



IOWA ADMINISTRATIVE BULLETIN

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July 26, 2000

NUMBER 2
Pages 101 to 188

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PREFACE

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

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

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

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

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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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, August 4, 2000	August 23, 2000
5	Friday, August 18, 2000	September 6, 2000
6	Friday, September 1, 2000	September 20, 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.

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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.

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

The Administrative Rules Review Committee will hold a special meeting on Wednesday, August 2, 2000, at 9 a.m. in Senate Committee Room 24, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Eradication of pseudorabies, 64.147, 64.151(3), 64.153(5), 64.154(2)"c," 64.156(2),
64.156(3)"a," 64.157, 64.158, 64.160, 64.161, Filed Emergency After Notice **ARC 9997A** 7/26/00
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PUBLIC BROADCASTING DIVISION[288]

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 Apartment buildings less than four stories—elevator exemption, 16.705(3)"a," Notice ARC 9987A 7/26/00
 Fire service training bureau, ch 53, Notice ARC 9964A, also Filed Emergency ARC 9968A 7/12/00
 Firefighter certification, ch 54, Notice ARC 9965A, also Filed Emergency ARC 9969A 7/12/00
 Volunteer emergency services provider death benefits, ch 59,
Notice ARC 9966A, also Filed Emergency ARC 9967A 7/12/00

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 School transportation services provided by regional transit systems, ch 911, Filed ARC 9951A 7/12/00

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COMMERCE DEPARTMENT[181]"umbrella"

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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2003.

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Administrative Rules Coordinator
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Capitol, Room 11
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
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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.
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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.
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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 (See also 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 (See also ARC 9971A)	600 E. Court Ave. Des Moines, Iowa	August 1, 2000 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Nursing home administration, 141.10, 141.12, ch 143 IAB 7/26/00 ARC 9999A	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	August 15, 2000 9 to 11 a.m.
Physical therapists and physical therapist assistants, 200.3(1), 200.5(2), 200.9 to 200.15, 200.23, 200.24, 202.6(2), 202.7 to 202.13, ch 203 IAB 7/26/00 ARC 9998A	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	August 15, 2000 9 to 11 a.m.
Occupational therapists and occupational therapy assistants, 201.1, 201.4, 201.5(1), 201.7(2), 201.8 to 201.17, 201.24, ch 207 IAB 7/26/00 ARC 0001B	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	August 15, 2000 1 to 3 p.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]

Fees for fire inspection; renewal of registration for aboveground petroleum storage tanks, 5.5, 5.307 IAB 7/26/00 ARC 9990A (See also ARC 9989A herein)	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 9:45 a.m.
Residential occupancies; bed and breakfast inns, 5.800 to 5.810, 5.820 IAB 7/12/00 ARC 9970A	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 9:30 a.m.

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)

Sex offender registry, 8.303(2), 8.304(1) IAB 7/26/00 ARC 9986A (See also ARC 9988A herein)	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 11 a.m.
Elevators in new apartment buildings, 16.705(3) IAB 7/26/00 ARC 9987A	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 1:30 p.m.
Fire service training bureau, ch 53 IAB 7/12/00 ARC 9964A (See also ARC 9968A)	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 10 a.m.
Firefighter certification, ch 54 IAB 7/12/00 ARC 9965A (See also ARC 9969A)	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	September 8, 2000 10:15 a.m.
Volunteer emergency services provider death benefits, ch 59 IAB 7/12/00 ARC 9966A (See also ARC 9967A)	Conference Room—3rd Floor 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.
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REVENUE AND FINANCE DEPARTMENT[701]

Fees to local option tax jurisdictions, 107.16, 108.4 IAB 7/26/00 ARC 0003B	Conference Room—4th Floor Hoover State Office Bldg. Des Moines, Iowa	August 15, 2000 1:30 to 3 p.m.
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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.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS’ AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

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

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

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

ARC 9991A

HUMAN SERVICES
DEPARTMENT[441]Notice of Termination
and
Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code 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 217.6, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)“b” for proposed rule making relating to Chapter 1, “Departmental Organization and Procedures,” and proposes to amend Chapter 1, “Departmental Organization and Procedures,” appearing in the Iowa Administrative Code.

Notice of Intended Action proposing amendments to the Department’s rule on exceptions to policy was published in the Iowa Administrative Bulletin on January 12, 2000, as **ARC 9597A**. The Notice proposed to bring the Department of Human Services rule for exceptions to policy into compliance with Executive Order Number 11 issued by Governor Vilsack on September 14, 1999. Executive Order Number 11 directs each state agency to adopt a waiver rule as outlined in the order.

That Notice was put on hold at the Governor’s direction pending legislative action on waivers of administrative rules. The Seventy-eighth General Assembly passed 2000 Iowa Acts, House File 2206, which does not rescind Executive Order Number 11, but does supersede some of the substantive provisions of the order, replacing them with statutory language to be codified at Iowa Code section 17A.9A.

Therefore, the Department is terminating the prior rule making and giving notice of new amendments to bring its rules on exceptions to policy into compliance with the Executive Order and 2000 Iowa Acts, House File 2206.

The Department has had a waiver (exception to policy) rule since 1987. The Department’s rule is written in a format that is easy to understand for clients and providers that are requesting exceptions to policy. Therefore, the Department is making only those changes necessary to bring its existing rule into conformity with the Executive Order and the legislative mandate. The Department is also continuing to refer to its “waivers” as “exceptions to policy,” to avoid confusion with the Home- and Community-Based waiver programs.

Specifically, these amendments:

- Clarify that exceptions must be consistent with other state and federal law.
- Specify the minimum findings that must be made, based on clear and convincing evidence, before the director can grant an exception.
- Provide that the party requesting an exception must establish that the exception is appropriate.
- Update the address to which requests for exceptions must be sent, require acknowledgment of requests within seven days, provide for notice to other affected parties and for requests for additional information, and allow for extensions of time for decisions with the requester’s agreement

and for the pending of requests filed in contested case proceedings until after a final decision is issued.

These amendments do not provide for waiver of the rules governing waivers in specified situations because all waivers should be subject to the same procedural and substantive rules.

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 16, 2000.

These amendments are intended to implement Executive Order Number 11, Iowa Code section 217.6 and 2000 Iowa Acts, House File 2206.

The following amendments are proposed.

Amend rule 441—1.8(217) as follows:

441—1.8(17A,217) Exceptions Waivers of administrative rules (hereinafter referred to as exceptions to policy). Exceptions to the department’s rules may be granted in individual cases upon the director’s own initiative or upon request. *No exception will be granted to a rule required by state statute or by federal statute or regulation. Any exception granted must be consistent with state and federal law.*

1.8(1) Procedures for requests.

a. Requests for exceptions must be submitted in writing to the ~~Bureau of Policy Analysis Appeals Section~~, Department of Human Services, ~~Hoover State Office Building 1305 E. Walnut Street, 5th Floor~~, Des Moines, Iowa 50319-0114.

b. A request for an exception is independent from a departmental appeal under 441—Chapter 7. However, a request for an exception may be combined with an appeal of a proposed decision to the director under 441—Chapter 7. A request for an exception made prior to an appeal under 441—Chapter 7 may be denied pending an appeal where factual matters need to be developed.

c. *A party requesting an exception must establish that the exception is appropriate.* A request for an exception should include the following information where applicable and known to the requester:

(1) The name, address, and case number or state identification number of the person or entity for whom an exception is being requested and the person requesting the exception, if different from the person for whom an exception is being requested.

(2) The specific rule to which an exception is requested or the substance thereof.

(3) The specific exception requested.

(4) Facts relevant to the factors listed in subrule 1.8(2).

(5) A history of the department’s action on the case.

(6) Any information known to the requester regarding the department’s treatment of similar cases.

(7) The name, address, and telephone number of any person inside or outside the department with knowledge of the matter with respect to which the exception is requested.

(8) Releases of information authorizing persons with knowledge regarding the request to furnish the department information pertaining to the request.

d. Requests for exceptions shall be acknowledged ~~immediately within seven days and shall be responded to in writing within 120 days of receipt.~~ *The department may give notice of the request to other affected parties. The department may also request additional information from the applicant.*

e. *The department shall issue a written decision on the request for an exception to policy within 120 days of receipt,*

HUMAN SERVICES DEPARTMENT[441](cont'd)

unless the applicant agrees to a later date. If a request for an exception to policy has been filed in a contested case proceeding, the department may pend the request until after a final decision is issued.

e f. A denial of a request for an exception is absolutely final and is not appealable under 441—Chapter 7.

£ g. A request for an exception does not delay the time to request an appeal under 441—Chapter 7 or for filing a petition for judicial review of a final decision in a contested case under Iowa Code section 17A.19.

g h. A request for an exception is not required to exhaust administrative remedies before judicial review of department action under Iowa Code section 17A.19.

h i. The department shall maintain a deidentified record of exceptions granted and denied indexed by rule available for public inspection.

1.8(2) Policy.

a. The director may grant an exception if the director finds, based on clear and convincing evidence, that:

(1) Failure to grant the exception will result in undue hardship;

(2) The exception will not substantially affect another person in an adverse manner;

(3) The exception is not prohibited by state or federal law; and

(4) The exception will not endanger public health, safety, or welfare.

b. ~~Exceptions are granted~~ The decision on whether an exception should be granted will be made at the complete discretion of the director after consideration of all relevant factors including, but not limited to, those in paragraph "a" and the following:

a. (1) The need of the person or entity directly affected by the exception. Exceptions will be granted only in cases of extreme need.

b. (2) Whether there are exceptional circumstances justifying an exception to the general rule applicable in otherwise similar circumstances.

c. (3) Whether granting the exception would result in net savings to the state or promote efficiency in the administration of programs or service delivery. Net savings or efficiency will make an exception more likely.

d. (4) In the case of services, assistance, or grants, whether other possible sources have been exhausted. Exceptions will not generally be granted if other sources are available.

e. (5) The cost of the exception to the state and the availability of funds in the department's budget.

