record keeping. The department is required to maintain a record of all petitions for waiver or variance and rulings granting or denying petitions for waiver or variance.

a. Petitions for waiver or variance. The department shall maintain a record of all petitions for waiver or variance available for public inspection. Such records will be indexed and filed and made available for public inspection at the clerk of the hearings section for the department at the address previously set forth in subrule 7.60(9).

b. Report of orders granting or denying a waiver or variance. All orders granting or denying a waiver or variance shall be summarized in a semiannual report to be drafted by the department and submitted to the administrative rules coordinator and the administrative rules review committee.

7.60(18) Cancellation of waiver or variance. A waiver or variance issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

a. The person who obtained the waiver or variance order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver or variance; or

b. The alternative means for assuring that public health, safety, and welfare will be adequately protected after issuance of the waiver or variance order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

c. The person who obtained the waiver or variance has failed to comply with all of the conditions in the waiver or variance order.

7.60(19) Violations. A violation of a condition in a waiver or variance order shall be treated as a violation of the particular rule or rule provision for which the waiver or variance was granted. As a result, the recipient of a waiver or variance under this rule who violates a condition of the waiver or variance may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

7.60(20) Defense. After an order granting a waiver or variance is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked, unless subrules 7.60(18) and 7.60(19) are applicable.

7.60(21) Hearing and appeals. Appeals from a decision in a contested case proceeding granting or denying a waiver or variance shall be in accordance with 701—Chapter 7 governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver or variance request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (see 701—7.55(17A)).

The provisions of Iowa Code sections 17A.10 to 17A.18A and the department rules 701—Chapter 7 regarding contested case proceedings shall apply to any petition for waiver or variance of a rule or provisions in a rule filed within a con-

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

tested case proceeding. A petition for waiver or variance of a rule provision in a rule outside of a contested case proceeding will not be considered under the statutes or the department's rules relating to contested case proceedings. Instead, the director's decision on the petition for waiver or variance is considered to be "other agency action."

This rule is intended to implement 2000 Iowa Acts, House File 2206.

ARC 9953A

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.

The legislature recently amended the Iowa Code to exempt purchases of certain types of clothing and footwear from Iowa sales and use tax during a two-day period in August. The Department has drafted a new rule interpreting and explaining the exemption in some detail.

The proposed rule will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this rule would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code Supplement section 17A.4A [1998 Iowa Acts, chapter 1202, section 10]. The Department will issue a regulatory analysis as provided in Iowa Code Supplement 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 August 14, 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 this proposed rule on or before August 11, 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 August 4, 2000.

This rule is intended to implement Iowa Code section 422.45 as amended by 2000 Iowa Acts, House File 2351.

This rule was also Adopted and Filed Emergency and is published herein as **ARC 9952A**. The content of that submission is incorporated by reference.

NOTICE—USURY

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

June 1, 1999 — June 30, 1999	7.25%
July 1, 1999 — July 31, 1999	7.50%
August 1, 1999 — August 31, 1999	8.00%
September 1, 1999 — September 30, 1999	8.00%
October 1, 1999 — October 31, 1999	8.00%
November 1, 1999 — November 30, 1999	8.00%
December 1, 1999 — December 31, 1999	8.00%
January 1, 2000 — January 31, 2000	8.00%
February 1, 2000 — February 29, 2000	8.25%
March 1, 2000 — March 31, 2000	8.75%
April 1, 2000 — April 30, 2000	8.50%
May 1, 2000 — May 31, 2000	8.25%
June 1, 2000 — June 30, 2000	8.00%
July 1, 2000 — July 31, 2000	8.50%

ARC 9976A

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.1 and 476.2 (1999) and 476.87 (1999 Supp.), the Utilities Board (Board) gives notice that on June 21, 2000, the Board issued an order in Docket No. RMU-00-7, In re: Natural Gas Marketer Certification, "Order Commencing Rule Making" to consider amendments to 199 IAC 2.2(17A,474), 19.13(6), and 19.14(476).

In 1999, the Legislature adopted Iowa Code Supplement section 476.87, which authorizes the Board to certify natural gas marketers in Iowa. This legislation directed the Board to adopt rules establishing the criteria for certification of competitive natural gas providers and aggregators.

In the March 3, 2000, "Order Terminating Small Volume Gas Dockets and Discussing Tariff Filing Requirements," Docket No. NOI-98-3, the Board decided to pursue the tariff approach for implementation of small volume gas transportation. The March 2000, "Report of the Board into Small Volume Gas Transportation" in Docket No. NOI-98-3 discussed minimal "transition-like" marketer certification rules under the tariff approach. The proposed amendments are consistent with that discussion.

UTILITIES DIVISION[199](cont'd)

Proposed 199 IAC 19.14(476) sets forth different standards for small and large volume customers. Natural gas marketers have been serving large volume customers for many years. Marketers proposing to serve small volume customers will be required to provide significantly more information than those marketers serving only large volume customers. Because small volume customers do not have the resources to research and evaluate a marketer's operational ability and business practices, or the bargaining position or sophistication to demand certain rights, the Board believes it is appropriate to include more protections for small volume customers in this proposal.

The amendments provide that any competitive natural gas provider (CNGP) providing service to an Iowa retail end user after the effective date of the rule must have a certificate in order to provide service to Iowa retail end users. The rule allows a CNGP which has provided service prior to the effective date of the rule to continue to provide service by filing for a certificate by February 1, 2001. A CNGP is a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa. CNGP includes an affiliate of an Iowa public utility and an aggregator as defined in Iowa Code Supplement section 476.86. CNGP excludes a public utility which is subject to rate regulation under Iowa Code chapter 476 and a municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in Iowa Code Supplement section 437A.3(20)"a"(1), in which the municipally owned utility is located.

Under the proposed amendments, the Board will act on a certification application within 90 days unless it determines an additional 60 days is necessary. Applications will be considered complete and the 90-day period will commence when all required items are submitted. Applicants will be notified of deficiencies and given 30 days to complete the applications.

In addition, the Board proposes to amend 199 IAC 19.13(6) concerning the written notice of risk pertaining to transportation users. The amendments limit that concept to the current existing large volume customers.

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

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on August 23, 2000, in the Board's hearing room at the address listed above. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code chapter 17A and Iowa Code Supplement sections 476.86 and 476.87.

The following amendments are proposed.

ITEM 1. Amend rule 199—2.2(17A,474) by adopting **new** subrule 2.2(17) as follows:

2.2(17) Application for certification of competitive natural gas providers (CNGP).

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

IN RE: (insert applicant name)	DOCKET NO._____ (completed by board) APPLICATION FOR CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDER OR AGGREGATOR

Contents of Application

1. The legal name and all trade names under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Iowa, and the applicant's state of organization.

2. The names, business addresses and business telephone numbers of the principal officers of the applicant who can be contacted regarding its operations in Iowa and a telephone number(s) at which the CNGP can be contacted 24 hours a day.

3. Identification of affiliates that are certified under 199—19.14(476) and a listing of the names and addresses of all the applicant's affiliates engaged in the provision of competitive natural gas services in any other state.

4. A listing of all legal actions and formal complaints pertaining to the provision of competitive natural gas services in the United States filed against the applicant or its affiliates at a public utility regulatory body other than the board that were pending in the 12 months prior to the date of the request for certificate, including identification of the title and number of applicable proceedings and a copy of the final orders in such proceedings or the citation to the website where the text of the orders can be found.

5. Identification of the states in which the applicant or an affiliate has had a license or certificate to supply energy services suspended, revoked, or denied, including identification of the title and number of any applicable proceedings and a copy of any final orders in such proceedings or the citation to the website where the text of the orders can be found.

6. Applicants who will be serving small volume customers must provide a demonstration that the applicant has the operational and financial capability to obtain and deliver the services it proposes to offer. At a minimum, applicants are required to submit financial statements. The applicant must submit a balance sheet, statement of income, statement of cash flow, and, if applicable, a statement of shareholders' equity and the applicant's debt structure, including bond rating. As a demonstration of the applicant's operational ability, the applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant's principal managerial and technical personnel, an operational flow chart, and a description of the applicant's facilities and the services it intends to render.

7. A commitment to comply with all the applicable conditions of certification contained in 199—subrules 19.14(5) and 19.14(6). Acknowledgment that failure to comply with all the applicable conditions of certification may result in the revocation of the CNGP's certificate.

ITEM 2. Amend subrule 19.13(6) as follows:

19.13(6) Written notice of risks. The utility must notify its ~~customers~~ *large volume users as defined in 19.14(1)* contracting for transportation service in writing that unless the

UTILITIES DIVISION[199](cont'd)

customer buys system supply reserve service from the utility, the utility is not obligated to supply gas to the customer. The notice must also advise the ~~customer~~ *large volume user* of the nature of any identifiable penalties, any administrative or reconnection costs associated with purchasing available firm or interruptible gas, and how any available gas would be priced by the utility. The notice may be provided through a contract provision or separate written instrument. The ~~customer~~ *large volume user* must acknowledge in writing that it has been made aware of the risks and accepts the risks.

ITEM 3. Adopt **new** rule 199—19.14(476) as follows and renumber rules **199—19.14(476)** and **199—19.15(476)** as **199—19.15(476)** and **199—19.16(476)**:

199—19.14(476) Certification of competitive natural gas providers and aggregators.

19.14(1) Definitions. The following words and terms, when used in these rule shall have the meanings indicated below:

"Competitive natural gas provider" or "CNGP" means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa. CNGP includes an affiliate of an Iowa public utility. CNGP includes aggregator as defined in Iowa Code Supplement section 476.86. CNGP excludes the following:

1. A public utility which is subject to rate regulation under Iowa Code chapter 476.

2. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in Iowa Code Supplement section 437A.3(20)"a"(1), in which the municipally owned utility is located.

"Competitive natural gas services" means natural gas sold at retail in this state excluding natural gas sold by a public utility or a municipally owned utility as provided in the definition of CNGP in 19.14(1).

"Large volume user" means any end user whose usage exceeds 25,000 therms in any month or 100,000 therms in any consecutive 12-month period.

"Small volume user" means any end user whose usage does not exceed 25,000 therms in any month and does not exceed 100,000 therms in any consecutive 12-month period.

19.14(2) General requirement to obtain certificate. A CNGP shall not provide service to an Iowa retail end user without a certificate approved by the utilities board pursuant to Iowa Code Supplement section 476.87. An exception to this requirement is a CNGP which has provided service to retail customers before the effective date of this rule. A CNGP subject to this exception shall file for a certificate under the provisions of this rule on or before February 1, 2001, to continue providing service pending the approval of the certificate.

19.14(3) Filing requirements and application process. Applications shall be made in the format and contain all of the information required in 199—subrule 2.2(17). Applications must be filed with the executive secretary at Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. An original and ten copies must be filed. An application fee of $125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant will be billed an hourly rate for actual time spent by board staff reviewing the application.

An applicant shall notify the board during the pendency of the certification request of any material change in the representations and commitments required by this subrule within 14 days of such change. Any new legal actions or formal complaints as identified in 199—numbered paragraph 2.2(17)"4" are considered material changes in the request. Once certified, CNGPs shall notify the board of any material change in the representations and commitments required for certification within 14 days of such change.

19.14(4) Deficiencies and board determination. The board will act on a certification application within 90 days unless it determines an additional 60 days is necessary. Applications will be considered complete and the 90-day period will commence when all required items are submitted. Applicants will be notified of deficiencies and given 30 days to complete applications.

19.14(5) Conditions of certification. As a condition for maintaining certification and the right to provide competitive natural gas services in Iowa, unless the board makes other provision by order, all CNGPs shall be subject to the following conditions:

a. Unauthorized charges. A CNGP shall not charge or attempt to collect any charges from end users for any competitive natural gas services or natural gas equipment not contracted for or otherwise agreed to by the end user.

b. Notification of emergencies. Upon receipt of information from an end user of the existence of an emergency situation with respect to delivery service, a CNGP shall immediately contact the appropriate public utility whose facilities may be involved. The CNGP shall also provide the end user with the emergency telephone number of the public utility.

c. Reports to the board. Each CNGP shall file a report with the utilities board on April 1 of each year for the 12-month period ending December 31 of the previous year. This information may be filed with a request for confidentiality, pursuant to rule 199—1.9(22). For each utility distribution system, the report shall contain the following information for its Iowa operations:

(1) The average number of small volume end users served per month.

(2) The average number of large volume end users served per month.

(3) The total volume of sales to small volume end users, by month.

(4) The total volume of sales to large volume end users, by month.

(5) The revenue collected from small volume end users for competitive natural gas services excluding any revenue collected from end users on behalf of utilities.

(6) The revenue collected from large volume end users for competitive natural gas services excluding any revenue collected from end users on behalf of utilities.

(7) The date the applicant began providing service in Iowa.

19.14(6) Additional conditions applicable to CNGPs providing service to small volume end users. All CNGPs providing service to small volume natural gas end users shall be subject to the following conditions in addition to those listed under subrule 19.14(5).

a. Customer deposits. Compliance with the following provisions of this chapter:

Customer deposits – subrule 19.4(2)
Interest on customer deposits – subrule 19.4(3)
Customer deposit records – subrule 19.4(4)
Customer's receipt for a deposit – subrule 19.4(5)
Deposit refund – subrule 19.4(6)
Unclaimed deposits – subrule 19.4(7)

b. Bills to end users. A CNGP shall include on end user bills all of the following:

(1) The period of time for which the billing is applicable.

UTILITIES DIVISION[199](cont'd)

(2) The amount owed for current service, including an itemization of all charges.
(3) Any past due amount owed.
(4) The last date for timely payment.
(5) The amount of penalty for any late payment.
(6) The location for or method of remitting payment.
(7) A toll-free telephone number for the end user to call for information and to make complaints regarding the CNGP.
(8) A toll-free telephone number for the end user to contact the CNGP in the event of an emergency.
(9) A toll-free telephone number for the end user to notify the public utility of an emergency regarding delivery service.
(10) Information regarding regulated rates, charges, refunds, and services as required by the board.

c. Disclosure. Each prospective end user must receive in writing, prior to initiation of service, all terms and conditions of service and all rights and responsibilities of the end user associated with the offered service.

d. Notice of service termination. Notice must be provided to the end user and the local distribution company at least 12 calendar days prior to service termination. CNGPs are prohibited from physically disconnecting the end user or threatening disconnection for any reason.

e. Transfer of accounts. CNGPs are prohibited from transferring the account of any end user to another supplier except with the consent of the end user. This provision does not preclude a CNGP from transferring all or a portion of its accounts pursuant to a sale or transfer of all or a substantial portion of a CNGP's business in Iowa, provided that the transfer satisfies all of the following conditions:
(1) The transferee will serve the affected end users through a certified CNGP;
(2) The transferee will honor the transferor's contracts with the affected end users;
(3) The transferor provides written notice of the transfer to each affected end user prior to the transfer; and
(4) Any affected end user is given 30 days to change to a competing CNGP without penalty.

f. Bond requirement. The board may require the applicant to file a bond or other demonstration of its financial capability to satisfy claims and expenses that can reasonably be anticipated to occur as part of operations under its certificate, including the failure to honor contractual commitments. The adequacy of the bond or demonstration shall be determined by the board and reviewed by the board from time to time. In determining the adequacy of the bond or demonstration, the board shall consider the extent of the services to be offered, the size of the provider, and the size of the load to be served, with the objective of ensuring that the board's financial requirements do not create unreasonable barriers to market entry.

g. Replacement cost for supply failure. If a CNGP fails to deliver at least 90 percent of the natural gas required for its end users for a 24-hour period, the public utility will procure natural gas on the open market to serve those end users. The CNGP will pay the utility three times the actual replacement cost for the natural gas. Replacement cost revenue will be credited to the public utility's system purchase gas adjustment.

ARC 9958A

WORKERS' COMPENSATION DIVISION[876]

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 86.8, the Workers' Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment specifies the amount of transportation expense allowed for the use of a private auto for medical treatment or examination for a work-related injury. The rate of reimbursement for transportation expense has historically corresponded to the rate the state of Iowa pays state employees and board members for use of personal vehicles. On May 1, 2000, the Department of General Services determined that, effective July 1, 2000, the rate will be 29 cents per mile.

The Division of Workers' Compensation has determined that this proposed amendment will not necessitate additional annual expenditures exceeding $100,000 by political subdivisions or agencies which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

The Division of Workers' Compensation has determined that this amendment will not have an impact on small business within the meaning of Iowa Code Supplement section 17A.4A.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 1, 2000, to the Workers' Compensation Commissioner, Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The proposed amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9957A**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code sections 85.27 and 85.39.

ARC 9973A

CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 17A.3, the Division of Criminal and Juvenile Justice Planning hereby rescinds 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 adopts 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 was signed by the Governor May 8, 2000. Senate File 2429 amends Iowa Code section 232.190 and changes the distribution of funding for that program and requires 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.

Notice of Intended Action was published on May 17, 2000, as **ARC 9841A**. A public hearing was held June 6, 2000, and no comments were provided at the hearing. These rules are identical to those published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), these rules became effective upon filing on June 22, 2000, to allow the Division to distribute funds to communities. These rules confer a benefit on those communities.

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

These rules became effective June 22, 2000.

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 adopted.

Rescind **428—Chapters 1** and **3** and adopt **new Chapters 1** and **3** and rescind and reserve **Chapters 4** and **5**:

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 P.L. 93-415, Section 223(a)(12)(A), 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 P.L. 93-415, Section 223(a)(12)(A), 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, Sections 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. Department 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 Secre-

tary 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, 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 allocations 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, and 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).

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 local units of 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 local units of 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 its 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.

[Filed Emergency After Notice 6/22/00, effective 6/22/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9950A

FAIR BOARD[371]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code chapters 173 and 17A, the Fair Board hereby amends Chapter 8, "Admittance and Use of Fairgrounds," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9832A**.

No comments were received during the comment period. This amendment is identical to that published under Notice of Intended Action.

FAIR BOARD[371](cont'd)

Pursuant to Iowa Code section 17A.5(2)"b"(2), this amendment became effective upon filing with the Administrative Rules Coordinator on June 17, 2000. The Board finds that the normal effective date of this amendment should be waived and the amendment shall be effective in advance of the annual state fair held August 10 to 20, 2000.

This amendment became effective June 17, 2000.

This amendment is intended to implement Iowa Code chapter 173.

The following amendment is adopted.

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 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.

[Filed Emergency After Notice 6/17/00, effective 6/17/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9971A

PERSONNEL DEPARTMENT[581]

Adopted and Filed Emergency

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

These amendments include the following:

1. Amend subrule 21.1(3) and paragraph 21.1(5)"c" to give IPERS' new address.
2. Amend subrule 21.4(3), paragraph "a," to reflect the current maximum covered wage amount.
3. Amend subparagraph 21.5(1)"a"(19) to clarify that permanent, postsecondary school employees may take part-time classes at their own schools without being excluded from IPERS coverage.
4. Amend referee exclusion, subparagraph 21.5(1)"a"(49), to exclude referees who qualify as independent contractors at all levels of public school athletic activities.
5. Add patient advocates employed pursuant to Iowa Code section 229.19 as covered employees in new subparagraph 21.5(1)"a"(50). Adopted to implement 2000 Iowa Acts, Senate File 2411, section 69.
6. Amend subrule 21.6(2) to rescind the $1 minimum wage reporting requirement. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 24.
7. Amend subrule 21.6(9), paragraphs "b" and "c," to reflect new contribution rates certified by IPERS' actuary for special service members effective July 1, 2000; paragraph "d" is also amended, pursuant to 2000 Iowa Acts, Senate File 2411, section 39, to include a new group of airport safety officers as protection occupation employees.
8. Amend rule 581—21.7(97B) to reflect new minimum charge on late contributions. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 22.
9. Adopt new paragraph 21.8(4)"e" to reflect a new four-month severance requirement for recipients of refunds. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 63.
10. Adopt new subrule 21.8(9) granting involuntarily terminated employees who take a refund and subsequently have reinstated the right to repay such refunds at a reduced cost, if the request is made within 90 days after the reinstatement ruling is rendered. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 63.
11. Adopt new subrule 21.8(10) granting members who terminate due to a disability, take a refund, and subsequently qualify for social security disability benefits the right to repay such refunds at a reduced cost if the request is made 90 days after July 1, 2000, or the date the member's social security benefits begin if later. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 50.
12. Amend paragraph 21.9(1)"a" and adopt new paragraph 21.9(1)"c" to reflect that appeal procedures for special service members covered under 2000 Iowa Acts, Senate File 2411, section 51, are governed by new rule 581—21.31(78GA,SF2411). Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 51.
13. Amend subrule 21.10(16) to indicate that no death benefit claim will be forfeited before January 1, 1988, the date that the federal minimum distribution laws became effective for governmental plans.

PERSONNEL DEPARTMENT[581](cont'd)

14. Adopt new subrule 21.10(18) to help IPERS deal with the legislatively mandated requirement that certain beneficiaries who have already received death benefits on or after January 1, 1999, may repay the prior death benefit and receive either a new lump sum amount or a monthly annuity based on the new lump sum amount. There will be tax consequences to some members who receive distributions under the old rules and then wish to receive the new retirement allowance in a subsequent calendar year. Some of these tax consequences cannot be altered by IPERS. These may include, for example, paying taxes on the original lump sum distribution and taxes on any retroactive payments used to offset a beneficiary's repayment obligation. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, sections 53 and 75.

15. Amend subrule 21.11(2) to make it easier for beneficiaries to provide acceptable identification when applying for benefits.

16. Amend subrule 21.11(6), first and second unnumbered paragraphs, primarily to clarify that, in addition to the other monthly retirement allowance options, a member may take a refund instead of the default option, if IPERS is contacted within 60 days after the first payment under the default option.

17. Adopt a new unnumbered paragraph at the end of subrule 21.11(9) modifying the period of severance requirements for bona fide retirement. Under the revised rule, a member must be out of all employment with covered employers for 30 days, and out of all covered employment an additional three months. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, sections 59 and 60.

18. Amend rule 581—21.12(97B) by adopting language that authorizes service credit for a third quarter in which no wages are reported if wages are reported in the preceding second quarter, or the individual was on an authorized leave of absence at the end of the preceding second quarter.

19. Adopt new paragraph 21.13(2)"e," which provides that, effective for retirement FMEs in January 2001 (or such later date certified by the actuary), early retirement reductions shall be calculated by determining the number of months that the early retirement precedes the earliest normal retirement date for that member based on the member's age and years of service, and multiplying that number by 0.25 percent. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, sections 48 and 80.

20. Amend paragraphs 21.13(6)"c," 21.13(10)"a," and 21.13(10)"e" to reflect that the applicable years for protection occupation members, currently 25, will be ratcheted down in several steps until they reach 22 effective July 1, 2002. The exact steps are described in new paragraph 21.13(6)"d." Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 37.

21. Adopt new paragraph 21.13(6)"d" to reflect the applicable years and applicable percentages for protection occupation members for the adjustment period July 1, 2000, through July 1, 2003. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, sections 36 and 37.

22. Amend paragraph 21.13(7)"a" to limit the covered wage smoothing period for highly compensated employees to January 1, 2002. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 16.

23. Amend paragraph 21.13(7)"b" to limit the wage smoothing period to January 1, 2002, to limit the number of years to be included in the wage smoothing calculation to six, and to increase the covered wage smoothing trigger amount to $65,000. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, sections 16 and 17.

24. Adopt new subrule 21.13(12) to provide that members aged 70 who begin their retirement allowances before July 1, 2000, while still working, and who terminate employment after January 1, 2000, will have their benefits recalculated under the benefit formula in place when they terminate, or when they apply for a recalculation, if later. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 74.

25. Amend subrule 21.16(5) to clarify that IPERS will accept as valid leaves of absence before November 27, 1996, during which the members took refunds, primarily because many employers and employees prior to that time did not realize that a member had to terminate employment to qualify for the refund.

26. Amend subrule 21.16(6), paragraph 21.24(2)"f," subrule 21.24(3), paragraph 21.24(5)"f," and paragraph 21.24(6)"d" to indicate that (1) if the actuary uses gender-distinct mortality tables in its valuation assumptions, the plan will use blended mortality tables in preparing service purchase costs, so that similarly situated males and females will not be paying different service purchase costs; and (2) service purchase costs are only valid for six months from the date they are delivered to members.

27. Amend subrule 21.19(1) to establish $14,000 as the maximum amount that a retiree under the age of 65 can earn in covered employment (unless the applicable social security limit is greater) before any reduction in benefits occurs. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 33.

28. Amend the catchwords in rule 581—21.22(97B) to distinguish it from new rule 581—21.31(78GA,SF2411).

29. Adopt new subrule 21.24(11) to permit vested and retired members to purchase service credit for periods of service in Iowa public employment for which no mandatory or optional coverage was provided. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 70.

30. Adopt new subrule 21.24(12) to permit vested or retired members to purchase service credit for periods of service as volunteers of the federal Peace Corps program, provided that the members make binding waivers of any rights to retirement credit under any other public retirement systems for such service. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 71.

31. Adopt new subrule 21.24(13) to permit vested or retired members to purchase service credit for periods of service with qualified Canadian educational institutions, provided that the members make binding waivers of any rights to retirement credit under any other public retirement systems for such service. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 68.

32. Adopt new subrule 21.24(14) to permit current and former patient advocates employed under Iowa Code section 229.19, in addition to amounts required for four quarters of wage adjustments, to purchase additional service credit for other periods of such service. The cost for each quarter of such service, if paid before July 1, 2002, will be determined under paragraphs 21.24(2)"b" through "e," and thereafter at the actuarial cost as determined under paragraph 21.24(2)"f." Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 69.

33. Amend subrule 21.30(3) to simplify the method for calculating FED payments. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 45.

34. Amend subrule 21.30(4) to provide that a potential FED recipient must be living in the month a FED payment is

PERSONNEL DEPARTMENT[581](cont'd)

payable in order to qualify for the payment. This change is consistent with the method used for dividend payments to pre-July 1, 1990, retirees. Adopted pursuant to 2000 Iowa Acts, Senate File 2411, section 43.

35. Adopt new subrule 21.30(5) to provide that, in addition to the ten-year cap placed on the FED reserve by 2000 Iowa Acts, Senate File 2411, sections 44, no transfer to the FED reserve can cause the system's unfunded liability amortization period to exceed the limit set by the system's funding policy in effect at the time of the proposed transfer.

36. Adopt new rule 581—21.31(78GA,SF2411) to implement the special service member disability benefit mandated by 2000 Iowa Acts, Senate File 2411, section 51. This new disability provision permits special service members to qualify for disability benefits without having to qualify for federal social security disability benefits. It also provides for alternative benefit formulas which may provide a greater retirement allowance than is available under the disability provisions of Iowa Code section 97B.50(2). IPERS staff will make special service member disability determinations based on the rules being adopted, in consultation with the University of Iowa Hospitals.

37. Adopt new rule 581—21.32(97B) to implement the qualified benefits arrangement authorized in Iowa Code section 97B.49I. This arrangement is designed to permit the payment of the full amount that would otherwise be payable under the plan but for the limitation of Internal Revenue Code Section 415.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to implementation are impracticable, unnecessary, and contrary to the public interest, and that these rules should be implemented immediately because the amendments revise IPERS' current interpretations and applications of its governing statutes and rules in a manner which is either beneficial to members or is required by statute. By far the majority of the amendments described above are required by 2000 Iowa Acts, Senate File 2411.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b," that the normal effective date of the amendments should be waived and the amendments be made effective upon filing with the Administrative Rules Coordinator on June 22, 2000, because they confer benefits and remove restrictions, or are required by state or federal statute. In conjunction with the Notice of Intended Action, also published herein, this filing will give interested persons adequate notice of the changes and an opportunity to respond.

There are no general waiver provisions in the proposed amendments because the amendments fall into one of the following categories: (1) there was no specific waiver authority granted in the statute being implemented; or (2) the amendments confer a benefit or remove a limitation.

The Department adopted these amendments on June 22, 2000.

These amendments are also published herein under Notice of Intended Action as **ARC 9972A** to allow public comment.

These amendments are intended to implement Iowa Code chapter 97B as amended by 2000 Iowa Acts, Senate File 2411.

These amendments became effective June 22, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 21.1(3) as follows:

21.1(3) Location. IPERS' business address is 600 East Court Avenue, Des Moines, Iowa. *In August 2000, IPERS' business location shall be 7401 Register Drive, Des Moines, Iowa.* General correspondence, inquiries, requests for information or assistance, complaints, or petitions shall be addressed to: Iowa Public Employees' Retirement System, P.O. Box 9117, Des Moines, Iowa 50306-9117.

ITEM 2. Amend paragraph **21.1(5)"c"** as follows:

c. The principal place of business of the investment board is located at 600 East Court Avenue, Des Moines, Iowa. *In August 2000, the principal place of business of the investment board shall be 7401 Register Drive, Des Moines, Iowa.*

ITEM 3. Amend paragraph **21.4(3)"a"** as follows:

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum. Effective January 1, ~~1997~~ *2000*, and for each subsequent calendar year, covered wages shall not exceed ~~$160,000~~ *$170,000* or the amount permitted for that year under Section 401(a)(17) of the Internal Revenue Code.

ITEM 4. Amend subparagraph **21.5(1)"a"(19)** as follows:

(19) Persons who are enrolled as students and whose primary occupations are as students are not covered. Full-time and part-time students who are employed *part-time* by the institutions where they are enrolled as students are not covered. Full-time and part-time students who are employed full-time *or part-time* by a covered employer other than the institution where they are enrolled are covered. ~~Part-time students who are employed part-time by a covered employer other than the institution in which they are enrolled are covered.~~ *Full-time employees who are enrolled as part-time students in the institution where they are employed are covered.* ~~Full-time students who are employed part-time by a covered employer are not covered.~~ Full-time and part-time student status is as defined by the individual educational institutions. Full-time and part-time employment status is as defined by the individual employers.

ITEM 5. Amend subparagraph **21.5(1)"a"(49)** as follows:

(49) Effective July 1, 1999, persons performing referee services for ~~varsity and junior varsity athletic events for which a license is needed from the Iowa high school athletic association~~ *a covered employer* shall be excluded from coverage, *unless the performance of such services is included in the persons' regular job duties for the employers for which such services are performed.*

ITEM 6. Adopt **new** subparagraph **21.5(1)"a"(50)** as follows:

(50) Effective July 1, 2000, patient advocates appointed under Iowa Code section 229.19 shall be included.

ITEM 7. Amend subrule 21.6(2) as follows:

21.6(2) Each periodic wage reporting form must include all employees who earned reportable wages or wage equivalents under IPERS. If an employee has no reportable wage in a quarter but is still employed by the employing unit, the employee should be listed with zero wages. ~~If the total amount of employer and employee contributions is $1 or less, wages shall be reported as zero for that member in that quarter.~~

ITEM 8. Amend paragraphs **21.6(9)"b"** and **21.6(9)"c"** as follows:

b. Sheriffs, deputy sheriffs, and airport firefighters, effective July 1, ~~1999~~ *2000*.

(1) Member's rate—~~5.69%~~ *5.59%*.

(2) Employer's rate—~~8.54%~~ *8.39%*.

PERSONNEL DEPARTMENT[581](cont'd)

c. Members employed in a protection occupation, effective July 1, ~~1999~~ *2000*.
(1) Member's rate—~~5.58%~~ *5.90%*.
(2) Employer's rate—~~8.38%~~ *8.86%*.

ITEM 9. Amend subparagraph **21.6(9)"d"(5)** as follows:
(5) Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city of 100,000 population or more, *and employees covered by the Iowa Code chapter 19A merit system whose primary duties are providing airport security and who carry or are licensed to carry firearms while performing those duties.*

ITEM 10. Amend paragraph **21.6(9)"e"** as follows:
e. Prior special rates are as follows:
Effective July 1, ~~1998~~ *1999*, through June 30, ~~1999~~ *2000*:
(1) Sheriffs, deputy sheriffs, and airport firefighters—member's rate—~~6.34%~~ *5.69%*; employer's rate—~~9.51%~~ *8.54%*.
(2) Protection occupation—member's rate—~~5.61%~~ *5.58%*; employer's rate—~~8.41%~~ *8.38%*.

ITEM 11. Amend rule 581—21.7(97B) as follows:

581—21.7(97B) Accrual of interest. Interest *or charges* as provided under Iowa Code section 97B.9 shall accrue on any contributions not received by IPERS by the due date, except that interest *or charges* may be waived by IPERS upon request prior to the due date by the employing unit, if due to circumstances beyond the control of the employing unit.
This rule is intended to implement Iowa Code section 97B.9 *as amended by 2000 Iowa Acts, Senate File 2411, section 22.*

ITEM 12. Adopt **new** paragraph **21.8(4)"e"** as follows:
e. Effective July 1, 2000, an employee is no longer required to be out of covered employment for 30 days before a refund application can be processed. However, an employee must sever all covered employment for four months and cannot file an application after returning to covered employment, even if more than four months have elapsed since the original termination. If the employee returns to covered employment before four months have passed, the refund will be revoked and the amounts paid plus interest must be repaid to the system.