This rule is intended to implement Iowa Code section 217.6 and 2000 Iowa Acts, House File 2206.

ARC 9994A**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of 2000 Iowa Acts, House File 2555, section 3, subsection 3, paragraph "b," the Risk Pool

Board established by Iowa Code section 426B.5(3)"b" proposes to amend Chapter 25, "Disability Services Management," appearing in the Iowa Administrative Code.

The Seventy-eighth General Assembly, in 2000 Iowa Acts, House File 2555, section 3, as amended by Senate File 2452, section 4, provided an appropriation from the Tobacco Settlement Fund to establish a risk pool fund. This fund is established to provide assistance to counties with limited county mental health, mental retardation, and developmental disabilities services fund balances to pay reimbursement increases to certain service providers that have increased the compensation of their service staff in state fiscal year 2001.

Any county wishing to receive assistance from the Tobacco Settlement Fund risk pool must apply to the Risk Pool Board by September 25, 2000. The legislature appropriated \$2 million for the fund for fiscal year 2001. The total amount of Tobacco Settlement Fund risk pool assistance to counties shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool, the Risk Pool Board shall prorate among the counties eligible for assistance the amount of assistance or adjust the percentage rate increase allowed to providers. These rules contain provisions for repaying the risk pool funds under specified conditions.

These rules do not provide for waivers in specified situations because the requirements for eligibility for funds and for awarding and repayment of funds are all stated in the statute. These requirements cannot be waived by rule.

The substance of these rules is also Adopted and Filed Emergency and is published herein as **ARC 9993A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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 16, 2000.

These rules are intended to implement 2000 Iowa Acts, House File 2555, section 3, as amended by Senate File 2452, section 4.

ARC 9995A**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 and 2000 Iowa Acts, Senate File 2435, section 9, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

These amendments add pharmaceutical case management as a new service in the Medicaid program. This service will be provided to Medicaid recipients at high risk for

HUMAN SERVICES DEPARTMENT[441](cont'd)

medication-related problems. This service is designed to identify, prevent, and resolve medication-related problems; improve drug therapy outcomes; and result in more cost-effective delivery of health care services to persons served.

Patients are eligible for pharmaceutical case management services if they have active prescriptions for four or more regularly scheduled nontopical medications, are ambulatory, do not reside in a nursing facility, and have at least one of the eligible disease states of congestive heart disease, ischemic heart disease, diabetes mellitus, hypertension, hyperlipidemia, asthma, depression, atrial fibrillation, osteoarthritis, gastroesophageal reflux, or chronic obstructive pulmonary disease.

Following enrollment to provide the services, pharmacists will be given a list of their Medicaid patients eligible to participate in the program. Patients have the choice of whether to receive the services. If a patient elects to receive the services, the patient must receive the services from any eligible physician and pharmacist acting as a pharmaceutical case management (PCM) team. Usually these will be the patient's primary physician and pharmacist.

Physicians and pharmacists shall meet specific criteria to provide pharmaceutical case management services. Both physicians and pharmacists shall complete an Iowa Medicaid provider agreement, have an Iowa Medicaid provider number, and receive training under the direction of the Department regarding the provision of pharmaceutical case management services under the Iowa Medicaid program.

Physicians shall be licensed to practice medicine. Pharmacists shall present to the Department evidence of competency including state licensure, submit five acceptable patient care plans, and have successfully completed professional training on patient-oriented, medication-related problem prevention and resolution. Pharmacists shall also maintain problem-oriented patient records, provide a private patient consultation area, and submit a statement indicating that the submitted patient care plans are representative of their usual patient care plans.

The Seventy-eighth General Assembly appropriated \$414,000 to provide these services and study the impact of the services on improving patients' drug therapy outcomes. The legislation provides for an independent evaluation of the services to be conducted by the University of Iowa College of Public Health at no cost to the state. The University is to submit a final report on the findings of the evaluation by December 15, 2002. The Department of Human Services is to submit a progress report on these services by December 15, 2001, and a final report by December 15, 2002. Following submission of the final reports, the Department will reevaluate the rules with input from the Iowa Medical Society and the Iowa Pharmacy Association.

The overall purpose of the study is to determine whether reimbursed pharmaceutical care results in better care processes and outcomes and is more cost-effective than nonreimbursed traditional pharmacist care.

These amendments do not provide for waiver in specified situations because the General Assembly directed the Department to implement this change, with no provision for exceptions; and they confer a benefit by providing a new Medicaid service.

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 16, 2000.

These amendments are intended to implement Iowa Code section 249A.5 and 2000 Iowa Acts, Senate File 2435, section 9.

The following amendments are proposed.

ITEM 1. Amend 441—Chapter 78 by adopting the following new rule:

441—78.47(249A) Pharmaceutical case management services. Payment will be approved for pharmaceutical case management services provided by an eligible physician and pharmacist for Medicaid recipients determined to be at high risk for medication-related problems. These services are designed to identify, prevent, and resolve medication-related problems and improve drug therapy outcomes.

78.47(1) Medicaid recipient eligibility. Patients are eligible for pharmaceutical case management services if they have active prescriptions for four or more regularly scheduled nontopical medications, are ambulatory, do not reside in a nursing facility, and have at least one of the eligible disease states of congestive heart disease, ischemic heart disease, diabetes mellitus, hypertension, hyperlipidemia, asthma, depression, atrial fibrillation, osteoarthritis, gastroesophageal reflux, or chronic obstructive pulmonary disease.

78.47(2) Provider eligibility. Physicians and pharmacists shall meet the following criteria to provide pharmaceutical case management services.

a. Both physicians and pharmacists shall complete an Iowa Medicaid provider agreement, have an Iowa Medicaid provider number, and receive training under the direction of the department regarding the provision of pharmaceutical case management services under the Iowa Medicaid program.

A copy of pharmaceutical case management records, including documentation of services provided, shall be maintained on file in each provider's facility and be made available for audit by the department on request.

b. Physicians shall be licensed to practice medicine.

c. Pharmacists shall present to the department evidence of competency including state licensure, submit five acceptable patient care plans, and have successfully completed professional training on patient-oriented, medication-related problem prevention and resolution. Pharmacists shall also maintain problem-oriented patient records, provide a private patient consultation area, and submit a statement indicating that the submitted patient care plans are representative of their usual patient care plans.

Acceptable professional training programs are:

(1) A doctor of pharmacy degree program.

(2) The Iowa Center for Pharmaceutical Care (ICPC) training program, which is a cooperative training initiative of the University of Iowa College of Pharmacy, Drake University College of Pharmacy and Health Sciences, and the Iowa Pharmacy Foundation.

(3) Other programs containing similar coursework and supplemental practice site evaluation and reengineering, approved by the department with input from a peer review advisory committee.

78.47(3) Services. Eligible patients may choose whether to receive the services. If patients elect to receive the services, they must receive the services from any eligible physician and pharmacist acting as a pharmaceutical case management (PCM) team. Usually these will be the patient's primary physician and pharmacist. Pharmaceutical case management services are to be value-added services complementary to the basic medical services provided by the primary physician and pharmacist.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The PCM team shall provide the following services:

a. Initial assessment. The initial assessment shall consist of:

(1) A patient evaluation by the pharmacist, including:

- 1. Medication history;
- 2. Assessment of indications, effectiveness, safety, and compliance of medication therapy;
- 3. Assessment for the presence of untreated illness; and
- 4. Identification of medication-related problems such as unnecessary medication therapy, suboptimal medication selection, inappropriate compliance, adverse drug reactions, and need for additional medication therapy.

(2) A written report and recommendation from the pharmacist to the physician.

(3) A patient care action plan developed by the PCM team with the patient's agreement and implemented by the PCM team. Specific components of the action plan will vary based on patient needs and conditions but may include changes in medication regimen, focused patient or caregiver education, periodic assessment for changes in the patient's condition, periodic monitoring of the effectiveness of medication therapy, self-management training, provision of patient-specific educational and informational materials, compliance enhancement, and reinforcement of healthy lifestyles. An action plan must be completed for each initial assessment.

b. New problem assessments. These assessments are initiated when a new medication-related problem is identified. The action plan is modified and new components are implemented to address the new problem. This assessment may occur in the interim between scheduled follow-up assessments.

c. Problem follow-up assessments. These assessments are based on patient need and a problem identified by a prior assessment. The patient's status is evaluated at an appropriate interval. The effectiveness of the implemented action plan is determined and modifications are made as needed.

d. Preventive follow-up assessments. These assessments occur approximately every six months when no current medication-related problems have been identified in prior assessments. The patient is reassessed for newly developed medication-related problems and the action plan is reviewed.

ITEM 2. Amend rule 441—79.1(249A) as follows:

Amend subrule 79.1(2) by adopting the following **new** provider category in alphabetical order:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Pharmaceutical case management	Fee schedule See 79.1(18)	Refer to 79.1(18)

Adopt the following **new** subrule:

79.1(18) Pharmaceutical case management services reimbursement. Pharmacist and physician pharmaceutical case management (PCM) team members shall be equally reimbursed for participation in each of the four services described in rule 441—78.47(249A). The following table contains the amount each team member shall be reimbursed for the services provided and the maximum number of payments for each type of assessment. Payment for services beyond the maximum number of payments shall be considered on an individual basis after peer review of submitted documentation of medical necessity.

<u>Service</u>	<u>Payment amount</u>	<u>Number of payments</u>
Initial assessment	\$75	One per patient

New problem assessment	\$40	Two per patient per 12 months
Problem follow-up assessment	\$40	Four per patient per 12 months
Preventative follow-up assessment	\$25	One per patient per 6 months

ARC 9992A

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 sections 234.6, 238.16, and 600.7A, the Department of Human Services proposes to amend Chapter 108, “Licensing and Regulation of Child-Placing Agencies,” Chapter 200, “Adoption Services,” and Chapter 202, “Foster Care Services,” appearing in the Iowa Administrative Code.