ITEM 13. Adopt **new** subrule 21.8(9) as follows:
21.8(9) Reinstatement following an employment dispute. If an involuntarily terminated employee is reinstated in covered employment as a remedy for an employment dispute, the member may restore membership service credit for the period covered by the refund by repaying the amount of the refund plus interest within 90 days after the date of the order or agreement requiring reinstatement.

ITEM 14. Adopt **new** subrule 21.8(10) as follows:
21.8(10) Commencement of disability benefits under Iowa Code section 97B.50(2).
a. If a vested member terminates covered employment, takes a refund, and is subsequently approved for disability under the federal Social Security Act or the federal Railroad Retirement Act, the member may reinstate membership service credit for the period covered by the refund by paying the actuarial cost as determined by IPERS' actuary. Repayments must be made by:
(1) For members whose federal social security or railroad retirement disability payments began before July 1, 2000, the repayment must be made within 90 days after July 1, 2000;
(2) For members whose social security or railroad retirement disability payments begin on or after July 1, 2000, the repayment must be made within 90 days after the date social security payments begin; or
(3) For any member who could have reinstated a refund under (1) or (2) above but for the fact that IPERS has not yet received a favorable determination letter from the federal Internal Revenue Service, the repayment must in any event be received within 90 days after IPERS has received such a ruling.
b. IPERS must receive a favorable determination letter from the federal Internal Revenue Service before any refund can be reinstated under this subrule.

ITEM 15. Amend paragraph **21.9(1)"a,"** introductory paragraph, as follows:
a. A party who wishes to appeal a decision by IPERS, other than a special service classification *or a disability claim under 2000 Iowa Acts, Senate File 2411, section 51,* shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

ITEM 16. Adopt **new** paragraph **21.9(1)"c"** as follows:
c. Appeals of disability claims under 2000 Iowa Acts, Senate File 2411, section 51, shall be filed and processed as provided under rule 581—21.31(78GA,SF2411).

ITEM 17. Amend subrule 21.10(16) as follows:
21.10(16) Effective July 1, 1998, a member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. For claims filed prior to July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the third quarter of 1998. For claims filed on or after July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the quarter that the claim is received by IPERS. *For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988.* IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

ITEM 18. Adopt **new** subrule 21.10(18) as follows:
21.10(18) Death benefits under Iowa Code section 97B.52(1)"b."
a. The death benefit provided for under Iowa Code section 97B.52(1) is intended to benefit beneficiaries of members who die before retiring and shall not apply to retired reemployed members. For retired reemployed members who die during the period of reemployment, the member's death benefits shall be provided under the option elected at retirement subject to adjustments for reemployment wages.
b. An "eligible beneficiary" is one who receives preretirement death benefits during the period January 1, 1999, through December 31, 2000, (or if later, the date the system's actuary approves the payment of benefits under Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, section 75) and may elect to receive the larger of the lump sum amounts available under Iowa Code section 97B.52(1) or to receive a single life annuity that is the actuarial equivalent of the larger of such lump sum amounts. The eligible beneficiary must repay the prior death benefit received as follows:
(1) If the eligible beneficiary wishes to receive the larger lump sum amount, if any, the system shall pay the difference

PERSONNEL DEPARTMENT[581](cont'd)

between the prior death benefit lump sum amount and the new death benefit lump sum amount to the eligible beneficiary or as directed by the eligible beneficiary in writing.

(2) If the eligible beneficiary wishes to receive a single life annuity under Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, section 75, the eligible beneficiary may either:

1. Annuitize the difference between the previously paid lump sum amount and the new larger lump sum amount, if any, or

2. Annuitize the full amount of the largest of the lump sum amounts available under Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, section 75, but only upon repaying the full amount of the previously paid lump sum amount.

(3) To the extent possible, repayment costs shall be recovered from retroactive monthly payments, if such retroactive monthly payments are authorized by statute or rule, and the balance shall be paid in a lump sum in after-tax dollars.

c. Claims for a single life annuity under this subrule filed by eligible beneficiaries and beneficiaries of members who die on or after the implementation date must be filed as follows:

(1) An eligible beneficiary must file a claim for a single life annuity within 12 months of the implementation date.

(2) The beneficiary of a member who dies while actively employed on or after the implementation date must file a claim for a single life annuity within 12 months of the member's death, provided that a surviving spouse files a claim for a single life annuity by the date that the member would have attained age 70½.

d. Elections to receive the lump sum amounts or single life annuity available under Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, sections 53 and 75, and this subrule shall be irrevocable once the first payment is made.

ITEM 19. Amend subrule 21.11(2) as follows:

21.11(2) Proof required in connection with application. Proof of date of birth to be submitted with an application for benefits shall be in the form of a birth certificate or an infant baptismal certificate. If these records do not exist, the applicant shall submit two other documents or records ~~ten or more years old, or certification from the custodians of these records,~~ which will verify the day, month and year of birth. *A photographic identification record may be accepted even if now expired unless the passage of time has made it impossible to determine if the photographic identification record is that of the applicant.* The following records or documents are among those deemed acceptable to IPERS as proof of date of birth:

a. United States census record;

b. Military record *or identification card*;

c. Naturalization record;

d. A marriage license showing age of applicant in years, months and days on date of issuance;

e. A life insurance policy;

f. Records in a school's administrative office;

g. An official form from the United States Immigration Service, such as the "green card," containing such information;

h. ~~Valid Iowa driver's~~ *Driver's* license~~;~~ *or Iowa nondriver identification card*;

i. Adoption papers; ~~or~~

j. A family Bible record. A photostatic copy will be accepted with certification by a notary that the record appears to be genuine~~.~~ *; or*

k. Any other document or record ten or more years old, or certification from the custodian of such records which verifies the day, month, and year of birth.

Under subrule 21.11(6), IPERS is required to begin making payments to a member or beneficiary who has reached the required beginning date specified by Internal Revenue Code Section 401(a)(9). In order to begin making such payments and to protect IPERS' status as a plan qualified under Internal Revenue Code Section 401(a), IPERS may rely on its internal records with regard to date of birth, if the member or beneficiary is unable or unwilling to provide the proofs required by this subrule within 30 days after written notification of IPERS' intent to begin *mandatory* payments.

ITEM 20. Amend subrule **21.11(6)**, first and second unnumbered paragraphs, as follows:

Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the appropriate notice. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in *such* a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all ~~covered and noncovered~~ employment with employers covered under Iowa Code chapter 97B.

If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the ~~mandatory options~~ *default option* described above, *or as a refund,* if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member what adjustments or repayments are required in order to make the change.

ITEM 21. Adopt a **new** unnumbered paragraph at the end of subrule **21.11(9)** as follows:

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits form with the department before returning to any employment with a covered employer.

ITEM 22. Amend rule 581—21.12(97B), introductory paragraph, as follows:

581—21.12(97B) Service credit. An employee working in a position for a school district or other institution which operates on a nine-month basis shall be credited with a year of service for each year in which three quarters of coverage are recorded, if the employee returns to covered employment the next operating year. The foregoing sentence shall be implemented as follows. A member will receive credit for the third quarter when no wages are reported in that quarter if the member works the following three calendar quarters and had covered wages *or was on an approved leave of absence* in the immediately preceding second quarter. An individual employed on a fiscal- or calendar-year basis shall be credited with a year of service for each year in which four quarters of coverage are recorded.

PERSONNEL DEPARTMENT[581](cont'd)

ITEM 23. Adopt **new** paragraph **21.13(2)"e"** as follows:

e. Effective January 1, 2001, or such later date that the actuary certifies that the change can be made without increasing contributions, the age reduction shall be calculated by deducting 0.25 percent per month for each month that the first month of entitlement precedes the earliest possible normal retirement date for that member based on the age and years of service at the member's actual retirement.

ITEM 24. Amend paragraph **21.13(6)"c"** as follows:

c. Effective July 1, 1996, in addition to the 60 percent multiplier identified above, members who retire with years of service in excess of their "applicable years" shall have the percentage multiplier increased by 1 percent for each year in excess of their "applicable years," not to exceed an increase of 5 percent. For regular members, "applicable years" means 30 years; for protection occupation members, "applicable years" means 25 years; for sheriffs, deputy sheriffs, and airport firefighters, "applicable years" means 22 years. Effective July 1, 1998, sheriffs, deputy sheriffs, and airport firefighters who retire with years of service in excess of their applicable years shall have their percentage multiplier increased by 1.5 percent for each year in excess of their applicable years, not to exceed an increase of 12 percent.

Notwithstanding the provisions of the foregoing paragraph, effective July 1, 2000, the "applicable years" and increases in the percentage multiplier for years in excess of the applicable years shall be determined under Iowa Code section 97B.49B(1) as amended by 2000 Iowa Acts, Senate File 2411, sections 36 and 37.

ITEM 25. Adopt **new** paragraph **21.13(6)"d"** as follows:

d. For special service members covered under Iowa Code section 97B.49B as amended by 2000 Iowa Acts, Senate File 2411, sections 36 and 37, the applicable percentage and applicable years for members retiring on or after July 1, 2000, shall be determined as follows:

(1) For each member retiring on or after July 1, 2000, and before July 1, 2001, 60 percent plus, if applicable, an additional 0.25 percent for each additional quarter of eligible service beyond 24 years of service (the "applicable years"), not to exceed 6 additional percentage points;

(2) For each member retiring on or after July 1, 2001, and before July 1, 2002, 60 percent plus, if applicable, 0.25 percent for each additional quarter of eligible service beyond 23 years of service (the "applicable years"), not to exceed a total of 7 additional percentage points;

(3) For each member retiring on or after July 1, 2002, and before July 1, 2003, 60 percent plus, if applicable, 0.25 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 8 additional percentage points;

(4) For each member retiring on or after July 1, 2003, 60 percent plus, if applicable, an additional 0.25 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 12 additional percentage points.

Regular service does not count as "eligible service" in determining a special service member's applicable percentage.

ITEM 26. Amend paragraph **21.13(7)"a,"** second unnumbered paragraph, and paragraph **21.13(7)"b"** as follows:

If the three-year average covered wage of a member who retires on or after January 1, 1997, and before January 1, ~~2003~~ *2002*, exceeds the limits set forth in paragraph "b" below, the longer period specified in paragraph "b" shall be substituted for the three-year averaging period described above. No quarters from the longer averaging period described in paragraph "b" shall be combined with the final quarter or quarters to complete the last year.

b. For the persons retiring during the period beginning January 1, 1997, and ending December 31, ~~2002~~ *2001*, the three-year average covered wage shall be computed as follows:

(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds $48,000, the member's covered wages averaged for the highest four years of the member's service or $48,000, whichever is greater.

(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds $52,000, the member's covered wages averaged for the highest five years of the member's service or $52,000, whichever is greater.

(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds $55,000, the member's covered wages averaged for the highest six years of the member's service or $55,000, whichever is greater.

(4) For a member who retires on or after January 1, 2000, but before January 1, ~~2003~~ *2002*, and whose three-year average covered wage at the time of retirement exceeds ~~$55,000~~ *$65,000*, the member's covered wages averaged for the highest ~~seven~~ *six* years of the member's service or ~~$55,000~~ *$65,000*, whichever is greater.

For purposes of this paragraph "b," the highest years of the member's service shall be determined using calendar years and may be determined using one computed year. The computed year shall be calculated in the manner and subject to the restrictions provided in paragraph "a."

ITEM 27. Amend numbered paragraph **21.13(10)"a"(3)"3"** as follows:

3. Members who have 25 years of protection occupation service credit as defined in Iowa Code section 97B.49B *(or the applicable years in effect at the member's retirement)*.

ITEM 28. Amend subparagraphs **21.13(10)"e"(2)** and **21.13(10)"e"(3)** as follows:

(2) The applicable percentage multiplier divided by 25 *(or the applicable years at that time under Iowa Code section 97B.49B)* times the years of protection occupation class service credit (if any) times the member's high three-year average covered wage, plus

(3) The applicable percentage multiplier divided by 30 times the years of regular service credit (if any) times the member's high three-year average covered wage minus the applicable wage reduction (if any).

If the sum of the percentages obtained by dividing the applicable percentage multiplier by 22, 25 *(or the applicable years at that time under Iowa Code section 97B.49B)*, and 30 and then multiplying those percentages by years of service credit exceeds the applicable percentage multiplier for that member, the percentage obtained above for each class of service shall be subject to reduction so that the total shall not exceed the member's applicable percentage multiplier in the order specified in paragraph "c," subparagraph (3), of this subrule.

ITEM 29. Adopt **new** subrule 21.13(12) as follows:

21.13(12) Recalculation for a member aged 70. A member remaining in covered employment after attaining the age of 70 years may receive a retirement allowance without terminating the covered employment. A member who is in covered employment, attains the age of 70 and begins receiving a retirement allowance must terminate all covered employ-

PERSONNEL DEPARTMENT[581](cont'd)

ment before the member's retirement allowance can be recalculated to take into account service after the member's original FME. The formula to be used in recalculating such a member's retirement allowance depends on the date of the member's FME and the member's termination date, as follows.

If the member is receiving a retirement allowance with an FME prior to July 1, 2000, and terminates covered employment on or after January 1, 2000, the member's retirement formula for recalculation purposes shall be the formula in effect at the time of the member's termination from covered employment or, if later, the date the member applies for a recalculation.

In all other cases, the recalculation for a member aged 70 who retires while actively employed shall use the retirement formula in effect at the time of the member's FME.

ITEM 30. Amend subrule 21.16(5) as follows:

21.16(5) Credit for a leave of absence shall not be granted and cannot be purchased for any time period which begins after or extends beyond an employee's termination of employment as certified by the employer. This includes a certification of termination of employment made by an employer on a refund application. Employers shall be required to certify all leaves of absence for which credit is being requested using an affidavit furnished by IPERS and accompanied by a copy of the official record(s) which authorized the leave of absence. The provisions of this subrule denying credit for leaves of absence in ~~certain situations~~ *cases in which the member takes a refund* shall *not* apply to *employees who were on* leaves of absence that ~~begin on or after the effective date of this subrule, which shall be~~ *began before* November 27, 1996, *and took a refund before such date*. The provisions of the subrule requiring employers to certify all leaves of absence using an affidavit furnished by IPERS shall apply to all requests for leave of absence credit filed after November 27, 1996, regardless of when the leave of absence was granted.

ITEM 31. Amend subrule 21.16(6) as follows:

21.16(6) For a leave of absence beginning on or after July 1, 1998, and purchased before July 1, 1999, the service purchase cost shall be equal to the employer and employee contributions and interest payable for the employee's most recent year of covered wages, adjusted by the inflation factor used in rule 21.24(97B). For a leave of absence beginning on or after July 1, 1998, and purchased on or after July 1, 1999, the service purchase cost shall be the actuarial cost, as certified by IPERS' actuary. In calculating the actuarial cost of a service purchase under this subrule, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: *(1)* the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age*; and (2) if the actuary uses gender-distinct mortality assumptions, the system shall use blended mortality assumptions reasonably representative of the system's experience.* The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. *If IPERS changes the service purchase mortality assumptions upon the recommendation of its actuary, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.*

ITEM 32. Amend subrule 21.19(1), introductory paragraph, as follows:

21.19(1) Effective July 1, 1998, the monthly benefit payments for a member under the age of 65 who has a bona fide retirement and is then reemployed in covered employment shall be reduced by 50 cents for each dollar the member earns in excess of the amount of remuneration permitted for a calendar year for a person under the age of 65 before a reduction in federal Social Security retirement benefits is required, or ~~$12,000~~ *$14,000*, whichever is greater. The foregoing reduction shall apply only to IPERS benefits payable for the applicable year that the member has reemployment earnings, and after the earnings limit has been reached. Said reductions shall be applied as provided in subrule 21.19(2) below.

ITEM 33. Amend rule 581—21.22(97B), catchwords, as follows:

581—21.22(97B) Disability ***for persons not retiring under 2000 Iowa Acts, Senate File 2411, section 51.***

ITEM 34. Amend paragraph **21.24(2)"f"** as follows:

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-in, as certified by IPERS' actuary. In calculating the actuarial cost of a buy-in, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that*: (1)* the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age*; and (2) if the actuary uses gender-distinct mortality assumptions, the system shall use blended mortality assumptions reasonably representative of the system's experience.* The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. *If IPERS changes the service purchase mortality assumptions upon the recommendation of its actuary, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.*

ITEM 35. Amend subrule 21.24(3), introductory paragraph, as follows:

21.24(3) IPERS buy-back. Effective July 1, 1996, only vested or retired members may buy back previously refunded IPERS credit. For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that*: (1)* the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age*; and (2) if the actuary uses gender-distinct mortality assumptions, the system shall use blended mortality assumptions reasonably representative of the system's experience.* The actuarial

PERSONNEL DEPARTMENT[581](cont'd)

cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. *If IPERS changes the service purchase mortality assumptions upon the recommendation of its actuary, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.*

ITEM 36. Amend paragraph **21.24(5)"f"** as follows:

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that*: (1)* the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age*; and (2) if the actuary uses gender-distinct mortality assumptions, the system shall use blended mortality assumptions reasonably representative of the system's experience*. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. *If IPERS changes the service purchase mortality assumptions upon the recommendation of its actuary, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.*

ITEM 37. Amend paragraph **21.24(6)"d"** as follows:

d. Actuarial cost. Effective July 1, 1999, an eligible member must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a legislative service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that*: (1)* the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age*; and (2) if the actuary uses gender-distinct mortality assumptions, the system shall use blended mortality assumptions reasonably representative of the system's experience*. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. *If IPERS changes the service purchase mortality assumptions upon the recommendation of its actuary, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.*

ITEM 38. Renumber subrule **21.24(11)** as **21.24(15)** and adopt **new** subrule 21.24(11) as follows:

21.24(11) Public employment service credit under 2000 Iowa Acts, Senate File 2411, section 70. A vested or retired member who has five or more years of service credit and who was previously employed in public employment for which optional coverage was not available, such as substitute teaching or other temporary employment, may purchase up to 20 quarters of service credit for such employment subject to the requirements of 2000 Iowa Acts, Senate File 2411, section 70. Service credit may not be purchased under this subrule for time periods when the member was eligible to elect coverage and failed to do so, or affirmatively elected out of coverage. Also, service credit may not be purchased under this subrule for periods in which the individual was performing services as an independent contractor. The contributions required under this subrule shall be in an amount equal to the actuarial cost of the service purchase as determined under 21.24(2)"f."

ITEM 39. Renumber subrule **21.24(12)** as **21.24(16)** and adopt **new** subrule 21.24(12) as follows:

21.24(12) Federal Peace Corps program service credit under 2000 Iowa Acts, Senate File 2411, section 71. A vested or retired member who has five or more years of service credit and who was previously employed full-time as a member of the federal Peace Corps program may purchase up to 20 quarters of service credit for such employment, subject to the requirements of 2000 Iowa Acts, Senate File 2411, section 71. Members with service credit for such employment under another public retirement system must provide a waiver of the service time to IPERS along with proof that the other public retirement system has accepted the waiver and allows withdrawals of the related service credit. The contributions required under this subrule shall be in an amount equal to the actuarial cost of the service purchase as determined under 21.24(2)"f."

ITEM 40. Adopt **new** subrule 21.24(13) as follows:

21.24(13) Purchase of service credit for employment with a qualified Canadian governmental entity. A vested or retired member who has five or more years of service credit and who was previously employed full-time by a qualified Canadian governmental entity, as defined in 2000 Iowa Acts, Senate File 2411, section 68, may purchase up to 20 quarters of service credit for such employment, subject to the requirements of 2000 Iowa Acts, Senate File 2411, section 68. Members with service credit for such employment under another public retirement system must provide a waiver of the service time to IPERS along with proof that the other public retirement system has accepted the waiver and allows withdrawals of the related service credit. All communications from qualified Canadian governmental entities and their retirement systems must be certified in English translation. The contributions required under this subrule shall be in an amount equal to the actuarial cost of the service purchase as determined under 21.24(2)"f."

ITEM 41. Adopt **new** subrule 21.24(14) as follows:

21.24(14) Patient advocate service purchases.

a. Current and former patient advocates employed under Iowa Code section 229.19 shall be eligible for a wage adjustment under Iowa Code section 97B.9(4) as amended by 2000 Iowa Acts, Senate File 2411, section 23, for the four quarters preceding the date that the patient advocate began IPERS coverage, or effective July 1, 2000, whichever is earlier. Additional service credit for employment as a patient advocate may be purchased as follows:

PERSONNEL DEPARTMENT[581](cont'd)

(1) For purchases completed prior to July 1, 2002, the cost for each quarter will be calculated using the methods set forth in paragraphs 21.24(2)"b" through "e."

(2) For purchases completed on or after July 1, 2002, the cost for each quarter will be calculated using the methods set forth in paragraph 21.24(2)"f."

b. Current patient advocates, former patient advocates who are vested or retired, and former patient advocates who have four quarters of wages on file as the result of wage adjustments shall qualify for service purchases under this subrule.

ITEM 42. Amend subrule **21.30(3)**, first unnumbered paragraph, as follows:

An eligible member's favorable experience dividend shall be calculated by multiplying the *retirement allowance payable to the retiree, beneficiary, or contingent annuitant for the previous December, or such other month as determined by the department, by 12, and then multiplying that amount* ~~total monthly benefit payments received in the prior calendar year~~ by the number of complete years the member has been retired or would have been retired if living on the date the dividend is payable, and by the applicable percentage set by the department. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

ITEM 43. Adopt a **new** unnumbered paragraph at the end of subrule **21.30(4)** as follows:

Effective July 1, 2000, a retiree or beneficiary eligible for a FED payment must, in addition to all other applicable requirements, be living on January 1 in order to receive a FED otherwise payable in that January.

ITEM 44. Adopt **new** subrule 21.30(5) as follows:

21.30(5) No transfer of favorable experience to the FED reserve fund shall exceed the amount that would extend IPERS' unfunded liability amortization period to more than the applicable limit then in effect under the funding policy adopted by IPERS.

ITEM 45. Adopt **new** rule 581—21.31(78GA,SF2411) as follows:

581—21.31(78GA,SF2411) Disability claim process under 2000 Iowa Acts, Senate File 2411, section 51. Except as otherwise indicated, this rule shall apply only to disability claims initiated under 2000 Iowa Acts, Senate File 2411, section 51. Except as otherwise indicated, disability claims under 2000 Iowa Acts, Senate File 2411, section 51, shall be administered under rule 581— 21.22(97B).

21.31(1) Initiation of disability claim. The disability claim process shall originate as an application to the system by the member. The application shall be forwarded to the system's designated retirement benefits officer. An application shall be sent upon request. The application consists of the following sections which must be completed and returned to the system's designated retirement benefits officer:

1. General applicant information.
2. Applicant's statement.
3. Employer's statement.
4. Member's assigned duties.
5. Disability/injury reports.
6. Medical information release.

21.31(2) Preliminary processing. Completed forms shall be returned to the disability retirement benefits officer. If the forms are not complete, they will be returned for completion. The application package shall contain copies of all relevant medical records and the names, addresses, and telephone numbers of all relevant physicians. If medical records are not included, the designated retirement benefits officer shall contact the listed physicians for copies of the files on the individual and shall request that any applicable files be sent to the medical board. In addition, IPERS may request workers' compensation records, social security records and such other official records as are deemed necessary. The application, including copies of the medical information, shall be forwarded to the medical board for review. All medical records that will be part of a member's permanent file shall be kept in locked locations separate from the member's other retirement records.

21.31(3) Scheduling of appointments. Upon receipt and forwarding of the application and sufficient medical records to the medical board, the disability retirement benefits officer shall establish an appointment for the applicant to be seen by the medical board in Iowa City. The member shall be notified by telephone and in writing of the appointment, and given general instructions about where to go for the examinations. The appointment for the examinations shall be no later than 60 days after the completed application, including sufficient medical records, is provided. All examinations must be scheduled and completed on the same date. The member shall also be notified about the procedures to follow for reimbursement of travel expenses and lodging. Fees for physical examinations and medical records costs shall be paid directly by IPERS pursuant to its contractual arrangements with the medical providers required to implement 2000 Iowa Acts, Senate File 2411, section 51.

21.31(4) Medical board examinations. The medical board, consisting of three physicians from the University of Iowa occupational medicine clinic and other departments as required, shall examine the member and perform the relevant tests and examinations pertaining to the difficulty the member is having.

The medical board shall submit a letter of recommendation to the system, based on its findings and the job duties supplied in the member's application, whether or not the member is mentally or physically incapacitated from the further performance of the member's duties and whether or not the incapacity is likely to be permanent. "Permanent" means that the mental or physical incapacity is reasonably expected to last more than one year. The medical board's letter of recommendation shall include a recommended schedule for reexaminations to determine the continued existence of the disability in question.

IPERS shall not be liable for any diagnostic testing procedures performed in accordance with 2000 Iowa Acts, Senate File 2411, section 51, and this rule which are alleged to have resulted in injury to the members being examined.

The medical board shall furnish its determination, test results, and supporting notes to the system no later than ten working days after the date of the examination.

The medical board shall not be required to have regular meetings, but shall be required to meet with IPERS' representatives at reasonable intervals to discuss the implementation of the program and performance review.

21.31(5) Member and employer comments. Upon receipt by the system, the medical board's determination regarding the existence or nonexistence of a permanent disability shall be distributed to the member and to the employer for review. The member and the employer may forward to the system written statements pertaining to the medical board's findings within ten days of transmittal. If relevant medical information not considered in materials previously forwarded to the medical board is contained within such written statements,

PERSONNEL DEPARTMENT[581](cont'd)

the system shall submit such information to the medical board for review and comment.

21.31(6) Fast-track review. IPERS' disability retirement benefits officer may refer any case to IPERS' chief benefits officer for fast-track review. The chief benefits officer may, based upon a review of the member's application and medical records, determine that the medical board be permitted to make its recommendations based solely upon a review of the application and medical records, without requiring the member to submit to additional medical examinations by, or coordinated through, the medical board.

21.31(7) Initial administrative determination. The medical board's letter of recommendation, test results, and supporting notes, and the member's file shall be forwarded to IPERS. Except as otherwise requested by IPERS, the medical board shall forward hospital discharge summary reports rather than the entire set of hospital records. The complete file shall be reviewed by the system's disability retirement benefits officer, who shall, in consultation with the system's legal counsel, make the initial disability determination. Written notification of the initial disability determination shall be sent to the member and the member's employer within 14 days after a complete file has been returned to IPERS for the initial disability determination.

21.31(8) General benefits provisions. If an initial disability determination is favorable, benefits shall begin as of the date of the initial disability determination or, if earlier, the member's last day on the payroll, but no more than six months of retroactive benefits are payable. "Last day on the payroll" shall include any form of authorized leave time, whether paid or unpaid. If a member receives short-term disability benefits from the employer while awaiting a disability determination hereunder, disability benefits will accrue from the date the member's short-term disability payments are discontinued. If an initial favorable determination is appealed, the member shall continue to receive payments pending the outcome of the appeal. Disability may not be awarded to any member who has terminated employment before filing an application.

Any member who is awarded disability benefits under 2000 Iowa Acts, Senate File 2411, section 51, and this rule shall be eligible to elect any of the benefit options available under Iowa Code section 97B.51 as amended by 2000 Iowa Acts, Senate File 2411, section 52. All such options shall be the actuarial equivalent of the lifetime monthly benefit provided in 2000 Iowa Acts, Senate File 2411, section 51, subsections 2 and 3.

The disability benefits established under this subrule shall be eligible for the favorable experience dividends payable under Iowa Code section 97B.49F(2).

If the award of disability benefits is overturned upon appeal, the member may be required to repay the amount already received or, upon retirement, have payments suspended or reduced until the appropriate amount is recovered.

21.31(9) In-service disability determinations. Subject to the presumptions contained in 2000 Iowa Acts, Senate File 2411, section 51, in determining whether a member's mental or physical incapacity arises in the actual performance of duty, "duty" shall mean:

a. For special service members other than firefighters, any action that the member, in the member's capacity as a law enforcement officer:

(1) Is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(2) Performs in the course of controlling or reducing crime or enforcing the criminal law; or;

b. For firefighters, any action that the member, in the member's capacity as a firefighter:

(1) Is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(2) Performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

21.31(10) Appeal rights. The member or the employer, or both, may appeal IPERS' initial disability determination. Such appeals must be in writing and submitted to IPERS' chief benefits officer within 30 days after the date of the system's initial notification letter. The system shall conduct an internal review of the initial disability determination, and the chief benefits officer shall notify the member who filed the appeal in writing of IPERS' final disability determination with respect to the appeal. The chief benefits officer may appoint a review committee to make nonbinding recommendations on such appeals. The disability retirement benefits officer, if named to the review committee, shall not vote on any such recommendations, nor shall any members of IPERS' legal staff participate in any capacity other than a nonvoting capacity. Further appeals shall follow the procedures set forth in rule 581—21.9(97B).

21.31(11) Notice of abuse of disability benefits. The system has the obligation and full authority to investigate allegations of abuse of disability benefits. The scope of the investigation to be conducted shall be determined by the system, and may include the ordering of a sub rosa investigation of a disability recipient to verify the facts relating to an alleged abuse. A sub rosa investigation shall only be considered upon receipt and evaluation of an acceptable notice of abuse. The notification must be in writing and include:

a. The informant's name, address, telephone number, and relationship to the disability recipient; and

b. A statement pertaining to the circumstances that prompted the notification, such as activities which the informant believes are inconsistent with the alleged disability.

c. Anonymous calls shall not constitute acceptable notification.

IPERS may employ such investigators and other personnel as may be deemed necessary, in IPERS' sole discretion, to carry out this function. IPERS may also, in its sole discretion, decline to carry out such investigations if more than five years have elapsed since the date of the disability determination.

21.31(12) Qualification for social security disability benefits. Upon qualifying for social security disability benefits, a member may contact the system to have the member's disability benefits calculated under Iowa Code section 97B.50(2) as amended by 2000 Iowa Acts, Senate File 2411, section 49. The election to stop having benefits calculated under 2000 Iowa Acts, Senate File 2411, section 51, and start having benefits calculated under Iowa Code section 97B.50(2) as amended by 2000 Iowa Acts, Senate File 2411, section 49, must be in writing on forms developed or approved by the system, is irrevocable, and must be made within 60 days after the member receives written notification of eligibility for disability benefits from social security.

21.31(13) Reemployment/income monitoring. A member who retires under 2000 Iowa Acts, Senate File 2411, section 51, and this rule shall be required to supply a copy of a complete set of the member's state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year. IPERS may suspend the benefits of any such member if such records are not timely provided.

Only wages and self-employment income shall be counted in determining a member's reemployment compari-

PERSONNEL DEPARTMENT[581](cont'd)

son amount, as adjusted for health care coverage for the member and member's dependents.

For purposes of calculating the income offsets required under 2000 Iowa Acts, Senate File 2411, section 51, IPERS shall convert any lump sum workers' compensation award to an actuarial equivalent, as determined by IPERS' actuary.

This rule is intended to implement 2000 Iowa Acts, Senate File 2411, section 51.

ITEM 46. Adopt **new** rule 581—21.32(97B) as follows:

581—21.32(97B) Qualified benefits arrangement. This rule establishes a separate unfunded qualified benefits arrangement (QBA) as provided for in Iowa Code section 97B.49I. This arrangement is established for the sole purpose of enabling IPERS to continue to apply the same formula for determining benefits payable to all employees covered by IPERS, including those whose benefits are limited by Section 415 of the Internal Revenue Code.

21.32(1) IPERS shall administer the QBA. IPERS has full discretionary authority to determine all questions arising in connection with the QBA, including its interpretation and any factual questions arising under the QBA. Further, IPERS has full authority to make modifications to the benefits payable under the QBA as may be necessary to maintain its qualification under Section 415(m) of the Internal Revenue Code.

21.32(2) All members, retired members, and beneficiaries of IPERS are eligible to participate in the QBA if their benefits would exceed the limitation imposed by Section 415 of the Internal Revenue Code. Participation is determined for each plan year, and participation shall cease for any plan year in which the benefit of a retiree or beneficiary is not limited by Section 415 of the Internal Revenue Code.

21.32(3) On and after the effective date of the QBA, IPERS shall pay to each eligible retiree and beneficiary a supplemental pension benefit equal to the difference between the retiree's or beneficiary's monthly benefit otherwise payable from IPERS prior to any reduction or limitation because of Section 415 of the Internal Revenue Code and the actual monthly benefit payable from IPERS as limited by Section 415. IPERS shall compute and pay the supplemental pension benefits in the same form, at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under IPERS except for said Section 415 limitations.

21.32(4) IPERS may consult its actuary to determine the amount of benefits that cannot be provided under IPERS because of the limitations of Section 415 of the Internal Revenue Code, and the amount of contributions that must be made to the QBA rather than to IPERS. Fees for the actuary's service shall be paid by the applicable employers.