These amendments revise licensing requirements for child-placing agencies providing foster care and adoptive services and revise policies governing foster care and adoptive placements made through the Department. They clarify policies that were adopted in 1996 to comply with the Multi-ethnic Placement Act of 1994, which prohibits states from having a placement policy that gives priority to race or ethnicity matches.

The Department has received an interpretation of this law and Section 1808 of Public Law 104-188, the Small Business Job Protection Act of 1996, which contains interethnic adoption provisions, from the federal Office of Civil Rights. This interpretation emphasizes that in order to avoid misuse and a generalized racial or ethnic screen, agency assessments cannot routinely include consideration of the race or ethnicity of the prospective foster or adoptive parents.

The Department's previous policies indicated that these factors could be considered, along with other factors, in determining whether placement with a particular family was in a child's best interests. The federal interpretation holds that these factors may never be considered unless there are special circumstances dictating that consideration is warranted.

Failure to comply with the statutory requirement could result in the reduction of federal funds for the foster care and adoption assistance programs.

These amendments do not provide for waivers in specified situations because the federal statute does not allow for exceptions.

Consideration will be given to all written data, views, and arguments received by the Office of Policy Analysis, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, on or before August 16, 2000.

These amendments are intended to implement Iowa Code chapters 238 and 600 and Iowa Code section 234.6(6)“b.”

The following amendments are proposed.

ITEM 1. Amend subrule 108.7(5) as follows:

108.7(5) Consideration of racial and cultural identity. ~~Placing a child with a family of the same ethnic, racial, and~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~cultural background may be considered in conjunction with other factors relevant to the child's best interest. Race, color, or national origin may not be routinely considered in placement selections.~~

ITEM 2. Amend subrule 108.9(7) as follows:

~~108.9(7) Ethnic Racial and cultural background. Placing a child with a family of the same ethnic, racial, and cultural background may be considered in conjunction with other factors relevant to the child's best interest. Race, color, or national origin may not be routinely considered in placement selections.~~

ITEM 3. Adopt new paragraph 200.4(3)"b" as follows:

b. Race, color, or national origin may not be routinely considered in placement selections.

ITEM 4. Amend subrule 202.4(1) as follows:

~~202.4(1) Placement consistent with the best interests and special needs of the child shall be made in the least restrictive, most family-like facility available and in close proximity to the child's home. Race, color, or national origin may not be routinely considered in placement selections.~~

ARC 0002B

INSPECTIONS AND APPEALS
DEPARTMENT[481]

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 10A.104(5), the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 1, "Administration," Iowa Administrative Code.

The proposed amendments are intended to implement 2000 Iowa Acts, Senate File 2390, and relate to the duties and functions of the Department's Investigations, Inspections and Health Facilities Divisions. The Department of Inspections and Appeals (DIA) was created in 1986 as part of the State Government Reorganization when portions of 15 other state agencies were transferred to DIA. Shortly after DIA was created, the Department's first Director used the authority granted to him in Iowa Code section 10A.106 to reallocate all health care facility functions into a single division. These amendments will formally recognize the Department's structure along the same lines as the appropriations process. Duties formally assigned to the Inspections and Investigations Divisions will be reassigned to the already existing Health Facilities Division. In addition, pursuant to Iowa Code chapter 99B, licensing procedures related to social and charitable gambling are now defined within the Department's Inspections Division.

Interested persons may make written comments or suggestions on the proposed amendments on or before August 15, 2000. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to jkomos@dia.state.ia.us.

A waiver provision has not been included in the proposed amendments. A waiver provision is not applicable to Chapter 1, "Organization," because the chapter details the purpose, duties and organizational structure of the Department.

These amendments are intended to implement 2000 Iowa Acts, Senate File 2390.

The following amendments are proposed.

ITEM 1. Amend rule 481—1.4(10A) as follows:

481—1.4(10A) Investigations division. This division conducts investigations including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.

2. Investigations relative to proposed sales within the state of subdivided land situated outside of the state.

3. Investigations relative to applications for beer and liquor licenses.

~~4. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.~~

5. Investigations relative to the liquidation of overpayment debts owed to the department of human services.

6. Investigations relative to the operations of the department of elder affairs.

7. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food stamp program, and the aid to dependent children program.

8. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

ITEM 2. Amend rule 481—1.5(10A) as follows:

481—1.5(10A) Inspections division. This division conducts inspections including but not limited to the following:

~~1. Land situated outside of the state which is proposed for sale within the state. Licensing procedures related to social and charitable gambling pursuant to Iowa Code chapter 99B.~~

2. Food establishments, including groceries, restaurants, hotels, food and beverage vending machines, state educational or charitable institutions for licensing determination, and sanitation inspections in any locality of the state upon the written petition of five or more residents of a particular locality. Correctional and penal institutions are also inspected for sanitary conditions.

~~3. Licensing procedures relative to the hospice program, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.~~

~~4. Hospital and health care facility construction projects and licensing boards established within the department of public health, except the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.~~

~~5. Child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.~~

ITEM 3. Adopt the following new rule:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

481—1.12(10A) Health facilities division. This division conducts inspections and investigations including but not limited to the following:

1. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.
2. Inspections and other licensing procedures relative to the hospice program, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.
3. Inspections relative to hospital and health care facility construction projects.
4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.

ITEM 4. Amend **481—Chapter 1, implementation clause**, as follows:

These rules are intended to implement Iowa Code sections 10A.104, ~~10A.106~~, and 17A.3(1), paragraph "a," and Iowa Code Supplement section 10A.106 as amended by 2000 Iowa Acts, Senate File 2390, section 2.

ARC 9999A**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 Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, "Licensure of Nursing Home Administrators," and to rescind Chapter 143, "Continuing Education," Iowa Administrative Code, and adopt a new Chapter 143 with the same title.

The proposed amendments rescind the current chapter on continuing education, adopt a new chapter on the same subject and renumber the rules regarding grounds for discipline.

Any interested person may make written comments on the proposed amendments no later than August 15, 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 letters to the public for comment and seven 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 15, 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. Rescind rule **645—141.10(155)** and renumber rule **645—141.12(147,155,272C)** as **645—141.10(147,155,272C)**.

ITEM 2. Rescind **645—Chapter 143** and adopt the following new chapter in lieu thereof:

CHAPTER 143**CONTINUING EDUCATION FOR
NURSING HOME ADMINISTRATION**

645—143.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

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

"Administrator" means the administrator of the board of examiners for nursing home administrators.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person may be deemed automatically approved.

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

"Board" means the board of examiners for nursing home administrators.

"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 for renewal within a stated time.

"License" means license to practice.

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

"National Continuing Education Review Service (NCERS)" means the continuing education review service operated by the National Association of Boards of Examiners for Nursing Home Administrators, #200, 808 17th Street NW, Washington, DC 20006.

645—143.2(272C) Continuing education requirements.

143.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on January 1 of each even-numbered year and ending on December 31 of the next odd-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state shall

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

be required to complete a minimum of 40 hours of continuing education approved by the board.

143.2(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.

143.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

143.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

143.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—143.3(272C) Standards for approval.

143.3(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(s), location, course title, presenter(s);
- (2) Number of program contact hours. (One contact hour usually equals one hour of continuing education credit.); and
- (3) Official signature or verification by program sponsor.

143.3(2) Specific criteria. Licensees may obtain continuing education hours of credit by:

a. Participating in the continuing education programs approved by the National Continuing Education Review Service (NCERS).

b. Academic coursework that meets the criteria set forth in these rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

c. Attendance at or participation in a program or course which is offered or sponsored by an approved continuing education sponsor.

d. Making presentations; conducting research; producing publications; preparing new courses; participating in home study courses; attending electronically transmitted courses; and attending workshops, conferences, or symposiums approved by the board.

e. Self-study coursework that meets the criteria set forth in these rules. Continuing education credit equivalent for self-study is as follows:

180 minutes of self-study work = 1 continuing education hour

The maximum number of hours for self-study, including television viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means which is not directly sponsored by and supervised by an accredited postsecondary college or university or an approved provider, is 8 hours.

645—143.4(272C) Approval of sponsors, programs, and activities for continuing education.

143.4(1) Approval of sponsors. An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include the following:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction to be presented;

(3) Names and qualifications of instructors including résumés or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance to the licensee providing the following information:

(1) Program date(s);

(2) Course title and presenter;

(3) Location;

(4) Number of clock hours attended and continuing education hours earned;

(5) Name of sponsor and sponsor number (if applicable);

(6) Licensee's name; and

(7) Method of presentation.

d. All approved sponsors shall maintain a copy of the following:

(1) The continuing education activity;

(2) List of enrolled licensee's names and license numbers; and

(3) Number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall also include a summary of the evaluations completed by the licensees.

143.4(2) Prior approval of programs/activities. An organization or person other than an approved sponsor that desires prior approval of a course, program or other educational activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

a. The date(s);

b. Course(s) offered;

c. Course outline;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- d. Total hours of instruction; and
- e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

143.4(3) Review of programs. Continuing education programs/activities shall be reported every year at the designated time as assigned by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

143.4(4) Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

- a. The date(s);
- b. Course(s) offered;
- c. Course outline;
- d. Total hours of instruction and credit hours requested;
- e. Names and qualifications of speakers and other pertinent information;
- f. Request for credit which includes a brief summary of the activity; and
- g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

143.4(5) Voluntary relinquishment. The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—143.5(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.

143.5(1) The information on the form shall include:

- a. Title of continuing education activity;
- b. Date(s);
- c. Sponsor of the activity;
- d. Board-approved sponsor number;
- e. Number of continuing education hours earned; and
- f. Teaching method used.