21.32(5) Contributions shall not be accumulated under this QBA to pay future supplemental pension benefits. Instead, each payment of contributions by the applicable employer that would otherwise be made to IPERS shall be reduced by the amount necessary to pay supplemental pension benefits and administrative expenses of the QBA. The employer shall pay to this QBA the contributions necessary to pay the required supplemental pension payments, and these contributions will be deposited in a separate fund which is a portion of the qualified plan established and administered by IPERS. This fund is intended to be exempt from federal income tax under Sections 115 and 415(m) of the Internal Revenue Code. IPERS shall pay the required supplemental pension benefits to the member out of the employer contributions so transferred. The employer contributions otherwise required under the terms of Iowa Code sections 97B.11, 97B.49B and 97B.49C shall be divided into those contributions required to pay supplemental pension benefits hereunder, and those contributions paid into and accumulated in the IPERS trust fund to pay the maximum benefits permitted under Iowa Code chapter 97B. Employer contributions made to provide supplemental pension benefits shall not be commingled with the IPERS trust fund. The supplemental pension benefit liability shall be funded on a plan-year-to-plan-year basis. Any assets of the separate QBA fund not used for paying benefits for a current plan year shall be used, as determined by IPERS, for the payment of administrative expenses of the QBA for the plan year.

21.32(6) A member cannot elect to defer the receipt of all or any part of the payments due under this QBA.

21.32(7) Payments under this rule are exempt from garnishment, assignment, attachment, alienation, judgments, and other legal processes to the same extent as provided under Iowa Code section 97B.39.

21.32(8) Nothing herein shall be construed as providing for assets to be held in trust or escrow or any form of asset segregation for members, retirees, or beneficiaries. To the extent any person acquires the right to receive benefits under this QBA, the right shall be no greater than the right of any unsecured general creditor of the state of Iowa.

21.32(9) This QBA is a portion of a governmental plan as defined in Section 414(d) of the Internal Revenue Code, is intended to meet the requirements of Internal Revenue Code Sections 115 and 415(m), and shall be so interpreted and administered.

21.32(10) Amounts deducted from employer contributions and deposited in the separate QBA fund shall not reduce the amounts that are to be credited to employer contribution accounts under Iowa Code sections 97B.11, 97B.49B and 97B.49C.

This rule is intended to implement Iowa Code section 97B.49I.

[Filed Emergency 6/22/00, effective 6/22/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9968A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of 2000 Iowa Acts, House File 2492, section 17, the Department of Public Safety hereby adopts Chapter 53, "Fire Service Training Bureau," Iowa Administrative Code.

Effective July 1, 2000, the Fire Service Institute of the Iowa State University Extension Service will be replaced by the new Fire Service Training Bureau of the Fire Marshal Division of the Iowa Department of Public Safety. Training programs of the Fire Service Institute will continue without interruption under the Fire Service Training Bureau as will other services of the Fire Service Institute, including distribution of publications produced within the Bureau as well as from national fire service organizations. These rules create a new chapter of administrative rules of the Department of Public Safety, Chapter 53, which describes the organization of the Fire Service Training Bureau, provides con-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

tact information for the Bureau, and provides for fees for services offered by the Bureau. One major service of the Bureau, the Iowa Fire Service Certification Program, is provided for separately in new Chapter 54 which was Adopted and Filed Emergency in a separate filing (**ARC 9969A** herein) and became effective July 1, 2000.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these rules is impracticable, as it is essential that administrative rules regarding the organization and administration of the Fire Service Training Bureau be effective on the date of assumption of responsibility for the Bureau and its programs by the Department of Public Safety. Transition of responsibility from the Fire Service Institute to the Fire Service Training Bureau of the Fire Marshal Division of the Department occured on July 1, 2000.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these rules should be waived and the rules made effective July 1, 2000, after filing with the Administrative Rules Coordinator. These rules confer a benefit upon the public by providing for immediate implementation of organization and administration of the programs of the Fire Service Training Bureau, enabling the transition of these programs to the Department of Public Safety on July 1, 2000.

These rules are also published herein under Notice of Intended Action as **ARC 9964A**. The Notice of Intended Action provides for a period of public comment and participation, including a public hearing. This process will culminate in rules being adopted through the normal rule-making process, after consideration of any public input received during the comment period.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

These rules became effective July 1, 2000.

The following **new** chapter is adopted.

CHAPTER 53
FIRE SERVICE TRAINING BUREAU

661—53.1(78GA,HF2492) Fire service training bureau. There is established within the fire marshal division a fire service training bureau, with responsibility for instructing the general public and fire protection personnel throughout the state, providing service to public and private fire departments in the state, conducting research in the methods of maintaining and improving fire education consistent with the needs of Iowa communities, and performing any other functions assigned to the bureau by the state fire marshal in consultation with the state fire service and emergency response council.

The fire service training bureau is located at 3100 Fire Service Road, Ames, Iowa 50010-3100. The bureau can be contacted by telephone at (888)469-2374 (toll free) or at (515) 294-6817, by fax at (800)722-7350 (toll free) or (515) 294-2156, or by electronic mail at fstbinfo@dps.state.ia.us.

661—53.2(78GA,HF2492) Programs, services, and fees.

53.2(1) Courses and tuition fees. Current course offerings of the fire service training bureau are available in the document Catalog of Courses, Conferences and Services, available from the fire service training bureau upon request. Current course tuition fees and any other fees related to participation in courses shall be listed in the document Catalog of Courses, Conferences and Services, and shall be effective until superseded by publication of a later edition of the document. Prospective students should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Courses, Conferences and Services prior to submitting the tuition fee for a course.

53.2(2) Conferences and fees. Upcoming conferences offered by the fire service training bureau are listed in the document Catalog of Courses, Conferences and Services, available from the fire service training bureau upon request. Conference registration fees and any other fees related to attendance at conferences shall be listed in the document Catalog of Courses, Conferences and Services, and shall be effective until superseded by publication of a later edition of the document. Prospective students should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Courses, Conferences and Services prior to submitting registration fees or any other fees related to attendance at a conference.

53.2(3) Publications and materials; fees. All publications and materials currently offered for sale by the fire service training bureau are listed in the document Catalog of Publications and Materials, available from the fire service training bureau upon request. Current prices of publications shall be listed in the document Catalog of Publications and Materials, and shall be effective until superseded by publication of a later edition of the document. Persons wishing to purchase publications or materials should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Publications and Materials prior to submitting payment for publications or materials.

53.2(4) Other services and tuition fees. Services other than courses, conferences, and firefighter certification offered by the fire service training bureau are listed in the document Catalog of Courses, Conferences and Services, available from the fire service training bureau upon request. Current fees for these services shall be listed in the document Catalog of Courses, Conferences and Services, and shall be effective until superseded by publication of a later edition of the document. Prospective clients for these services should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Courses, Conferences and Services prior to submitting a request for or payment for any service.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

[Filed Emergency 6/22/00, effective 7/1/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9969A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of 2000 Iowa Acts, House File 2492, section 17, the Department of Public Safety hereby adopts Chapter 54, "Firefighter Certification," Iowa Administrative Code.

Effective July 1, 2000, the Fire Service Institute of the Iowa State University Extension Service was replaced by the new Fire Service Training Bureau of the Fire Marshal Division of the Iowa Department of Public Safety. One of the programs of the Fire Service Institute is the certification of firefighters in the state of Iowa. There are several different

PUBLIC SAFETY DEPARTMENT[661](cont'd)

levels of certification, each based upon standards promulgated by the National Fire Protection Association. While certification is voluntary under state law, that is, state law does not require certification in order to work either for pay or as a volunteer in the fire service, some fire departments within the state of Iowa require certification of their members as a condition of employment. Consequently, it is imperative that administrative rules regarding the administration of the certification program and the standards required for certification be in place from the date on which the Department of Public Safety assumes responsibility for the certification program. These rules provide administrative procedures for the operation of the certification program, the standards for certification at various levels, and fees related to the certification program to be collected by the Fire Service Training Bureau.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these rules is impracticable, as it is essential that administrative rules regarding the administration of and standards for firefighter certification be effective from the date of assumption by the Department of Public Safety of responsibility for the administration of the firefighter certification program. Transition of responsibility for the certification program to the Fire Marshal Division of the Department occured on July 1, 2000.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these rules, 35 days after publication, should be waived and the rules made effective July 1, 2000, after filing with the Administrative Rules Coordinator. These rules confer a benefit upon the public by providing for immediate implementation of administrative procedures and standards for certification of firefighters, allowing the continued operation of the certification program after assumption of responsibility for its operation by the Department of Public Safety on July 1, 2000.

These rules are also published herein under Notice of Intended Action as **ARC 9965A**. The Notice of Intended Action provides for a period of public comment and participation, including a public hearing. This process will culminate in rules being adopted through the normal rule-making process, after consideration of any public input received during the comment period.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

These rules became effective July 1, 2000.

The following **new** chapter is adopted.

CHAPTER 54
FIREFIGHTER CERTIFICATION

661—54.1(78GA,HF2492) Firefighter certification program. There is established within the fire service training bureau of the fire marshal division a firefighter certification program for the state of Iowa, which shall be known as the Iowa fire service certification system. The Iowa fire service certification system is accredited by the International Fire Service Accreditation Congress to certify fire service personnel to accepted national standards. All certifications issued by the Iowa fire service certification system shall be based upon nationally accepted standards.

Inquiries and requests regarding the Iowa fire service certification system should be directed to Iowa Fire Service Certification System, Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50010-3100. The bureau can be contacted by telephone at (888)469-2374 (toll free) or at (515)294-6817, by fax at (800)722-7350 (toll free) or (515) 294-2156, or by electronic mail at fstbinfo@dps.state.ia.us.

54.1(1) Eligibility. Any person seeking certification through the Iowa fire service certification system shall be a current member of a fire, emergency, or rescue organization within the state of Iowa and shall be at least 18 years of age.

EXCEPTION: Persons not meeting the requirement of membership in a fire, emergency, or rescue organization may be granted exceptions to this requirement on an individual basis. Individuals seeking such exceptions shall address these requests to the fire service training bureau.

54.1(2) Application. Application forms for each level of firefighter certification may be obtained from the fire service training bureau, or on the bureau's Web site at http://www.state.ia.us/government/dps/fm/fstb. In order to enter the certification program, an applicant shall submit a completed application, accompanied by the required fee, to the fire service training bureau. The fee must accompany the application form, although a purchase order from a public agency or private organization may be accepted in lieu of prior payment. The application and fee shall be submitted no less than two weeks prior to the date of any examination in which the applicant wishes to participate.

661—54.2(78GA,HF2492) Certification standards. Standards for Iowa firefighter certification are based upon nationally recognized standards established by the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Certification at each level in the Iowa fire service certification system results in national certification as well.

54.2(1) Firefighter I. Certification as firefighter I is based upon the requirements for firefighter I certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," 1997 edition, chapter 3, published by the National Fire Protection Association.

EXCEPTION: Any person applying for certification as a firefighter I who applied to the Fire Service Institute, Iowa State University Extension, by May 15, 2000, and completes certification requirements by July 15, 2000, shall be required to meet the requirements for firefighter I certification established in NFPA 1001, "Fire Fighter Professional Qualifications," 1992 edition, chapter 3, published by the National Fire Protection Association.

54.2(2) Firefighter II. Certification as firefighter II is based upon the requirements for firefighter II certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," 1997 edition, chapter 4, published by the National Fire Protection Association.

EXCEPTION: Any person applying for certification as a firefighter II who applied to the Fire Service Institute, Iowa State University Extension, by May 15, 2000, and completes certification requirements by July 15, 2000, shall be required to meet the requirements for firefighter II certification established in NFPA 1001, "Fire Fighter Professional Qualifications," 1992 edition, chapter 4, published by the National Fire Protection Association.

54.2(3) Driver operator (pumper). Certification as a driver operator (pumper) is based upon the requirements for fire department vehicle driver/operator certification established in NFPA 1002, "Standard for Fire Vehicle Driver/Operator Professional Qualifications," 1993 edition, published by the National Fire Protection Association.

54.2(4) Fire officer. Certification as a fire officer is based upon the requirements for fire officer certification established in NFPA 1021, "Standard for Fire Officer Professional

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Qualifications," 1997 edition, published by the National Fire Protection Association.

54.2(5) Fire service instructor I. Certification as a fire service instructor I is based upon the requirements for certification as a fire service instructor I established in NFPA 1041, "Standard for Fire Service Instructor Professional Qualifications," 1996 edition, chapter 2, published by the National Fire Protection Association.

661—54.3(78GA,HF2492) Fees. The following fees are established for certification at each level. Fees are due at the time of application.

Firefighter I	$ 50
Firefighter II	$ 50
Driver/Operator (Pumper)	$ 65
Fire Officer	$ 75
Fire Service Instructor I	$ 35

Fees may be paid by personal check made payable to "Iowa Department of Public Safety – Fire Service Training Bureau," credit card, purchase order from a public agency or private organization, check or draft from a public agency or private organization, money order, or cash.

661—54.4(78GA,HF2492) Certification, denial, and revocation of certification.

54.4(1) Certification. Upon completion of the requirements for certification, the applicant's name shall be entered into the Iowa certification database maintained by the fire service training bureau for the respective level of certification and into the National Certification Data Base maintained by the International Fire Service Accreditation Congress. Individuals who successfully complete the certification requirements shall also receive an individualized certificate awarding national certification from the fire service training bureau, which will bear a numbered seal from the International Fire Service Accreditation Congress, and additional insignia from the fire service training bureau.

54.4(2) Denial of certification. Certification shall be denied to any applicant who fails to meet all of the requirements for the type of certification, who knowingly submits false information to the fire service training bureau, or who engages in fraudulent activity during the certification process.

54.4(3) Revocation. The fire marshal may revoke the certification of any individual who is found to have knowingly provided false information to the fire service training bureau during the certification process or to have engaged in fraudulent activity during the certification process.

54.4(4) Appeals. Any person who is denied certification or whose certification is revoked may appeal the denial or revocation. Appeals of denials or revocations of certification shall be made to the commissioner of public safety within 30 days of the issuance of the denial or revocation using the contested case procedures specified in 661—Chapter 10.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

[Filed Emergency 6/22/00, effective 7/1/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9967A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.3, the Department of Public Safety hereby adopts a new Chapter 59, "Volunteer Emergency Services Provider Death Benefits," Iowa Administrative Code.

2000 Iowa Acts, Senate File 2452, section 97, provides that, effective July 1, 2000, the beneficiary of a volunteer emergency services provider who dies in the line of duty will be eligible for payment of a $100,000 death benefit from the State of Iowa, subject to certain restrictions. These rules establish the death benefits program, including eligibility criteria in accordance with Senate File 2452, administrative procedures for the program, a definition of "beneficiary" for the purposes of the program, and a procedure for appeals of decisions made by the Department in administration of the program.

Language in 2000 Iowa Acts, Senate File 2452, provides that the lump-sum death benefit is to be paid to the "beneficiary" of the deceased volunteer emergency services provider once eligibility has been established. The term "beneficiary" is not defined in this statute. In order to provide clear direction for the payment of benefits when eligibility has been established, the term "beneficiary" is defined in these rules in terms parallel to the provisions of the similar death benefit program for paid emergency services providers, which was established in 2000 Iowa Acts, Senate File 2411.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these rules is impracticable, as it is essential that administrative rules regarding the organization and administration of the Volunteer Emergency Services Provider Death Benefit Program be effective on July 1, 2000, in order for the program to be accessible in a timely fashion to any prospective beneficiary.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these rules, 35 days after publication, should be waived and the rules made effective July 1, 2000, after filing with the Administrative Rules Coordinator. These rules confer a benefit upon the public by providing for immediate implementation of the Volunteer Emergency Services Provider Death Benefit Program and making the program available immediately to any beneficiary whose eligibility results from a death which occurs on or after July 1, 2000.

Notice of Intended Action regarding these rules is published herein as **ARC 9966A**. The Notice of Intended Action provides for a period of public comment and participation, including a public hearing. This process will culminate in adoption of the rules through the normal rule-making process after consideration of any public input received during the comment period.

These rules are intended to implement 2000 Iowa Acts, Senate File 2452, section 97.

These rules became effective July 1, 2000.

The following **new** chapter is adopted.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

CHAPTER 59
VOLUNTEER EMERGENCY SERVICES PROVIDER DEATH BENEFITS

661—59.1(78GA,SF2452) Volunteer emergency services provider death benefit program. There is established within the fire marshal division a volunteer emergency services provider death benefit program with responsibility for administering the payment of death benefits to beneficiaries of volunteer emergency services providers who die in the line of duty, as provided in 2000 Iowa Acts, Senate File 2452, section 97.

Information about the program can be obtained by mail from the Volunteer Emergency Services Provider Death Benefit Program, Fire Marshal Division, Department of Public Safety, 621 East 2nd Street, Des Moines, Iowa 50309-1831, by telephone at (515)281-5821, or by electronic mail at fminfo@dps.state.ia.us.

661—59.2(78GA,SF2452) Eligibility. The beneficiary of a volunteer emergency services provider who is killed in the line of duty is eligible for a lump-sum payment of $100,000 from the volunteer emergency services provider death benefit program, provided that application is made to the program in accordance with requirements established in this chapter and all eligibility criteria are satisfied.

59.2(1) Application. Application forms for the volunteer emergency services provider death benefit program may be obtained on request from the fire marshal division. The fire marshal may accept a legible copy of a completed application for the federal public safety officer benefits program as an application for payment of benefits from the volunteer emergency services provider death benefit program. Completed application forms shall be mailed or delivered to the Volunteer Emergency Services Provider Death Benefit Program, Fire Marshal Division, Department of Public Safety, 621 East 2nd Street, Des Moines, Iowa 50309-1831. A completed application form shall be accompanied by a letter from the chief or other responsible supervisory official of the department in which the volunteer emergency services provider was serving at the time of the line-of-duty death, certifying that the death of the volunteer was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer. Any evidence or proof available to the chief or responsible supervisory official to support the claim shall accompany the letter.

59.2(2) Definitions. The following definitions apply to the volunteer emergency services provider death benefit program.

"Beneficiary" means the surviving spouse of the volunteer emergency services provider who died in the line of duty. If there is no surviving spouse, and there is a surviving child or surviving children of the volunteer emergency services provider, then "beneficiary" means the surviving child of the member. If there is more than one surviving child, the children are cobeneficiaries who shall share equally in the lump-sum payment of the death benefit. If there is no surviving spouse or child of the volunteer emergency services provider, "beneficiary" means the surviving father or mother of the volunteer emergency services provider if either or both survives at the time of the line-of-duty death of the volunteer emergency services provider. If both the mother and father of the volunteer emergency services provider survive at the time of the line-of-duty death of the volunteer emergency services provider, then the father and mother are cobeneficiaries who shall share equally in the lump-sum payment. If there is no surviving spouse, child, or parent at the time of the line-of-duty death of the volunteer emergency services provider, then "beneficiary" means the estate of the deceased volunteer emergency services provider.

"Line-of-duty death" means the death of a volunteer emergency services provider which was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer. The death is not a line-of-duty death if any of the following apply:

1. The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the volunteer emergency services provider's death.
2. The death was caused by the intentional misconduct of the volunteer emergency services provider or by such provider's intent to cause the provider's own death.
3. The volunteer emergency services provider was voluntarily intoxicated at the time of death.
4. The volunteer emergency services provider was performing the provider's duties in a grossly negligent manner at the time of death.
5. A beneficiary who would otherwise be entitled to a benefit under this chapter was, through the beneficiary's actions, a substantial contributing factor to the volunteer emergency services provider's death.

661—59.3(78GA,SF2452) Determination. After receiving an application for benefits from the volunteer emergency services provider death benefit program, the fire marshal shall make a determination as to whether or not the application meets the requirements for payment of benefits. The fire marshal may require the beneficiary or the chief or responsible supervisory official who has certified that the death is a line-of-duty death to submit any additional information that the fire marshal deems material to making the determination. If the determination is that the requirements for payment of benefits have been met, the fire marshal shall so notify the beneficiary or cobeneficiaries and shall request that the department of revenue and finance issue a warrant payable to the beneficiary in the amount of the lump-sum payment provided or, if there are cobeneficiaries, that the department of revenue and finance issue warrants in equal shares of the lump-sum amount payable to each of the cobeneficiaries.

59.3(1) Denial and notification. If the fire marshal determines that the eligibility criteria have not been met, the fire marshal shall notify in writing the beneficiary or cobeneficiaries and the chief or responsible supervisory official who certified that the death occurred in the line of duty of the determination and of the reason or reasons for the denial.

59.3(2) Appeals. If an application for payment from the volunteer emergency services provider program is denied, the beneficiary or any cobeneficiary may appeal that decision to the commissioner of public safety by filing an appeal in writing to the commissioner of public safety within 30 days of the date of the denial of the application by the fire marshal. Appeals shall be processed in accordance with contested case procedures specified in 661—Chapter 10.

These rules are intended to implement 2000 Iowa Acts, Senate File 2452, section 97.

[Filed Emergency 6/22/00, effective 7/1/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9952A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed Emergency

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.

The legislature recently amended the Iowa Code to exempt purchases of certain types of clothing and footwear from Iowa sales and use tax during a two-day period in August. The Department has drafted a new rule interpreting and explaining the exemption in some detail.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the need to implement the new provisions of this relatively complicated law within a very short period of time.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule should be waived and this rule should be made effective June 23, 2000, upon filing with the Administrative Rules Coordinator.

The Department of Revenue and Finance adopted this rule on June 23, 2000.

This rule is also published herein under Notice of Intended Action as **ARC 9953A** to allow for public comment.

This emergency filing permits the Department to implement this new provision of law.

This rule is intended to implement Iowa Code section 422.45 as amended by 2000 Iowa Acts, House File 2351.

This rule became effective June 23, 2000.

Amend 701—Chapter 20 by adopting the following **new** rule:

701—20.12(422,423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than $100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2000, this period begins at 12:01 a.m. on Friday, August 4, and ends at 12 midnight on Saturday, August 5. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

20.12(1) Definitions. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

"Accessories" include but are not limited to jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

"Clothing or footwear" means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

"Special clothing or footwear" is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

20.12(2) Exempt sales. The exemption applies to each article of clothing or footwear selling for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, both items qualify for the exemption even though the customer's total purchase price ($160) exceeds $99.99. The exemption does not apply to the first $99.99 of an article of clothing or footwear selling for more than $99.99. For example, if a customer purchases a pair of pants costing $110, sales tax is due on the entire $110.

20.12(3) Taxable sales. This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on the clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, the $90 charge for the pants is exempt, but tax is due on the $15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

20.12(4) Special situations.

a. Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

b. Sales of exempt clothing combined with gifts of taxable merchandise. When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may

qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than $100 during the exemption period.

c. Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. Under Iowa sales tax law, a sale of tangible personal property occurs when a purchaser takes delivery of tangible personal property in return for a consideration. Therefore, if a customer takes delivery of qualifying clothing or footwear during the exemption period (usually by taking possession of it; see rule 701—16.22(422,423) for general information on layaway sales) that sale of eligible clothing will qualify for the exemption.

20.12(5) Calculating taxable and exempt gross receipts—discounts, coupons, buying at a reduced price, and rebates.

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer offering a 10% discount. After applying the 10% discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (it is over $99.99), and the blouse is exempt (it is less than $99.99). See rule 701—15.6(422,423) for a definition of the word "discount" and a description of which retailers' reductions in price are discounts which reduce the taxable sales prices of items and which are not.

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount, regardless of whether the retailer is reimbursed for the amount represented by the coupon. Therefore, a retailer's coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20 off, the final sales price of the shoes is $90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item. See 701—subrule 15.6(3).

c. Buy one, get one free or for a reduced price or "two for the price of one" sales. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the price of one" cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1. A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50% off, selling each pair of $120 pants for $60, each pair of pants qualifies for the exemption.

EXAMPLE 2. A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25% off, thereby selling each pair of $100 shoes for $75, each pair of shoes qualifies for the exemption.

EXAMPLE 3. A retailer advertises shirts as "buy two for the price of one" for $140. Tax is due on $140. Each shirt cannot be rung up as costing $70. However, as described in examples 1 and 2 above, the $140 cost of each shirt can be discounted to bring the price of each shirt within the exemption's limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater. See 701—subrule 15.6(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (as explained in rule 701—15.13(422,423)) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

20.12(6) Treatment of various transactions associated with sales.

a. Rain checks. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for the same item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE. During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemp-

tion period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE. Before the exemption period, a customer purchases a $60 dress. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

20.12(7) Nonexclusive list of exempt items. The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

Adult diapers
Aerobic clothing
Antique clothing
Aprons—household
Athletic socks
Baby bibs
Baby clothes—generally
Baby diapers
Baseball caps
Bathing suits
Belts with buckles attached
Blouses
Boots—general purpose
Bow ties
Bowling shirts
Bras
Bridal apparel—sold not rented
Camp clothing
Caps—sports and others
Chefs' uniforms
Children's novelty costumes
Choir robes
Clerical garments
Coats
Corsets
Costumes—Halloween, Santa Claus, etc., sold not rented
Coveralls
Cowboy boots
Diapers—cloth and disposable
Dresses
Dress gloves
Dress shoes
Ear muffs
Employee uniforms other than those primarily designed for athletic activity or protective use
Formal clothing—sold not rented
Fur coats and stoles
Galoshes
Garters and garter belts
Girdles
Gloves—cloth, dress and leather
Golf clothing—caps, dresses, shirts and skirts
Graduation caps and gowns—sold not rented
Gym suits and uniforms
Hats
Hiking boots
Hooded (sweat) shirts
Hosiery, including support hosiery
Jackets
Jeans
Jerseys for other than athletic wear
Jogging apparel
Knitted caps or hats
Lab coats
Leather clothing
Leg warmers
Leotards and tights
Lingerie
Men's formal wear— sold not rented
Neckwear, e.g., scarves
Nightgowns and nightshirts
Overshoes
Pajamas
Pants
Panty hose
Prom dresses
Ponchos
Raincoats and hats
Religious clothing
Riding pants
Robes
Rubber thongs—"flip-flops"
Running shoes without cleats
Safety shoes (adaptable for street wear)
Sandals
Shawls
Shirts
Shoe inserts and laces
Stockings
Suits
Support hose
Suspenders
Sweatshirts
Swim trunks
Tennis dresses
Tennis skirts
Ties
Tights
Trousers
Tuxedoes (except cufflinks)—sold not rented
Underclothes
Underpants
Undershirts
Uniforms—generally
Veils
Vests—general, for wear with suits
Walking shoes
Windbreakers
Work clothes

20.12(8) Nonexclusive list of taxable items. The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

Accessories—generally
Alterations of clothing
Athletic supporters
Backpacks
Ballet shoes
Barrettes
Baseball cleats
Baseball gloves
Belt buckles sold without belts
Belts for weight lifting
Belts needing buckles but sold without them
Bicycle shoes with cleats
Billfolds
Blankets
Boutonnieres

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

Bowling shoes—rented and sold
Bracelets
Buttons
Chest protectors
Clothing repair
Coin purses
Corsages
Dry cleaning services
Elbow pads
Employee uniforms primarily designed for athletic activities or protective use
Fabric sales
Fishing boots (waders)
Football pads
Football pants
Football shoes
Goggles
Golf gloves
Ice skates
In-line skates
Insoles
Jewelry
Key cases and chains
Knee pads
Laundry services
Life jackets and vests
Luggage
Monogramming services
Pads—elbow, knee, and shoulder, football and hockey
Patterns
Protective gloves and masks
Purses
Rental of clothing
Rental of shoes or skates
Repair of clothing
Roller blades
Safety clothing
Safety glasses
Safety shoes—not adaptable for street wear
Shoes with cleats or spikes
Shoulder pads for dresses and jackets
Shower caps
Skates—ice and roller
Ski boots, masks, suits and vests
Special protective clothing or footwear not adaptable for street wear
Sports helmets
Sunglasses—except prescription
Sweatbands—arm, wrist and head
Swim fins, masks and goggles
Tap dance shoes
Thread
Vests—bulletproof
Weight lifting belts
Wrist bands
Yard goods
Yarn
Zippers

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, House File 2351.

[Filed Emergency 6/23/00, effective 6/23/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9957A

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment specifies the amount of transportation expense allowed for the use of a private auto for medical treatment or examination for a work-related injury.

In compliance with Iowa Code section 17A.4(2), the Workers' Compensation Commissioner finds that notice and public participation are unnecessary. Rule 8.1(85) is noncontroversial. The rate of reimbursement for transportation expense has historically corresponded to the rate the state of Iowa pays state employees and board members for use of personal vehicles. On May 1, 2000, the Department of General Services determined that, effective July 1, 2000, the rate will be 29 cents per mile. In order for the change to 876—8.1(85) to be effective July 1, 2000, it must be filed emergency.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2000, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

This amendment is also published herein under Notice of Intended Action as **ARC 9958A** to allow for public comment.

The Division has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

The amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

This amendment is intended to implement Iowa Code sections 85.27 and 85.39.

This amendment became effective on July 1, 2000.

The following amendment is adopted.

Amend rule **876—8.1(85)**, paragraph **"2,"** as follows:

2. All mileage incident to the use of a private auto. The per-mile rate for use of a private auto shall be ~~24~~ *29* cents per mile.

[Filed Emergency 6/22/00, effective 7/1/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9956A

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment provides reference to current tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(2), the Workers' Compensation Commissioner finds that notice and public participation are unnecessary. Rule 8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and Iowa Department of Revenue and Finance determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2000, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

The amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment became effective on July 1, 2000.

The following amendment is adopted.

Amend rule 876—8.8(85,17A) to read as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~1999~~ *2000*, through June 30, ~~2000~~ *2001*, are the tables in effect on July 1, ~~1999~~ *2000*, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [Rev. January ~~1999~~ *2000*].)
2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Iowa Withholding Tax Guide, Publication 44-001 [Rev. January 1998], for all wages paid on or after January 1, 1998.)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [Rev. January ~~1999~~ *2000*].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/22/00, effective 7/1/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9982A

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

The 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.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9819A** on May 17, 2000. The Iowa Department of Economic Development Board adopted this amendment on June 22, 2000.

A public hearing was held on June 6, 2000, to receive comments on the proposed amendment. No comments were received. This amendment is identical to the proposed amendment.

This amendment will become effective on August 16, 2000.

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

The following amendment is adopted.

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.*

[Filed 6/23/00, effective 8/16/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9981A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and Executive Order Number 11, the Department of Economic Development adopts Chapter 104, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

These rules describe the procedures for applying for, issuing or denying waivers and variances from Department rules. The purpose of these rules is to comply with Executive Order Number 11 which requires state agencies to adopt a uniform waiver rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9598A** on January 12, 2000. The Iowa Department of Economic Development Board adopted these amendments on June 22, 2000.

Public comments concerning the proposed rules were accepted through February 1, 2000. No public comments were received. The following revisions were made to the proposed rules to be consistent with the requirements of 2000 Iowa Acts, House File 2206:

1. Subrule 104.1(1) was revised to add a definition of "waiver or variance." This phrase is as defined in 2000 Iowa Acts, House File 2206.
2. Subrule 104.2(1) was revised to include an additional criterion listed in 2000 Iowa Acts, House File 2206, to be considered when responding to a request for a waiver or variance. Where applicable, the Department will also consider a petitioner's proposed means, other than those described in the rule, to ensure protection of public health, safety and welfare.
3. Subrule 104.3(3) was revised to specify that the party requesting a waiver or variance must demonstrate by clear and convincing evidence that the Department should exercise its discretion to grant a waiver.

These changes are also reflected in the sample petition included in the rules.

These rules will become effective on August 16, 2000.

These rules are intended to implement Executive Order Number 11 and 2000 Iowa Acts, House File 2206.

The following **new** chapter is adopted.

CHAPTER 104
UNIFORM WAIVER AND VARIANCE RULES

261—104.1(ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

104.1(1) Definitions.

"Board" or "IDED board" means the Iowa department of economic development board created by Iowa Code chapter 15.

"Department" or "IDED" means the Iowa department of economic development authorized by Iowa Code chapter 15.

"Director" means the director of the department of economic development or the director's designee.

"Director/board" means either the director or the board depending on which one has decision-making authority pursuant to rule 104.2(ExecOrd11).

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

"Waiver or variance" means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

104.1(2) Authority.

a. A waiver or variance from rules adopted by the department may be granted in accordance with this chapter if (1) the department has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

261—104.2(ExecOrd11) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the board shall make the decision, upon consideration of all relevant factors:

1. Community Economic Betterment Account (CEBA) program, 261—Chapter 53.
2. New Jobs and Income Program (NJIP), 261—Chapter 58.
3. Workforce Development Fund, 261—Chapter 75.
4. Accelerated Career Education Program Physical Infrastructure Assistance Program (ACE PIAP), 261—Chapter 20.

104.2(1) Criteria for waiver or variance. The director/board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director/board finds each of the following:

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

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the director/board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

104.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the director/board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.

261—104.3(ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

104.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

104.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver or variance is requested.

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

c. The relevant facts that the petitioner believes would justify a waiver or variance.

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.

e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Any information known to the requester regarding the department's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

104.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a department rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director/board should exercise its discretion to grant the petitioner a waiver or variance.

261—104.4 (ExecOrd11) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

261—104.5(ExecOrd11) Department responsibilities regarding petition for waiver or variance.