143.5(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

- a. The board will select licensees to be audited.
- b. The licensee shall make available to the board for auditing purposes a 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 the responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—143.6(272C) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse 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 to the board;
2. Pays all of the renewal fees then due;
3. Pays all penalty fees which have been assessed by the board for failure to renew;
4. Pays 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 hours required for license reinstatement is 40.

6. In addition to fees and penalties, any administrator who fails to renew a license within 90 days following the expiration of a current license may be required to meet with the board and, if through the interview process the board finds reasonable doubt that the licensee displays knowledge of the domains of practice, as listed on the national examination, the board may require the administrator to successfully complete any or all of the minimum qualifications for licensure as listed in the rules before the license shall be renewed.

645—143.7(272C) Continuing education waiver for active practitioners. A nursing home administrator licensed to practice nursing home administration 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 nursing home administrator.

645—143.8(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—143.9(272C) Continuing education waiver for disability or illness. The board may, in individual cases involv-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ing 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 is 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—143.10(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in the practice of nursing home administration in the state of Iowa, satisfy the following requirements for reinstatement.

143.10(1) Submit written application for reinstatement to the board upon forms provided by the board;

143.10(2) Submit payment of the current renewal fee;

143.10(3) Submit payment of the reinstatement fee; and

143.10(4) 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 40 hours of approved continuing education.

645—143.11(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 155.

ARC 9998A**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 Physical and Occupational Therapy Examiners

hereby gives Notice of Intended Action to amend Chapter 200, "Physical Therapy Examiners," and Chapter 202, "Physical Therapist Assistants," and adopt new Chapter 203, "Continuing Education for Physical Therapists and Physical Therapist Assistants," Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rules regarding grounds for discipline and supervision requirements; and amend cross references to rules.

Any interested person may make written comments on the proposed amendments no later than August 15, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division sent letters to the public for comment, and eleven 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 15, 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 subparagraph **200.3(1)"b"(1)** as follows:

(1) An English translation and an equivalency evaluation of their educational credentials by one of the following: Foreign Credentialing Commission on Physical Therapy, Inc., P.O. Box 25827, Alexandria, VA 22313-9998, telephone (703)684-8406; International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 66940, Los Angeles, CA 90066, telephone (310)390-6276; International Consultants of Delaware, Inc., 109 Barksdale, Professional Center, Newark, DE 19711, telephone (302) 737-8715; International Credentialing Associates, Inc., One Progress Plaza, Suite 810, St. Petersburg, FL 33701, telephone (813)821-8852; 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone (727) 549-8555. The professional curriculum must be equivalent to the Commission of Accreditation in Physical Therapy Education standards and shall consist of a minimum of 60 hours of general education and 60 hours of professional education. An applicant shall bear the expense of the curriculum evaluation.

ITEM 2. Amend subrule 200.5(2) as follows:

200.5(2) Beginning July 1, 1999, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 200.9(147). Individuals who were issued their initial licenses within six months of their birth month will not be required to renew their licenses until the fifteenth day of their birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license is originally issued. Individuals will be required to report 40 hours

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

ITEM 3. Amend subrule 200.9(1) as follows:

200.9(1) The application fee for a license to practice physical therapy issued upon the basis of examination or endorsement is \$100 in check or money order made payable to the Board of Physical and Occupational Therapy Examiners. There is an additional fee for the examination. The fee for the examination is listed on the application form ~~and should be included in the check with the application fee.~~

ITEM 4. Rescind subrule 200.9(2) and adopt **new** subrule 200.9(2) as follows:

200.9(2) The renewal fee for a license to practice physical therapy for a biennial period is \$55.

ITEM 5. Rescind rule **645—200.10(272C)** and renumber rule **645—200.23(272C)** as **645—200.10(272C)**.

ITEM 6. Amend renumbered rule **645—200.10(272C)**, introductory paragraph, as follows:

645—200.10(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in ~~rule 645—13.3(272C), these rules,~~ including civil penalties in an amount not to exceed \$1,000, when the board determines that the licensee is guilty of any of the following acts or offenses.

ITEM 7. Amend renumbered subparagraph **200.10(7) “c”(7)** as follows:

(7) Appropriately supervising individuals as described in rule ~~200.24(272C) 200.11(272C)~~.

ITEM 8. Amend renumbered subrule 200.10(8) as follows:

200.10(8) Failure to adequately supervise personnel in accordance with the standards for supervision set forth in rule ~~200.24(272C) 200.11(272C)~~.

ITEM 9. Amend renumbered subrule 200.10(15) as follows:

200.10(15) Failure to report to the board as provided in Iowa Code section 272C.9 any violation by a physical therapist assistant of the reasons for disciplinary action as listed in ~~rule 645—202.20(272C) Chapter 13.~~

ITEM 10. Rescind rule **645—200.11(272C)** and renumber rule **645—200.24(272C)** as **645—200.11(272C)**.

ITEM 11. Amend renumbered subrule 200.11(1) as follows:

200.11(1) Licensed physical therapist assistants may assist in providing physical therapy services under immediate telecommunicative supervision as long as the physical therapy services are rendered in accordance with the minimal frequency standards set forth in subrule ~~200.24(4) 200.11(4)~~.

ITEM 12. Amend renumbered subrule 200.11(2) as follows:

200.11(2) Licensed physical therapist assistants may assist in providing physical therapy services as long as supervision and the physical therapy services are rendered in accordance with the minimal frequency standards set forth in subrule ~~200.24(4) 200.11(4)~~.

ITEM 13. Rescind and reserve rules **645—200.12(272C)** to **645—200.15(272C)**.

ITEM 14. Amend subrule 202.6(2) as follows:

202.6(2) Beginning July 1, 1999, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office, 30 days

before licensure expiration, the application and continuing education report form with the renewal fee as specified in ~~200.10(147) 200.7(147)~~. Individuals who were issued their initial licenses within six months of their birth month will not be required to renew their licenses until the fifteenth day of their birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license is originally issued. Individuals will be required to report 20 hours of continuing education for ~~the first renewal and every renewal thereafter.~~

ITEM 15. Rescind rule **645—202.7(147)** and renumber rule **645—202.10(147)** as **645—202.7(147)**.

ITEM 16. Amend renumbered subrule 202.7(1) as follows:

202.7(1) The application fee for a license to practice as a physical therapist assistant issued upon the basis of examination or endorsement is \$90 in check or money order made payable to the Board of Physical and Occupational Therapy Examiners. There is an additional fee for the examination. The fee for the examination is listed on the application form ~~and should be included in the check with the application fee.~~

ITEM 17. Rescind renumbered subrule 202.7(2) and adopt **new** subrule 202.7(2) as follows:

202.7(2) The renewal fee for a license to practice physical therapy for a biennial period is \$45.

ITEM 18. Rescind rule **645—202.8(147)** and renumber rule **645—202.23(272C)** as **645—202.8(272C)**.

ITEM 19. Amend renumbered rule **645—202.8(272C)**, introductory paragraph, as follows:

645—202.8(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in ~~rule 645—13.1(272C), these rules,~~ including civil penalties in an amount not to exceed \$1,000, when the board determines that the licensee is guilty of any of the following acts or offenses.

ITEM 20. Amend renumbered paragraph **202.8(7)“h”** as follows:

h. The physical therapist assistant shall work only when supervised by a physical therapist and in accordance with rule ~~645—200.24(272C) 200.11(272C)~~. If the available supervision does not meet the standards as set forth in rule ~~645—200.24(272C) 200.11(272C)~~, the physical therapist assistant shall refuse to administer treatment.

ITEM 21. Rescind and reserve rules **645—202.9(147)** and **645—202.11(272C)** to **645—202.13(272C)**.

ITEM 22. Adopt **new** 645—Chapter 203 as follows:

CHAPTER 203

CONTINUING EDUCATION FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

645—203.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

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

“Administrator” means the administrator of the board of physical and occupational therapy examiners.

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

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"Board" means the board of physical and occupational therapy 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 approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as a physical therapist or physical therapist assistant in the state of Iowa.

645—203.2(148A) Continuing education requirements.

203.2(1) The biennial continuing education compliance period shall extend for a two-year period that begins on the fifteenth day of the birth month and ends two years later on the fifteenth day of the birth month.

a. Requirements for physical therapist licensees. Each biennium, each person who is licensed to practice as a physical therapist in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board.

b. Requirements for physical therapist assistant licensees. Each biennium, each person who is licensed to practice as a physical therapist assistant in this state shall be required to complete a minimum of 20 hours of continuing education approved by the board.

203.2(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 physical therapists and a minimum of 20 hours for physical therapist assistants each subsequent license renewal.

203.2(3) Reinstated licensees and licensees through interstate endorsement shall obtain 40 hours of continuing education credit for physical therapists and 20 hours for physical therapist assistants for renewal of the license if the license is obtained in the first year of the continuing education biennium. Reinstated licensees and licensees through interstate endorsement shall obtain 20 hours for physical therapists and 10 hours for physical therapist assistants if the license is obtained in the second year of the continuing education biennium. Reinstated licensees and licensees through interstate endorsement may use continuing education earned prior to licensure in Iowa, but within the same continuing education biennium in which they obtained Iowa licensure, to fulfill this requirement.

203.2(4) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must meet the requirements herein pursuant to statutory provisions and the rules that implement them.

203.2(5) No hours of continuing education shall be carried over into the next biennium.

203.2(6) It is the responsibility of each licensee to finance the cost of continuing education.

645—203.3(148A) Standards for approval.

203.3(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, and is 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 usually equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

203.3(2) Specific criteria. Licensees may obtain continuing education hours of credit by:

a. Presenting professional programs which meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

b. Providing official transcripts indicating successful completion of academic courses which apply to the field of physical therapy will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

c. Attending workshops, conferences, symposiums or electronically transmitted, live interactive conferences which relate directly to the professional competency of the licensee.

d. Authoring research or other activities the results of which are published in a recognized professional publication. The licensee shall receive five hours of credit per page.

e. Viewing videotaped presentations if the following criteria are met:

(1) There is a sponsoring group or agency;

(2) There is a facilitator or program official present;

(3) The program official may not be the only attendee; and

(4) The program meets all the criteria specified in this rule.

f. Participating in home study courses that have a certificate of completion.

g. Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

h. Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

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i. Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

j. Having the following maximums per biennium:

(1) Twenty hours of credit for physical therapists and ten hours for physical therapist assistants for presenting professional programs.

(2) Twenty hours of credit for physical therapists and ten hours for physical therapist assistants for authoring research.

(3) Twenty hours of credit for physical therapists and ten hours for physical therapist assistants for viewing videotaped presentations and electronically transmitted material that have a postcourse test.

(4) Twenty hours of credit for physical therapists and ten hours for physical therapist assistants for business-related topics, personal skills topics and general health topics.

(5) Twenty hours of credit for physical therapists and ten hours for physical therapist assistants for home-study courses.

k. Completing per biennium continuing education of a clinical nature at a minimum of twenty hours for physical therapists and ten hours for physical therapist assistants.

645—203.4(148A) 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.

203.4(1) The information on the form shall include:

- a. Title of continuing education activity;
- b. Date(s);
- c. Sponsor of the activity;
- d. Board-approved sponsor number (if applicable); and
- e. Number of continuing education hours earned.

203.4(2) Audit of continuing education report. After each educational biennium, the board shall audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information:

(1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s) and applicable credentials), and method of presentation; and

(2) Number of contact hours for program attended.

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 an audit of the continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—203.5(148A) 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 a 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 li-

cense to lapse may apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

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

2. Pays all of the renewal fees then due;

3. Pays all 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 Iowa continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 40 for physical therapist licensees and 20 for physical therapist assistant licensees by the number of bienniums since the license lapsed. Physical therapist licensees shall have a maximum of 120 continuing education hours, and physical therapist assistants shall have a maximum of 60 continuing education hours.

6. The applicant shall provide an official statement from each country, territory and state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statement from all entities in which the applicant has been licensed since the Iowa license lapsed.

645—203.6(148A,272C) Continuing education waiver for active practitioners. A physical therapist or physical therapist assistant licensed to practice physical therapy 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 physical therapist or physical therapist assistant.

645—203.7(148A,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—203.8(148A,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 is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the 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—203.9(148A,272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a

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waiver of compliance with these rules and have obtained a certificate of exemption shall, prior to engaging in the practice of physical therapy in the state of Iowa, satisfy the following requirements for reinstatement:

203.9(1) Submit written application for reinstatement to the board upon forms provided by the board with the current renewal fee and appropriate reinstatement fee; and

203.9(2) 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 for physical therapist licensees or 20 for physical therapist assistant licensees by the number of bienniums a certificate of exemption has been in effect for such applicant for a maximum of 120 hours for physical therapy licensees and a maximum of 60 hours for physical therapist assistant licensees.

c. Successful completion of the professional examination required for initial licensure within one year immediately prior to the submission of such application for reinstatement.

d. An official statement from each country, territory and state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statement from all entities in which the applicant has been licensed since putting the Iowa license on inactive status.

645—203.10(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 148A.

ARC 0001B**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 Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 201, "Occupational Therapy Examiners," and adopt new Chapter 207, "Continuing Education for Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules; add a new chapter for continuing education; renumber grounds for discipline, license fees, and supervision requirements; and amend references to rules that are no longer in use.

Any interested person may make written comments on the proposed amendments no later than August 15, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division sent letters to the public for comment and nine 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 15, 2000, from 1 to 3 p.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 rules are intended to implement Iowa Code section 147.76 and chapter 272C.

The following amendments are proposed.

ITEM 1. Amend rule **645—201.1(148B)** by rescinding the definition of "AOTCB."

ITEM 2. Amend rule **645—201.1(148B)**, definition of "examination," as follows:

"Examination" means the ~~AOTCB~~ *NBCOT* examination for occupational therapists and for occupational therapy assistants.

ITEM 3. Amend rule **645—201.1(148B)** by adopting the following new definition:

"NBCOT" means the National Board for Certification in Occupational Therapy.

ITEM 4. Amend subrules **201.4(1)** and **201.4(2)** as follows:

201.4(1) The applicant for licensure as an occupational therapist shall have received a passing score on the *NBCOT* certification examination for occupational therapists ~~of the AOTCB as determined by that board~~. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

201.4(2) The applicant for a license as an occupational therapy assistant shall have received a passing score on the *NBCOT* certification examination for occupational therapy assistants ~~of the AOTCB as determined by that board~~. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the board of physical and occupational therapy examiners.

ITEM 5. Amend paragraph **201.5(1)"d"** as follows:

d. A notarized copy of the certification examination results or official letter from ~~AOTCB~~ *NBCOT* confirming a passing score.

ITEM 6. Amend subrule 201.7(2) as follows:

201.7(2) Beginning July 1, 1999, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule ~~201.12(147)~~ *201.8(147)*. Individuals who were issued

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their initial licenses within six months of their birth month will not be required to renew their licenses until the fifteenth day of their birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license is originally issued. Occupational therapists will be required to report 30 hours and occupational therapy assistants 15 hours of continuing education for the first renewal and every renewal thereafter.

ITEM 7. Rescind rule **645—201.8(147)** and renumber **645—201.12(147)** as **645—201.8(147)**.

ITEM 8. Rescind renumbered subrule 201.8(3) and adopt the following **new** subrule in lieu thereof:

201.8(3) The renewal fee for a license to practice as an occupational therapist for a biennial period is \$55. The renewal fee for a license to practice as an occupational therapy assistant for a biennial period is \$45.

ITEM 9. Rescind rule **645—201.9(272C)** and renumber **645—201.13(272C)** as **645—201.9(272C)**.

ITEM 10. Rescind and reserve renumbered subrules **201.9(3)** and **201.9(4)**.

ITEM 11. Amend renumbered subrule 201.9(6), introductory paragraph, as follows:

201.9(6) The applicant for permanent license who is already certified and working in the scope of occupational therapy prior to licensure shall receive the same supervision as set out in 201.13 9(1)“b” and 201.13 9(2) for occupational therapy assistants and 201.13 9(1)“b” and 201.13 9(3) for occupational therapists.

ITEM 12. Amend renumbered subrule 201.9(8) as follows:

201.9(8) When supervising unlicensed personnel not covered under 201.13 9(1), 201.13 9(2), 201.13 9(3) and 201.13 9(6), the following conditions shall be met:

a. to c. No change.

ITEM 13. Rescind rule **645—201.10(272C)** and renumber rule **645—201.24(272C)** as **645—201.10(272C)**.

ITEM 14. Amend renumbered subrule 201.10(8) as follows:

201.10(8) Failure to adequately supervise personnel in accordance with the standards for supervision set forth in rule 201.13 9(272C).

ITEM 15. Rescind and reserve rules **645—201.11(147)** and **645—201.14(272C)** to **645—201.17(272C)**.

ITEM 16. Adopt **new 645—Chapter 207** as follows:

CHAPTER 207

CONTINUING EDUCATION FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

645—207.1(148B) Definitions. For the purpose of these rules, the following definitions shall apply:

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

“Administrator” means the administrator of the board of physical and occupational therapy examiners.

“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 physical and occupational therapy 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 engaged in practice in the state of Iowa.

“Lapsed license” means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

“License” means license to practice.

“Licensee” means any person licensed to practice as an occupational therapist or occupational therapy assistant in the state of Iowa.

645—207.2(272C) Continuing education requirements.

207.2(1) The biennial continuing education compliance period shall extend for a two-year period that begins on the fifteenth day of the licensee’s birth month and ends two years later on the fifteenth day of the birth month.

a. Requirements for occupational therapist licensees. Each biennium, each person who is licensed to practice as an occupational therapist in this state shall be required to complete a minimum of 30 hours of continuing education approved by the board.

b. Requirements for occupational therapy assistant licensees. Each biennium, each person who is licensed to practice as an occupational therapy assistant in this state shall be required to complete a minimum of 15 hours of continuing education approved by the board.

207.2(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 30 hours of continuing education per biennium for occupational therapists and 15 hours for occupational therapy assistants each subsequent license renewal.

207.2(3) Reinstated licensees and licensees through interstate endorsement shall obtain 30 hours of continuing education credit for occupational therapists and 15 for occupational therapy assistants for renewal of license if the license is obtained in the first year of the continuing education biennium. Reinstated licensees and licensees through interstate endorsement shall obtain 15 hours for occupational therapists and 8 hours for occupational therapy assistants if the license is obtained in the second year of the continuing education biennium. Reinstated licensees and licensees through interstate endorsement may use continuing education earned prior to licensure in Iowa, but within the same continuing education biennium in which they obtained Iowa licensure, to fulfill this requirement.

207.2(4) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must meet the requirements herein pursuant to statutory provisions and the rules that implement them.

207.2(5) No hours of continuing education shall be carried over into the next biennium.

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207.2(6) It is the responsibility of each licensee to finance the cost of continuing education.

645—207.3(272C) Standards for approval.

207.3(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, and is 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 usually equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

207.3(2) Specific criteria.

a. Licensees may obtain continuing education hours of credit by:

(1) Presenting professional programs which meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for an audit;

(2) Providing official transcripts indicating successful completion of academic courses which apply to the field of occupational therapy. Credit hour equivalents are:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

(3) Authoring research or other activities the results of which are published in a recognized professional publication. The licensee shall receive five hours of credit per page;

(4) Viewing videotaped presentations if the following criteria are met:

1. There is a sponsoring group or agency;

2. There is a facilitator or program official present;

3. The program official may not be the only attendee; and

4. The program meets all the criteria specified in this rule;

(5) Participating in home study courses that have a certificate of completion;

(6) Attending courses/activities that have business-related topics: marketing, time management, government relations, and other like topics;

(7) Attending courses/activities that have personal skills topics: career burnout, communication skills, human relations, and other like topics;

(8) Attending courses/activities that have general health topics: clinical research, CPR, child abuse reporting, and other like topics;

(9) Attending workshops, conferences and symposiums which relate directly to the professional competency of the licensee.

b. The maximum number of hours in each category in each biennium is as follows:

(1) Fifteen hours of credit for occupational therapists and eight hours of credit for occupational therapy assistants for presenting professional programs.