104.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the director/board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director/board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

104.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the director/board so provides by rule or order; or (c) when a statute so requires.

104.5(3) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons

upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

104.5(4) Conditions. The director/board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

104.5(5) Time for ruling. The director/board shall grant or deny a petition for a waiver or variance as soon as practicable, but in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

104.5(6) When deemed denied. Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

104.5(7) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

261—104.6(ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"e," the department shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

261—104.7(ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver or variance upon appropriate notice if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

261—104.8(ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

261—104.9(ExecOrd11) Defense. After the director/board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

261—104.10(ExecOrd11,17A) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A
Sample Petition (Request) for Waiver/Variance

BEFORE THE IOWA DEPARTMENT
OF ECONOMIC DEVELOPMENT

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	PETITION FOR WAIVER

Requests for waiver or variance from a department rule shall include the following information in the petition for waiver or variance where applicable and known:

a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver or variance is requested.

c. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.

d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. Provide history of prior contacts between the department and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Provide information known to the petitioner regarding the department's treatment of similar cases.

g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. Provide the name, address, and telephone number of any person or entity who would be adversely affected or disadvantaged by the grant of the waiver or variance.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature _____ Date _____

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving, by clear and convincing evidence, the following to the director/board: (a) application of the rule to the petitioner would result in hard-

ship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The department may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and 2000 Iowa Acts, House File 2206.

[Filed 6/23/00, effective 8/16/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9974A

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 11, "Remedial Claims," Iowa Administrative Code.

591—Chapter 10 provides for the restructuring of the Insurance Fund as a private entity pursuant to Iowa Code section 455G.11. These amendments to Chapter 11 remove references to the now defunct Insurance Program formerly offered by the Board. The Board does not pay benefits for future or existing releases that occur from insured tanks. The Board may no longer accept insurance premiums to reinstate financial responsibility coverage. The remaining provision allows a one-time reinstatement of remedial benefits for a site for which there has been a lapse in financial responsibility coverage.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 3, 2000, as **ARC 9793A**. No public comment has been received since publication. These amendments are identical to those published under Notice.

These amendments were approved June 20, 2000.

These amendments will become effective August 16, 2000.

These amendments are intended to implement Iowa Code chapter 455G.

The following amendments are adopted.

ITEM 1. Rescind subparagraph **11.1(3)"b"(2)**.

ITEM 2. Amend subparagraph **11.1(3)"b"(3)** as follows:

~~(3)~~ *2)* An owner or operator who has had a lapse of financial responsibility coverage shall be allowed to remain eligible for remedial benefits if the following conditions are met:

1. The owner or operator applies for reinstatement of remedial benefits and submits a reinstatement fee ~~equal to the full premium which would have been paid to maintain financial responsibility coverage plus an additional 10 percent. The reinstatement fee~~ *according to the following table:*

Fiscal Year	*Per Tank Reinstatement Fee*
July 1, 1991 through June 30, 1992	*$330*
July 1, 1992 through June 30, 1993	*$415*
July 1, 1993 through June 30, 1994	*$495*
July 1, 1994 through June 30, 1995	*$575*
July 1, 1995 through Present	*$450*

For each fiscal year in which the owner or operator lacked financial responsibility coverage, such owner or operator shall pay the per tank reinstatement fee for such fiscal year, as set forth above. The reinstatement fees above are for full years and shall be prorated on a per-month basis for each month *or portion of a month* for which there was a lapse of financial responsibility coverage. There is a minimum reinstatement fee of $500 per site per lapse of coverage.

2. At the time of the application for reinstatement of remedial benefits, all active tanks must be in compliance with all state and federal technical and financial responsibility requirements.

3. The owner or operator is in compliance with all other requirements of this rule.

4. An owner or operator is only eligible for reinstatement of remedial benefits one time per site. If there is another lapse of financial responsibility coverage on any active tank on site after remedial benefits have been reinstated, the owner or operator will lose eligibility for remedial benefits and will be subject to cost recovery pursuant to Iowa Code section 455G.13.

ITEM 3. Rescind subrule **11.4(11)**.

[Filed 6/22/00, effective 8/16/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9959A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue and Finance hereby adopts amendments to Chapter 20, "Foods for Human Consumption, Prescription Drugs, Insulin, Hypodermic Syringes, Diabetic Testing Materials, Prosthetic, Orthotic or Orthopedic Devices," Iowa Administrative Code.

Department rules explaining taxation and exemption of prescription and nonprescription drugs and devices intended for human use are amended. 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 items dis-

pensed by chiropractors in accordance with Iowa Code chapter 151.

The word "interocular" is changed to "intraocular" to harmonize the rule's language with existing statutory language. Lists of prosthetic and orthopedic devices and medical equipment and supplies are updated.

Notice of Intended Action was published in IAB Volume XXII, Number 23, page 1680, on May 17, 2000, as **ARC 9838A**.

One change from the Notice of Intended Action was made. In new paragraph 20.7(2)"h," the description of chiropractors was changed to read as follows:

"h. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when dispensing in accordance with Iowa Code chapter 151."

These amendments will become effective August 16, 2000, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 422.45, subsection 13.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [20.7, 20.8, 20.8(2)"c," 20.8(3), 20.9(3) to 20.9(5)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9838A**, IAB 5/17/00.

[Filed 6/22/00, effective 8/16/00]
[Published 7/12/00]

[For replacement pages for IAC, see IAC Supplement 7/12/00.]

ARC 9955A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue and Finance hereby adopts amendments to Chapter 54, "Allocation and Apportionment," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXII, Number 23, page 1682, on May 17, 2000, as **ARC 9837A**.

Items 1 and 2 amend rule 701—54.3(422) to bring the Department's rule into accordance with the United States Supreme 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.

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

These amendments will become effective August 16, 2000, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.33 and 422.63.

The following amendments are adopted.

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.~~

[Filed 6/22/00, effective 8/16/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9949A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 13,

TRANSPORTATION DEPARTMENT[761](cont'd)

2000, adopted amendments to Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 19, 2000, Iowa Administrative Bulletin as **ARC 9779A**.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR) Parts 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the Federal Motor Carrier Safety Regulations on the effective dates specified in the Federal Register. Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the Federal Hazardous Materials Regulations on the effective dates specified in the Federal Register. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the Federal Register to allow a period for public comment, and, after adoption, the final regulations are again published in the Federal Register. Each year a revised edition of 49 CFR is published incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or November, the publication is not actually available in Iowa for several months after that date.

The amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations that have become final and effective since the 1998 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations

Parts 107, 171, 172, 173, 177, 178 and 180 (FR Volume 63, No. 190, Page 52884, 10-1-98)

This final rule makes editorial corrections and clarifications to the hazardous materials regulations.

Part 171 (FR Volume 63, No. 209, Page 57929, 10-29-98)

This final rule will provide for harmonization with the United Nations' recommendations, International Maritime Dangerous Goods (IMDG) Code and International Civil Aviation Organization's (ICAO) technical instructions. This final rule amends a requirement for the use of ICAO's technical instructions for the safe transport of dangerous goods by air. This rule updates references in the hazardous materials regulations to include the most recent amendments to the IMDG Code and ICAO's technical instructions.

Part 177 (FR Volume 63, No. 210, Page 58323, 10-30-98)

This final rule is in response to petitions for reconsideration of the July 10, 1998, rule concerning the amendments relating to portable tanks. The Research and Special Programs Administration (RSPA) denied three petitions to allow portable tanks to be unloaded without fusible links. RSPA felt unloading portable tanks in the same manner as a cargo tank but without the same outlet requirements would pose increased safety risks in a fire situation when the operator is not able to manually activate the closure.

Parts 171, 172, 173, 177, 178 and 180 (FR Volume 64, No. 43, Page 10741, 3-5-99)

This rule will eliminate the "keep away from food" label. Also, this rule will add an identifier to the hazardous materials table for generic and not-otherwise-shown descriptions. This identifier will be the letter "g." Section 172.203(k)3 will be removed from the regulations. Also, numerous hazardous materials' proper shipping names are revised.

Part 393 (FR Volume 64, No. 61, Page 15588, 3-31-99)

This rule requires motor carriers engaged in interstate commerce to install retroreflective tape or reflex reflectors on the sides and rear of semitrailers and trailers that were manufactured prior to December 1, 1993, with an overall width of 80 inches or more and a gross vehicle weight rating of 10,001 or more pounds.

Parts 171, 173, 177, 178 and 180 (FR Volume 64, No. 99, Page 28029, 5-24-99)

This rule creates new standards for testing discharge hoses, the use of passive shutoff systems on high pressure cargo tanks and the attendance requirement during loading and unloading.

Parts 177 and 180 (FR Volume 64, No. 130, Page 38062, 7-8-99)

This final rule extends the implementation date until January 1, 2000, for Section 177.840(t) as it applies to chlorine unloading operations. This final rule also makes several editorial corrections.

Part 396 (FR Volume 64, No. 160, Page 45207, 8-19-99)

This is a correction to reinstate text of Paragraph (b) concerning inspector qualifications.

Part 171 (FR Volume 64, No. 161, Page 45457, 8-20-99)

This replaces the word "poison" the first time it appears with the words "poison inhalation hazard."

Part 393 (FR Volume 64, No. 169, Page 47703, 9-1-99)

This rule requires certain trailers and semitrailers with a gross vehicle weight rating of 10,001 pounds or more, manufactured on or after January 26, 1998, to be equipped with rear impact guards. These guards are required to improve the safety of operation of commercial motor vehicles by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer.

Part 390 (FR Volume 64, No. 171, Page 48510, 9-3-99)

This rule revises the definition of "commercial motor vehicle" to mean a vehicle that has a gross vehicle weight rating, gross combination weight rating or vehicle weight or gross combination weight of 10,001 pounds or more, whichever is greater. This rule also revises the definition of "passenger carrying vehicle" within the definition of "commercial motor vehicle." However, the Department is not adopting the "passenger carrying vehicle" definition because it conflicts with state law.

Part 171 (FR Volume 64, No. 179, Page 50260, 9-16-99)

This interim final rule provides a limited exception until October 1, 2001, for requirements to place the new poison inhalation hazard or poison gas labels on packages that are intended for transportation in international commerce. The exception applies only to Division 2.3 materials and Division 6.1 liquids in Hazard Zone A or B. Until that time, the existing poison gas and poison labels will be acceptable.

Part 171 (FR Volume 64, No. 185, Page 51719, 9-24-99)

In this correction, the September 16, 1999, interim final rule is revised to provide for the transportation of packages containing poison inhalation hazard materials between the

TRANSPORTATION DEPARTMENT[761](cont'd)

United States and Canada in conformance with the transportation of dangerous goods labeling requirements.
Parts 107, 171, 172, 173 and 178 (FR Volume 64, No. 186, Page 51912, 9-27-99)

This final rule corrects editorial errors and makes minor regulatory changes in the hazardous materials regulations.

The other amendments to this chapter are due to the following:

- The Code of Federal Regulations is available from the state law library.
- 1999 Iowa Acts, chapter 96, section 34, numbered the paragraphs in Iowa Code section 321.449.
- 1998 Iowa Acts, chapter 1178, section 5, eliminated the motor carrier safety regulation exemption relating to hazardous materials which are clearly labeled.
- Public Law 106-159 established the Federal Motor Carrier Safety Administration.

Proposed rule 761—520.8(321) identifies Iowa's planting and harvesting seasons when the hours of service exemptions apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in Iowa. Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

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

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective August 16, 2000.

Rule-making actions:

ITEM 1. Amend subrule **520.1(1)**, paragraphs **"a," "b"** and **"d,"** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390-399 (October 1, ~~1998~~ *1999*).

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~1998~~ *1999*).

d. ~~Obtaining copies~~ *Copies* of regulations. Copies of the federal regulations may be ~~obtained~~ *reviewed* ~~from~~ *at* the ~~Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402~~ *state law library.*

ITEM 2. Amend rule **761—520.2(321)** by amending the following definitions:

"Any requirements which impose any restrictions upon a person" as used in Iowa Code *Supplement* section 321.449*(6)*~~, unnumbered paragraph 8,~~ means the requirements in 49 CFR Parts 391~~, 394~~ and 395.

"Driver age qualifications" as used in Iowa Code *Supplement* section 321.449*(3)*~~, unnumbered paragraph 3,~~ means the age qualifications in 49 CFR 391.11(b)(1).

"Driver qualifications" as used in Iowa Code *Supplement* section 321.449*(2)*~~, unnumbered paragraph 2,~~ means the driver qualifications in 49 CFR Part 391.

"Hours of service" as used in Iowa Code *Supplement* section 321.449*(2)*~~, unnumbered paragraph 2,~~ means the hours of service requirements in 49 CFR Part 395.

"Record-keeping requirements" as used in Iowa Code *Supplement* section 321.449*(2)*~~, unnumbered paragraph 2,~~ means the record-keeping requirements in 49 CFR Part 395.

"Rules adopted under this section concerning physical and medical qualifications" as used in Iowa Code *Supplement* section 321.449*(5)*~~, unnumbered paragraphs 5, 6 and 7,~~ and Iowa Code section 321.450, unnumbered paragraph 2, means the regulations in 49 CFR 391.11(b)(6) and 49 CFR Part 391, Subpart E.

"Rules adopted under this section for a driver of a commercial vehicle" as used in Iowa Code *Supplement* section 321.449*(4)*~~, unnumbered paragraph 4,~~ means the regulations in 49 CFR Parts 391 and 395.

ITEM 3. Amend paragraph **520.3(1)"d"** as follows:

d. Motor vehicles registered for a gross weight of five tons or less when used by retail dealers or their employees to deliver hazardous materials, fertilizers, petroleum products and pesticides to farm customers ~~provided the hazardous materials which are transported are clearly labeled~~.

ITEM 4. Amend subrule 520.4(1) as follows:

520.4(1) Pursuant to Iowa Code section 321.450, unnumbered paragraph 3, "retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products and pesticides to farm customers within a ~~100-mile~~ *100-air-mile* radius of their retail place of business" are exempt from 49 CFR 177.804; and, pursuant to Iowa Code *Supplement* section 321.449*(4)*~~, unnumbered paragraph 4~~, they are exempt from 49 CFR Parts 391 and 395. However, pursuant to Iowa Code section 321.449, the retail dealers and their employees under the specified conditions are subject to the regulations in 49 CFR Parts 390, 392, 393, ~~394,~~ 396 and 397.

ITEM 5. Amend subrule 520.6(1) as follows:

520.6(1) A person shall not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance shall be issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until necessary repairs are made. The out-of-service order shall be consistent with the North American Uniform Out-of-Service Criteria issued by the ~~Federal Highway Administration, Office of Motor Carriers~~ *Federal Motor Carrier Safety Administration*.

ITEM 6. Amend rule 761—520.7(321), introductory paragraph, as follows:

761—520.7(321) Driver's statement. A "driver" as used in Iowa Code *Supplement* section 321.449*(5)*~~, unnumbered paragraph 5,~~ and Iowa Code section 321.450, unnumbered paragraph 2, shall carry at all times a notarized statement of employment. The statement shall include the following:

ITEM 7. Amend 761—Chapter 520 by adopting the following **new** rule:

761—520.8(321) Agricultural operations. The provisions of 49 CFR Part 395.3 shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in Iowa if such transportation:

1. Is limited to an area within a 100-air-mile radius from the source of the commodities or the distribution point from the farm supplies, and
2. Is conducted only during the time frames of March 15 through June 30 and October 4 through December 14.

TRANSPORTATION DEPARTMENT[761](cont'd)

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

[Filed 6/16/00, effective 8/16/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9951A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 13, 2000, adopted Chapter 911, "School Transportation Services Provided by Regional Transit Systems," Iowa Administrative Code.

Iowa Code Supplement section 321.377 requires the DOT to develop rules governing the provision of school transportation services by regional transit systems. The DOT developed the proposed rules in consultation with the Department of Education.

These rules establish standards for school transportation services provided by Iowa's regional transit systems. Specific requirements are set in the areas of driver qualifications, vehicles and equipment, maintenance practices, and operating policies.

A waiver provision is not included in these rules because flexibility is provided by establishing a later compliance date for certain requirements which are expected to be more difficult to meet. Issuing other waivers would be inappropriate for safety-related rules of this nature.

Notice of Intended Action for these rules was published in the April 19, 2000, Iowa Administrative Bulletin as **ARC 9778A**. An oral presentation was held on May 11, 2000. Several written and oral comments were received. As a result of these comments, the Department made two changes:

1. In rule 761—911.2(321,324A) the definition of "bus" was corrected to reflect the federal definition.
2. In subrule 911.6(2) the requirement for follow-up training for drivers was changed to every 12 months. This is consistent with the current school bus operation requirements.