(2) Fifteen hours of credit for occupational therapists and eight hours of credit for occupational therapy assistants for participating in research.

(3) Fifteen hours of credit for occupational therapists and eight hours of credit for occupational therapy assistants for viewing videotaped presentations and electronically transmitted material that have a postcourse test.

(4) Fifteen hours of credit for occupational therapists and eight hours of credit for occupational therapy assistants for business-related topics, personal skills topics and general health topics.

(5) Fifteen hours of credit for occupational therapists and eight hours of credit for occupational therapy assistants for home-study courses.

c. Each biennium, a minimum of 15 hours of continuing education for occupational therapists and a minimum of 8 hours for occupational therapy assistants shall be of a clinical nature.

645—207.4(272C) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report of continuing education to the board on a board-approved form.

207.4(1) The information on the form shall include:

a. Title of continuing education activities;

b. Date(s);

c. Sponsor of the activities;

d. Board-approved sponsor number (if applicable);

e. Number of continuing education hours earned; and

f. Teaching method used.

207.4(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 copy of the certificate of attendance or verification for all reported activities that includes the following information:

(1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s) and their credentials), and method of presentation; and

(2) Number of contact hours for program attended.

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 an audit of the continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal fee by the end of the compliance period.

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645—207.5(147) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows a license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse may apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all of the renewal fees then due;
3. Pays all penalty fees which have been assessed by the board for failure to renew;
4. Pays the reinstatement fee; and
5. Provides an official statement from each country, territory and state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statement from all entities in which the applicant has been licensed since the Iowa license lapsed; or

6. Provides evidence of satisfactory completion of Iowa continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 30 for the occupational therapist licensees and 15 for occupational therapy assistant licensees by the number of bienniums since the license lapsed. Occupational therapist licensees shall have a maximum of 90 hours of continuing education and occupational therapy assistant licensees shall have a maximum of 45 hours of continuing education.

645—207.6(272C) Continuing education waiver for active practitioners. An occupational therapist or occupational therapy assistant licensed to practice occupational therapy or occupational therapy assistance 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 occupational therapist or occupational therapy assistant.

645—207.7(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—207.8(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 is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the 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—207.9(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in the practice of occupational therapy in the state of Iowa, satisfy the following requirements for reinstatement.

207.9(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 renewal fees then due;
- c. Pays the reinstatement fee; and
- d. Provides an official statement from each country, territory and state board of examiners regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicant shall request such statement from all entities in which the applicant has been licensed since putting the Iowa license on inactive status.

207.9(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 30 for occupational therapist licensees or 15 for occupational therapy assistant licensees by the number of bienniums a certificate of exemption has been in effect for such applicant. The occupational therapy licensees shall have a maximum of 90 hours of continuing education and occupational therapy assistants shall have a maximum of 45 hours of continuing education; or
- c. Successful completion of the appropriate professional examination, successfully completed within one year immediately prior to the submission of such application for reinstatement.

645—207.10(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 148B.

ARC 0004B**PUBLIC BROADCASTING
DIVISION[288]****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 256.84(9), the Public Broadcasting Board proposes to adopt Chapter 14, “Criteria for Grants,” Iowa Administrative Code.

The proposed new chapter will set criteria used for awarding grants or contracts.

Interested persons may submit comments orally or in writing to Molly Phillips, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131, telephone (515) 242-3120, on or before August 15, 2000.

The Public Broadcasting Board adopted this chapter on July 5, 2000.

These rules are intended to implement Iowa Code sections 256.80 to 256.90.

The following new chapter is proposed.

**CHAPTER 14
CRITERIA FOR GRANTS**

288—14.1(256) Purpose. The division provides grant funding and contracts to a variety of entities throughout the state for support of educational telecommunications programs. To ensure objective evaluation of applicants for these funds, grant and contract application materials shall contain, at minimum, specific content. Program grant and contract application packets shall be developed by the division in accordance with these rules unless prohibited by or in conflict with appropriation language, the Iowa Code, the Iowa Administrative Code, federal regulations, or interagency agreements between the division and other state agencies.

288—14.2(256) Definitions. For the purpose of these rules, the following definitions shall apply:

“Division” means Iowa Public Television.

“Program grant or contract” means the collective activities of a grant or contract funded through the division.

“Program period” means the period of time during which the division intends to support the program without requiring the recompetition for funds. The program period is specified within the grant application.

“Service delivery area” means the defined geographic area for delivery of program services.

288—14.3(256) Requirements. The following shall be included in all program grant and contract application materials made available by the division:

1. Funding source.
2. Program period.
3. Description of eligible applicants.
4. Services to be delivered.
5. Service delivery area.
6. Target population to be served (if applicable).
7. Funding purpose.
8. Funding restrictions.
9. Funding formula (if any).

10. Matching requirement (if any).
11. Reporting requirements.
12. Performance criteria (if any).
13. Need for letters of support or other materials (if applicable).
14. Application due date.
15. Anticipated date of awarding grant/contract.
16. Required components of submitted grant applications.
17. An explanation of the review process and the review criteria to be used by application evaluators, including, if applicable, the number of points allocated per required component.
18. Appeal process in the event an application is denied (only with competitive grant/contract process).

288—14.4(256) Review process (for competitive grants and contracts). The review process to be followed in determining the amount of funds to be approved for any competitive program grant or contract shall be described in the application. The review criteria and point allocation for each criterion shall also be described in the grant application material.

288—14.5(256) Appeal of grant or contract denial or termination. Any applicant may appeal to the administrator the denial of a properly submitted competitive program grant or contract application or the unilateral termination of a competitive program grant or contract. Appeals must be in writing and received within ten working days of the date of the notice of decision and must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The contested case procedures found in 288—Chapter 13 that govern the administrator’s decision shall be applicable to any appeal of denial or termination.

In the notice of appeal, the applicant shall give a short and plain statement of the reasons for the appeal.

The administrator shall issue a decision within a reasonable time, not to exceed 60 days from the date of the appeal.

These rules are intended to implement Iowa Code sections 256.80 to 256.90.

ARC 9990A**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.

Provisions were included in legislation passed by the General Assembly during its 2000 regular session for changes in and additions to fees collected by the Fire Marshal Division. 2000 Iowa Acts, House File 2552, section 20,

PUBLIC SAFETY DEPARTMENT[661](cont'd)

amended Iowa Code section 100.1 to require the adoption of rules designating a fee to be assessed to each building, structure, or facility for which a fire inspection is required as a condition of licensure. 2000 Iowa Acts, Senate File 2430, section 23, amended Iowa Code section 101.22 to provide for renewal of registrations of aboveground petroleum storage tanks. Registration of these tanks has been required since 1989, and a one-time registration fee of \$10 per tank has been collected and deposited in the general fund as the tanks were registered. The additional language provides for an annual fee of \$10 per tank for renewal of the registration. These amendments provide for the required fire inspection fees and for annual renewal of aboveground petroleum storage tank registrations and the accompanying fees.

A public hearing on these proposed amendments will be held on September 8, 2000, at 9:45 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 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 the Bureau office at least one day prior to the public hearing.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9989A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 100.1 as amended by 2000 Iowa Acts, House File 2552, and section 101.22 as amended by 2000 Iowa Acts, Senate File 2430.

ARC 9986A**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 692A.10, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

The Sex Offender Registry was established by the adoption of Iowa Code chapter 692A by the Iowa General Assembly in 1995. The Registry is intended to facilitate the tracking of sex offenders by criminal and juvenile justice agencies in order to accomplish two related purposes: (1) enhance the capability of criminal and juvenile justice agencies to obtain

information about convicted sex offenders useful in investigation of offenses, apprehension of suspects, and prosecution of crimes, especially sex offenses, and (2) enable members of the public to obtain information about convicted sex offenders that may assist them in protecting themselves.

Iowa Code chapter 692A was amended this year by 2000 Iowa Acts, Senate File 2031, in which the time limit for registrants to report changes of address, telephone number, or name was reduced from ten days to five days. These proposed amendments incorporate this change. In addition, completion of risk assessments by juvenile court officers, which was previously inadvertently omitted from the rules, is added, and two elements of the rules are removed. One of the deleted elements is a requirement that registrants receive a completed copy of the risk assessment form when they receive notice of possible affirmative public notification. This information will be provided to the registrant if an appeal of affirmative public notification is filed. These amendments also remove the requirement that the forms displaying registrants for purposes of affirmative public notification contain the signature of the chief executive of the agency undertaking affirmative public notification.

A public hearing on these proposed amendments will be held on September 8, 2000, at 11 a.m. in the Third Floor Conference Room, 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 amendments were also Adopted and Filed Emergency and are published herein as **ARC 9988A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 692A as amended by 2000 Iowa Acts, Senate File 2031.

ARC 9987A**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 103A.7, the Building Code Commissioner hereby gives Notice of In-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

tended Action to amend Chapter 16, "State of Iowa Building Code," Iowa Administrative Code, with the approval of the Building Code Advisory Council.

The Building Code Commissioner has received a petition for rule making requesting an amendment to 661—Chapter 16. The petition requests that subrule 16.705(3), paragraph "a," be amended to remove any requirement for elevators in newly constructed three-story apartment buildings.

This Notice is being published in order to provide an opportunity for public participation and comment. After public comment has been obtained, the Building Code Commissioner will determine whether or not to proceed with proposing to the Building Code Advisory Council the addition of the language contained in the proposed amendment.

A public hearing regarding this amendment will be held on September 8, 2000, at 1:30 p.m. in the Third Floor Conference Room, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa. Persons may present their views concerning this amendment at the public hearing orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Building Code Bureau, Fire Marshal Division, Department of Public Safety, 621 East 2nd Street, Des Moines, Iowa 50309; or by telephone at (515) 281-5132 at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning this proposed amendment to the Building Code Bureau by mail, telephone, or in person at the above address at least one day prior to the public hearing. Comments may also be submitted by electronic mail via the Internet to admrule@dps.state.ia.us at least one day prior to the public hearing.

This amendment is intended to implement Iowa Code section 103A.7.

The following amendment is proposed.

Amend subrule **16.705(3)**, paragraph "a," by adopting the following **new** exception:

EXCEPTION 4: Elevators are not required in apartment buildings of less than four stories.

ARC 0003B**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, 422.68, 422B.9, and 422E.3, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 107, "Local Option Sales and Service Tax," and Chapter 108, "Local Option School Infrastructure Sales and Service Tax," Iowa Administrative Code.

Items 1 and 2 amend 701—Chapters 107 and 108 by adopting new rule 701—107.16(422B) and amending 701—108.4(422E) to reference 701—107.16(422E) as being applicable to 701—Chapter 108. Both of these amendments provide that the Director may charge a fee to local option tax

jurisdictions to recover direct costs incurred by the Department related to the collection and distribution of such taxes.

The proposed amendments impact state mandates regarding agency administrative rules set forth in Iowa Code section 25B.6. In compliance with this statutory provision, attached is the fiscal impact statement outlining the costs of these proposed amendments.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code 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 28, 2000, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 25, 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.

There will be a public hearing August 15, 2000, from 1:30 to 3 p.m. in the conference room on the fourth floor of the Hoover State Office Building. Persons may present their views at this hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Policy Section at least one day prior to the date of the public hearing.

These amendments are intended to implement 2000 Iowa Acts, House File 2545, section 28.

Iowa Code section 25B.6 requires a fiscal impact statement outlining the cost of an administrative rule which necessitates additional combined expenditures exceeding \$100,000 by all affected political subdivisions. Because this noticed rule will reduce the distribution of local option sales taxes to political subdivisions of the state exceeding \$100,000, a fiscal impact statement has been prepared.

Cost Recovery Estimates - SILO

Code	Jurisdiction	Dist%	Cost
BLACK HAWK COUNTY			
7-1044	Cedar Falls	24.57%	3,254.85
7-1719	Denver	0.70%	92.73
7-1791	Dike—New Hartford	0.08%	10.39
7-1908	Dunkerton	3.03%	400.90
7-2502	Gladbrook—Reinbeck	0.24%	31.90
7-3042	Hudson	4.56%	603.88
7-3105	Independence	0.00%	0.00
7-3186	Janesville	0.88%	116.47
7-3204	Jesup	0.76%	100.15
7-6536	Union	3.80%	503.72

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

7-6660	Vinton—Shellsburg	0.00%	0.00
7-6762	Wapsie Valley	0.13%	17.80
7-6795	Waterloo	61.20%	8,106.26
7-6840	Waverly—Shell Rock	0.05%	5.93
7-25	Total Black Hawk Co.	100.00%	13,244.98

DES MOINES COUNTY

29-0882	Burlington	72.57%	4,448.33
29-1602	Danville	6.58%	403.26
29-2322	Fort Madison	0.24%	14.40
29-4203	Mediapolis	13.52%	828.55
29-4509	Morning Sun	0.19%	11.86
29-4689	New London	0.21%	12.71
29-6759	Wapello	0.03%	1.69
29-6937	West Burlington	6.63%	406.65
29-7047	Winfield—Mt. Union	0.04%	2.54
29-25	Total Des Moines Co.	100.00%	6,129.99

EMMET COUNTY

32-0333	Armstrong—Ringsted	19.76%	357.02
32-2124	Estherville Lincoln Central	76.93%	1,390.03
32-2556	Graettinger	2.30%	41.47
32-6345	Terril	1.02%	18.48
32-25	Total Emmet Co.	100.00%	1,807.00

FREMONT COUNTY

36-2205	Farragut	21.96%	0.00
36-2369	Fremont—Mills	27.11%	0.00
36-2772	Hamburg	20.14%	0.00
36-5976	Shenandoah	3.59%	0.00
36-6003	Sidney	27.21%	0.00
36-25	Total Fremont Co.	100.00%	0.00

LEE COUNTY

56-1079	Central Lee	17.68%	1,087.01
56-2322	Fort Madison	42.84%	2,633.49
56-2834	Harmony	0.90%	55.46
56-3312	Keokuk	38.39%	2,360.36
56-4536	Mt. Pleasant	0.19%	11.68
56-25	Total Lee Co.	100.00%	6,148.00

MONONA COUNTY

67-1917	Boyer Valley	0.61%	16.52
67-1134	Charter Oak—Ute	6.46%	175.76
67-1969	East Monona	10.66%	290.24
67-4033	Maple Valley	25.10%	683.53
67-6969	West Harrison	0.00%	0.00
67-6987	West Monona	40.09%	1,091.54
67-6992	Westwood	3.15%	85.63
67-7002	Whiting	13.84%	376.77
67-7092	Woodbine	0.11%	3.00
67-25	Total Monona Co.	100.00%	2,722.99

MONTGOMERY COUNTY

69-2113	Essex	0.10%	1.94
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69-2718	Griswold	6.22%	121.60
69-4751	Nishna Valley	0.36%	7.05
69-5463	Red Oak	63.70%	1,244.69
69-5976	Shenandoah	0.00%	0.00
69-6165	Stanton	12.76%	249.36
69-6651	Villisca	16.86%	329.37
69-25	Total Montgomery Co.	100.00%	1,954.01

MUSCATINE COUNTY

70-1368	Columbus	1.92%	95.13
70-1611	Davenport	1.07%	52.92
70-1926	Durant	1.66%	82.11
70-3841	Louisa—Muscatine	5.25%	259.59
70-4581	Muscatine	66.25%	3,276.48
70-6975	West Liberty	14.08%	696.49
70-7038	Wilton	9.77%	483.27
70-25	Total Muscatine Co.	100.00%	4,945.99

PAGE COUNTY

73-1197	Clarinda	37.38%	0.00
73-2113	Essex	9.70%	0.00
73-4698	New Market	0.44%	0.00
73-5463	Red Oak	0.00%	0.00
73-5976	Shenandoah	37.48%	0.00
73-6097	South Page	13.72%	0.00
73-6165	Stanton	0.36%	0.00
73-6651	Villisca	0.93%	0.00
73-25	Total Page Co.	100.00%	0.00

POLK COUNTY

77-0261	Ankeny	9.23%	4,937.95
77-0472	Ballard	0.01%	5.15
77-0720	Bondurant-Farrar	1.43%	766.65
77-0981	Carlisle	0.42%	224.10
77-1350	Collins-Maxwell	0.09%	45.51
77-1576	Dallas Center	1.60%	858.35
77-1737	Des Moines	51.07%	27,334.03
77-3231	Johnston	6.11%	3,271.82
77-3942	Madrid	0.08%	41.21
77-4779	North Polk	1.39%	745.45
77-5160	PCM (Prairie City-Monroe)	0.01%	3.43
77-5805	Saydel	2.43%	1,300.11
77-6101	Southeast Polk	7.02%	3,759.43
77-6579	Urbandale	5.20%	2,784.82
77-6957	West Des Moines	13.82%	7,397.19
77-7110	Woodward	0.09%	49.80
77-25	Total Polk Co.	100.00%	53,525.00

SCOTT COUNTY

82-0603	Bennett	0.32%	49.98
82-0621	Bettendorf	15.25%	2,351.69
82-0918	Calamus Wheatland	0.14%	22.28
82-1611	Davenport	62.38%	9,619.69
82-1926	Durant	0.30%	46.72

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

82-4784	North Scott	10.61%	1,636.27
82-5250	Pleasant Valley	10.98%	1,693.37
82-25	Total Scott Co.	100.00%	15,420.00

SHELBY COUNTY

83-0441	A-H-S-T	9.79%	237.36
83-1917	Boyer Valley	0.81%	19.54
83-2016	Elk Horn— Kimballton	7.64%	185.16
83-2826	Harlan	64.69%	1,568.08
83-3168	IKM	13.81%	334.77
83-4014	Manning	0.96%	23.26
83-6460	Tri-Center	1.11%	26.98
83-6750	Walnut	1.08%	26.05
83-7092	Woodbine	0.12%	2.79
83-25	Total Shelby Co.	100.00%	2,423.99

WEBSTER COUNTY

94-1944	Eagle Grove	0.84%	43.10
94-2313	Fort Dodge	70.32%	3,602.43
94-2493	Gilmore City—Bradgate	0.13%	6.51
94-3060	Humboldt	0.64%	32.77
94-4023	Manson NW Webster	6.19%	317.16
94-5325	Prairie Valley	10.35%	530.39
94-6096	Southeast Webster	8.78%	449.96
94-6246	Stratford	0.52%	26.84
94-6867	Webster City	2.22%	113.85
94-25	Total Webster Co.	100.00%	5,123.01

WOODBURY COUNTY

97-0270	Anthon—Oto	1.68%	177.22
97-0504	Battle Creek— Ida Grove	0.05%	5.69
97-1975	River Valley	0.80%	84.80
97-3348	Kingsley—Pierson	3.43%	363.09
97-3555	Lawton—Bronson	0.71%	75.07
97-4033	Maple Valley	1.65%	174.03
97-5877	Sergeant Bluff—Luton	6.39%	675.88
97-6039	Sioux City	78.31%	8,282.13
97-6992	Westwood	3.62%	382.39
97-7098	Woodbury Central	3.36%	355.70
97-25	Total Woodbury Co.	100.00%	10,576.00