Another change was made to correct the address and telephone number for the Office of Public Transit. The Office of Public Transit will be located in Ames instead of in Des Moines.

This chapter will become effective August 16, 2000.

These rules are intended to implement Iowa Code sections 321.189, 321.343, 321.376, and 324A.1 and Iowa Code Supplement sections 321.1 and 321.377.

The following **new** chapter is adopted.

CHAPTER 911
SCHOOL TRANSPORTATION SERVICES PROVIDED BY REGIONAL TRANSIT SYSTEMS

761—911.1(321) Purpose and information.

911.1(1) Purpose. This chapter establishes standards for school transportation services provided by Iowa's regional transit systems under contract with local schools.

911.1(2) Information. Information and forms may be obtained from the Department of Transportation, Office of Public Transit, 800 Lincoln Way, Ames, Iowa 50010; telephone number (515)239-1708.

761—911.2(321,324A) Definitions. For the purpose of these rules, the following definitions apply:

"Automobile" means a motor vehicle, except a motorcycle or motorized bicycle, designed primarily to carry nine persons or less, as defined in Iowa Code section 321.1.

"Bus" means a motor vehicle, excluding a trailer, designed to carry ten or more persons.

"Contract" means a written agreement between a public or nonpublic school or other group and a regional transit system which defines the terms and conditions under which school transportation service is to be provided. It shall not include the relationship between a regional transit system and an individual fare-paying passenger in either fixed route or demand response service.

"Multipurpose vehicle" means a motor vehicle designed to carry not more than ten persons, and constructed either on a truck chassis or with special features for occasional off-road operation, as defined in Iowa Code section 321.1.

"Regional transit system" means a regional transit system designated under Iowa Code section 324A.1 and all subcontracted providers to the designated regional transit system. It does not mean an urban transit system designated under that section.

"School bus" means a bus that complies with all federal motor vehicle safety standards applicable to a school bus.

"School transportation service" means transit service provided under contract to a public or nonpublic school or other group, including day care centers, to transport students to or from schools or school-sponsored activities.

"Student" means a person attending a public or nonpublic school, grades pre-kindergarten through high school.

"Vehicle" means an automobile, multipurpose vehicle, bus or school bus as defined in this rule.

761—911.3(321) Services to students as part of the general public. All services provided by regional transit systems must be open to the public. This chapter shall not be construed to restrict the use of these services by any individual fare-paying passenger, in either fixed route or demand response service.

761—911.4(321) Contracts for nonexclusive school transportation. As common carriers in urban transportation service, regional transit systems may contract with schools, day care providers, after-school program providers, or others to provide nonexclusive school transportation service that meets the requirements of this chapter. Exclusive service contracts are prohibited.

761—911.5(321) Adoption of federal regulations.

911.5(1) Code of Federal Regulations. The department of transportation adopts the following portions of the October 1, 1999, Code of Federal Regulations, which are referenced throughout this chapter:

a. 49 CFR Part 38, Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles.

b. 49 CFR Part 571, Federal Motor Vehicle Safety Standards.

c. 49 CFR Part 653, Prevention of Prohibited Drug Use in Transit Operations.

d. 49 CFR Part 654, Prevention of Alcohol Misuse in Transit Operations.

911.5(2) Obtaining copies of regulations. Copies of these regulations are available from the state law library.

761—911.6(321) Driver standards. The following standards apply to regional transit system drivers assigned to provide school transportation service:

911.6(1) FTA drug and alcohol testing. Each driver is subject to the following testing for drug and alcohol usage as required by the Federal Transit Administration in 49 CFR Parts 653 and 654, including:

a. Preemployment testing.
b. Reasonable suspicion testing.
c. Postaccident testing.
d. Random testing.
e. Return to duty testing.
f. Follow-up testing.

911.6(2) Training. Each new driver must, within the first six months of assignment and at least every 12 months thereafter, complete a course of instruction approved by the department of education, in accordance with Iowa Code section 321.376.

911.6(3) Driving record check. The regional transit system must review the driving record of each driver prior to employment and on an annual basis.

911.6(4) Criminal record check. The regional transit system must conduct a criminal records review of each driver prior to employment and on an annual basis. This review verifies that the driver has no history of child abuse or other criminal activity.

911.6(5) Driver licensing. Each driver must be licensed appropriately for the size and type of vehicle used as provided in Iowa Code section 321.189. A Class A, B or C commercial driver's license with passenger endorsement may be required. If a commercial driver's license is not required, a Class D (chauffeur) license with passenger endorsement is required.

911.6(6) School bus operator's permit. Each driver who transports students must have a school bus operator's permit issued by the department of education in accordance with Iowa Code section 321.376.

761—911.7(321) Vehicle standards. The following standards apply to regional transit system vehicles assigned to provide school transportation service:

911.7(1) Vehicle construction.

a. Each vehicle must be constructed in compliance with the federal motor vehicle safety standards for that type of vehicle as set forth in 49 CFR Part 571. The capacity rating of automobiles and multipurpose vehicles shall not be modified or altered in any way except by the original manufacturer.

b. On or after July 1, 2001, each bus in use must also comply with the following federal motor vehicle safety standards:

(1) Standard No. 217, Bus Emergency Exits and Window Retention and Release. Buses purchased after January 1, 2000, shall incorporate a rear emergency exit door in meeting this standard.
(2) Standard No. 220, School Bus Rollover Protection.
(3) Standard No. 221, School Bus Body Joint Strength.
(4) Standard No. 301, Fuel System Integrity.

911.7(2) Passenger restraint/protection. Each automobile, multipurpose vehicle or school bus must provide passenger restraint/protection devices as required for that type of vehicle in the federal motor vehicle safety standards. Each bus must meet the standards listed in either "a" to "d" below or "e" below:

a. Standard No. 207, Seating Systems.
b. Standard No. 208, Occupant Crash Protection.
c. Standard No. 209, Seat Belt Assemblies.
d. Standard No. 210, Seat Belt Assembly Anchorages.
e. Standard No. 222, School Bus Passenger Seating and Crash Protection.

911.7(3) Accessibility for persons with disabilities. Each vehicle used for students with disabilities must comply with all applicable provisions of 49 CFR Part 38.

911.7(4) Signage. A vehicle must not be signed as a school bus.

911.7(5) Department of education inspection. Every vehicle must be inspected twice annually by the department of education school bus inspectors and officers of the Iowa state patrol to determine if the vehicle meets all vehicle standards set forth in this chapter.

The department of education will notify each regional transit system of the dates and locations of scheduled inspections. Inspections must be documented on a form prescribed jointly by the departments of transportation and education.

761—911.8(321) Maintenance. Regional transit system vehicles assigned to provide school transportation service must be maintained in a safe and operable condition. The following maintenance practices apply:

911.8(1) FTA drug and alcohol testing of mechanics. All personnel providing maintenance services on regional transit system vehicles are subject to drug and alcohol testing as required by the Federal Transit Administration in 49 CFR Parts 653 and 654.

911.8(2) Daily pretrip vehicle inspections. Drivers of these vehicles must perform daily pretrip vehicle inspections using a form prescribed by the department of transportation. Regional transit systems must retain daily pretrip vehicle inspection reports and documentation of follow-up maintenance for one year.

911.8(3) Annual vehicle inspection. Maintenance personnel must annually inspect each vehicle using a form prescribed by the department of transportation. Regional transit systems must retain annual inspection forms for one year.

761—911.9(321) Safety equipment. Regional transit system vehicles assigned to provide school transportation service must carry the following safety equipment:

911.9(1) Communication equipment. Each vehicle must be equipped with a two-way radio or cellular telephone capable of emergency communication between the vehicle and the regional transit system's base of operations.

911.9(2) First-aid/body fluids cleanup kit(s). Each vehicle must be equipped with a first-aid kit of sufficient size and content for the capacity of the vehicle and, in addition, be equipped with a body fluid cleanup kit. These may be provided as separate kits or combined into one kit. The contents of the kit(s) must be contained in one or more moisture-proof and dustproof containers mounted in an accessible location within the driver's compartment and must be removable from the vehicle in an emergency.

911.9(3) Fire extinguisher. Each bus or school bus must be equipped with a minimum 5-pound capacity, dry chemical fire extinguisher. Each automobile and multipurpose vehicle must be equipped with an extinguisher of at least 2.5-pound capacity. Extinguishers must have a 2A-10BC rating.

761—911.10(321) Operating policies. School transportation services provided by regional transit systems must be designed to maximize the safety of student riders and must, at a minimum, meet the following standards:

TRANSPORTATION DEPARTMENT[761](cont'd)

911.10(1) Passenger loading/unloading. Unless prohibited by law, students transported in vehicles other than school buses must be loaded and unloaded on the same side of the street as their residence or other origin or destination. Students may be released only to the custody of a designated school official, parent or guardian, employee of the department of human services, or law enforcement official, unless other arrangements are made in advance.

911.10(2) Student passenger behavior and discipline policy. Each contract for school transportation service must include a policy relating to the behavior of students while they ride in vehicles. The regional transit system or school must provide instruction to all drivers assigned to school transportation service relative to the content and application of the policy. If a student is removed from a vehicle for one or more policy violations, the student may be released only to the custody of a school official, parent or guardian, employee of the department of human services or a law enforcement officer. In all cases, the school must be notified immediately of any such disciplinary action, and a written report must be filed with the school describing the circumstances resulting in the removal.

911.10(3) Standing prohibited. Under no circumstances shall a student be permitted or required to stand while a vehicle is in motion. Every student must be provided an appropriate seat at all times.

911.10(4) Stops at rail crossings. Every driver must make a complete stop before crossing the tracks of any railroad crossing, in accordance with Iowa Code section 321.343. In the case of a bus or school bus, the driver must open the service entrance door, look and listen for approaching trains and proceed to cross the tracks only when the driver can do so safely. No stop is needed where the crossing is posted with an exempt sign.

911.10(5) Accident reporting. If a driver is involved in a collision or other incident causing or having a potential to cause injuries to students, the regional transit system must immediately notify the school of the incident. The regional transit system must file all accident reports required by law. In addition, the regional transit system must complete a school bus accident report on a form prescribed by the department of education and submit it to the school or the department of education.

911.10(6) Passenger instruction/evacuation drills. Each school must provide students assigned to school transportation service with school bus passenger safety instruction and emergency evacuation drills at least twice each school year. These evacuation drills must involve a vehicle of the same type used to provide the school transportation service.

911.10(7) Special training for drivers carrying students with disabilities. Each school contracting for school transportation services for a student with one or more disabilities must provide the regional transit system with information on any special needs of the student and, if necessary, provide the assigned driver with appropriate information and training on how to appropriately respond to the needs of the student during transit and in the event of an emergency.

These rules are intended to implement Iowa Code sections 321.189, 321.343, 321.376 and 324A.1 and Iowa Code Supplement sections 321.1 and 321.377.

[Filed 6/22/00, effective 8/16/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

ARC 9977A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 474.5, 476.1, and 476.6(16) (1999), the Utilities Board (Board) gives notice that on June 21, 2000, the Board issued an order in Docket No. RMU-00-6, In re: Review of Fuel Procurement Practices, "Order Adopting Rules."

The amendments to 199 IAC 20.13(1) and 20.13(2) reflect recent amendments to Iowa Code section 476.6(16). Section 476.6(16) now requires the Board to conduct a periodic, rather than an annual, proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's electric fuel procurement and contracting practices.

On February 17, 2000, the Board issued an order to consider adopting amendments to 199 IAC 20.13(1) and 20.13(2). The proposed rule making was published in IAB Vol. XXII, No. 18 (3/8/00) p. 1360, as **ARC 9729A**. Written statements of position were filed by the Consumer Advocate Division of the Department of Justice, Alliant Energy, and MidAmerican Energy Company (MidAmerican). All those filing statements, except MidAmerican, supported adoption of the proposed amendments. An oral presentation was not requested or scheduled.

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

MidAmerican commented on four major subject areas. First, MidAmerican suggested that electric utilities without a fuel adjustment clause be excluded from the subrules' requirements. While the Board may not be able to disallow costs in an electric energy supply and cost review (ARC) proceeding for a utility without a fuel adjustment clause, the proceeding provides the Board with an opportunity to give that utility directions as to things the Board would like pursued or done differently. An ARC proceeding allows the Board and other interested parties to focus on fuel procurement issues without the distraction of the myriad of other issues present in a rate case proceeding. The Board believes the ARC proceedings have value for all investor-owned electric utilities, whether or not the utilities have a fuel adjustment clause.

Second, MidAmerican requested that the ARC proceeding be limited to procurement and contracting practices related to the acquisition of fuel for use in generating electricity. In other words, MidAmerican would not have the Board consider issues surrounding purchased power contracts in an ARC proceeding. However, the Board believes that given the increased role of purchased power in supply portfolios, it is appropriate for utilities to continue to provide purchased power contracts, pool interchange agreements, and interchange agreements.

Third, MidAmerican proposed that the procurement plan only include contracts in effect during the applicable prior

UTILITIES DIVISION[199](cont'd)

12-month period that have not been previously reviewed by the Board. The Board rejects this suggestion because a complete review of a utility's fuel procurement practices cannot be obtained without current review of all contracts, including long-term contracts. For example, several years ago the Board used the ARC proceedings as a forum to encourage utilities to buy out long-term coal contracts because of significant price decreases in the spot market. This could not have been done if the Board did not review all fuel procurement contracts.

Fourth, MidAmerican suggested several nonsubstantive changes, including combining the requirements associated with allowance contracts with those for other fuel and transportation contracts in paragraph 20.13(1)"b." The Board adopted these changes. Because the changes are nonsubstantive, no further notice is required.

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

The amendments will become effective on August 16, 2000.

The following amendments are adopted.

Amend rule 199—20.13(476) as follows:

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

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

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

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

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

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

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

(3) All contracts and arrangements for purchasing or selling allowances;

(~~3~~ *4*) Purchased power contracts or arrangements, including sale-of-capacity contracts, involving over 25 MW of capacity;

(~~4~~ *5*) Pool interchange agreements;

(~~5~~ *6*) Multiutility transmission line interchange agreements; and

(~~6~~ *7*) Interchange agreements between investor-owned utilities, generation and transmission cooperatives, or both, not required to be filed ~~by either subparagraph (2) or (3)~~ above, which were entered into or in effect ~~during the previous 12-month period~~ *since the last filing*, and all such contracts or arrangements which will be entered into or exercised by the utility during the prospective 12-month period. ~~In addition, the utility shall separately set forth a list of all contracts or agreements filed in the procurement plan which will become subject to renegotiation, extension, or termination within five years.~~

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

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

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

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

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

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

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

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

UTILITIES DIVISION[199](cont'd)

considered by the utility in deciding whether to enter into any of those types of contracts or arrangements listed in paragraphs 20.13(1)"~~e~~ *b*," "~~d~~" and "~~e~~ *c*" which will be exercised or entered into during the prospective 12-month period.

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

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

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

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

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

~~j~~ *h*. Compliance plans. ~~Beginning with the 1993 procurement plan, each~~ *Each* utility shall file its SO_2 compliance plan as submitted to the EPA. Revisions to the compliance plan shall be filed with each subsequent procurement plan.

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

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

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

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

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

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

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

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

[Filed 6/22/00, effective 8/16/00]
[Published 7/12/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/12/00.

SENATE JOINT RESOLUTION 2005

A JOINT RESOLUTION

NULLIFYING AMENDMENTS TO ADMINISTRATIVE RULES OF THE DEPARTMENT OF REVENUE AND FINANCE CONCERNING THE CLASSIFICATION OF CONDOMINIUMS FOR PROPERTY TAX PURPOSES AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. The amendments to 701 Iowa administrative code, rule 71.1, subrules 4 and 5, as appearing in ARC 8725A, as published in the Iowa administrative bulletin, volume XXI, number 19, dated March 10, 1999, pp. 1858 and 1859, are nullified.

*Reproduced as submitted

Sec. 2. This joint resolution, being deemed of immediate importance, takes effect upon enactment.

Mary Kramer

MARY E. KRAMER
President of the Senate

Brent Siegrist

BRENT SIEGRIST
Speaker of the House

I hereby certify that this resolution originated in the Senate and is known as Senate Joint Resolution 2005, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved May 9, 2000

THOMAS J. VILSACK
Governor

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

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

STATE OF IOWA - DEPT OF GENERAL SERVICES
CUSTOMER SERVICE CENTER, HOOVER BLDG LEVEL A
DES MOINES, IA 50319

Qty: 3 Iowa Bulletin 06/28/00

TO: STATE LAW LIBRARY
LINDA ROBERTSON
CAPITOL BLDG
2ND FL WEST
LOCAL , GT