Grand Total Population	124,020.96
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Cost Recovery Estimates - LOST

<u>Code</u>	<u>Jurisdiction</u>	<u>Dist%</u>	<u>Cost</u>
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ADAIR COUNTY**ADAMS COUNTY****ALLAMAKEE COUNTY**

03-01	Waukon	25.47%	853.01
03-02	Lansing	6.51%	217.85

03-03	Postville	10.19%	341.42
03-04	New Albin	3.36%	112.47
03-05	Harpers Ferry	1.77%	59.22
03-06	Waterville	0.80%	26.69
03-22	Unincorporated	51.91%	1,738.35
03-24	TOTAL	100.01%	3,349.01

APPANOOSE COUNTY

04-05	Mystic	90.11%	329.81
04-08	Plano	9.89%	36.19
04-24	TOTAL	100.00%	366.00

AUDUBON COUNTY

05-03	Brayton	63.39%	176.23
05-04	Gray	36.61%	101.77
05-24	TOTAL	100.00%	278.00

BENTON COUNTY**BLACK HAWK COUNTY**

07-01	Waterloo	52.10%	6,900.02
07-02	Cedar Falls	24.07%	3,188.72
07-03	Evansdale	3.00%	397.70
07-04	Elk Run Heights	0.71%	94.64
07-05	Hudson	1.40%	186.02
07-06	La Porte City	1.47%	194.12
07-08	Dunkerton	0.51%	67.40
07-09	Janesville	0.08%	10.67
07-10	Gilbertville	0.51%	67.04
07-11	Raymond	0.40%	53.25
07-22	Unincorporated	15.74%	2,085.42
07-24	TOTAL	99.99%	13,245.00

BOONE COUNTY

08-01	Boone	45.80%	2,042.70
08-02	Madrid	8.07%	359.74
08-03	Ogden	6.29%	280.60
08-04	Beaver	0.16%	7.19
08-05	Berkley	0.12%	5.33
08-06	Boxholm	0.73%	32.41
08-07	Fraser	0.38%	16.74
08-08	Luther	0.51%	22.68
08-09	Pilot Mound	0.63%	27.95
08-10	Sheldahl	0.07%	2.92
08-22	Unincorporated	37.26%	1,661.75
08-24	TOTAL	100.02%	4,460.01

BREMER COUNTY

09-01	Waverly	0.00%	0.00
09-02	Sumner	60.90%	1,053.58
09-03	Tripoli	34.30%	593.33
09-04	Denver	0.00%	0.00
09-05	Janesville	0.00%	0.00

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

09-06	Readlyn	0.00%	0.00	15-05	Cumberland	1.63%	58.42
09-07	Frederika	4.80%	83.09	15-06	Marne	0.80%	28.45
09-08	Plainfield	0.00%	0.00	15-07	Massena	2.09%	74.52
09-22	Unincorporated	0.00%	0.00	15-08	Wiota	0.87%	31.14
09-24	TOTAL	100.00%	1,730.00	15-22	Unincorporated	36.19%	1,293.45
				15-24	TOTAL	100.00%	3,573.99

BUCHANAN COUNTY

10-02	Jesup	42.71%	885.04
10-03	Fairbank	15.83%	328.08
10-04	Hazleton	12.91%	267.59
10-05	Lamont	8.61%	178.48
10-06	Winthrop	14.07%	291.62
10-07	Aurora	3.68%	76.19
10-11	Stanley	2.17%	44.99
10-24	TOTAL	99.98%	2,071.99

BUENA VISTA COUNTY

11-01	Storm Lake	40.29%	1,760.78
11-02	Alta	7.61%	332.41
11-03	Albert City	3.66%	159.78
11-04	Marathon	1.43%	62.57
11-05	Newell	4.55%	198.86
11-06	Sioux Rapids	3.41%	149.15
11-07	Lakeside	2.23%	97.46
11-08	Rembrandt	0.89%	38.90
11-09	Truesdale	0.53%	23.18
11-10	Linn Grove	0.79%	34.45
11-22	Unincorporated	34.61%	1,512.47
11-24	TOTAL	100.00%	4,370.01

BUTLER COUNTY

12-01	Clarksville	7.47%	231.76
12-02	Greene	6.74%	209.04
12-03	Parkersburg	10.35%	321.21
12-04	Shell Rock	7.79%	241.56
12-05	Allison	5.89%	182.62
12-06	Aplington	5.44%	168.71
12-07	Dumont	3.93%	122.01
12-08	New Hartford	4.03%	124.98
12-09	Aredale	0.52%	16.19
12-10	Bristow	1.00%	31.02
12-22	Unincorporated	46.84%	1,452.90
12-24	TOTAL	100.00%	3,102.00

CALHOUN COUNTY**CARROLL COUNTY****CASS COUNTY**

15-01	Atlantic	44.38%	1,586.26
15-02	Anita	5.80%	207.36
15-03	Griswold	5.94%	212.32
15-04	Lewis	2.30%	82.07

CEDAR COUNTY**CERRO GORDO COUNTY**

17-01	Mason City	56.51%	4,511.37
17-02	Clear Lake	15.69%	1,252.96
17-03	Ventura	1.08%	86.60
17-04	Rockwell	1.87%	149.33
17-05	Dougherty	0.19%	15.15
17-06	Meservey	0.52%	41.61
17-07	Plymouth	0.78%	62.60
17-08	Rock Falls	0.26%	21.07
17-09	Swaledale	0.35%	28.00
17-10	Thornton	0.80%	63.97
17-22	Unincorporated	21.94%	1,751.35
17-24	TOTAL	99.99%	7,984.01

CHEROKEE COUNTY

18-01	Cherokee	0.00%	0.00
18-02	Marcus	36.29%	632.89
18-03	Aurelia	29.82%	520.07
18-04	Cleghorn	7.84%	136.78
18-05	Larrabee	4.44%	77.41
18-06	Meriden	5.09%	88.86
18-07	Quimby	9.38%	163.50
18-08	Washta	7.14%	124.49
18-22	Unincorporated	0.00%	0.00
18-24	TOTAL	100.00%	1,744.00

CHICKASAW COUNTY

19-01	New Hampton	25.89%	818.11
19-02	Nashua	9.70%	306.64
19-03	Fredericksburg	6.09%	192.50
19-04	Lawler	3.24%	102.47
19-05	Alta Vista	1.58%	49.82
19-06	Bassett	0.44%	13.87
19-07	Ionia	1.85%	58.38
19-08	North Washington	0.66%	20.81
19-22	Unincorporated	50.55%	1,597.40
19-24	TOTAL	100.00%	3,160.00

CLARKE COUNTY

20-01	Osceola	46.03%	891.64
20-02	Murray	7.49%	145.06
20-03	Woodburn	2.32%	44.86
20-22	Unincorporated	44.16%	855.44
20-24	TOTAL	100.00%	1,937.00

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

CLAY COUNTY

21-01	Spencer	57.77%	2,206.24
21-02	Everly	3.61%	137.78
21-03	Peterson	1.88%	71.86
21-04	Dickens	1.01%	38.65
21-05	Fostoria	0.96%	36.66
21-06	Greenville	0.38%	14.61
21-07	Rossie	0.30%	11.43
21-08	Royal	2.26%	86.23
21-09	Webb	0.79%	30.08
21-10	Gillett Grove	0.30%	11.60
21-22	Clay County	30.74%	1,173.86
21-24	TOTAL	100.00%	3,819.00

CLAYTON COUNTY

22-01	Elkader	7.19%	313.49
22-02	Guttenberg	10.79%	470.24
22-03	Monona	7.05%	307.29
22-04	Strawberry Point	6.22%	271.00
22-05	Edgewood	1.28%	55.91
22-06	Garnavillo	3.55%	154.53
22-07	Marquette	2.20%	96.04
22-08	McGregor	3.72%	162.05
22-10	Elkport	0.34%	14.97
22-11	Farmersburg	1.29%	56.31
22-12	Garber	0.48%	21.13
22-13	Littleport	0.37%	16.00
22-14	Luana	0.86%	37.29
22-15	N Buena Vista	0.60%	26.18
22-17	Saint Olaf	0.59%	25.64
22-18	Volga	1.33%	57.79
22-19	Millville	0.13%	5.61
22-20	Postville	0.00%	0.00
22-22	Unincorporated	52.01%	2,266.54
22-24	TOTAL	100.00%	4,358.01

CLINTON COUNTY

23-01	Clinton	53.43%	3,899.48
23-02	Dewitt	8.32%	607.21
23-03	Camanche	7.77%	567.09
23-04	Delmar	0.88%	64.32
23-05	Grand Mound	0.99%	71.91
23-06	Lost Nation	0.76%	55.78
23-07	Wheatland	1.15%	84.28
23-08	Andover	0.16%	11.32
23-09	Calamus	0.63%	45.93
23-10	Charlotte	0.57%	41.38
23-11	Goose Lake	0.35%	25.27
23-12	Low Moor	0.44%	32.27
23-13	Toronto	0.20%	14.85
23-14	Welton	0.29%	20.99
23-22	Unincorporated	24.06%	1,755.92
23-24	TOTAL	100.00%	7,298.00

CRAWFORD COUNTY

24-01	Dension	34.75%	1,078.58
24-02	Charter Oak	2.68%	83.06
24-03	Dow City	2.19%	67.94
24-04	Manilla	4.46%	138.58
24-05	Schleswig	4.43%	137.54
24-06	Vail	1.93%	60.00
24-07	Arion	0.69%	21.50
24-08	Aspinwall	0.27%	8.45
24-09	Buck Grove	0.27%	8.25
24-10	Deloit	1.42%	44.06
24-11	Kiron	1.50%	46.46
24-12	Ricketts	0.60%	18.61
24-13	Westside	1.81%	56.27
24-22	Unincorporated	43.00%	1,334.70
24-24	TOTAL	100.00%	3,104.00

DALLAS COUNTY

25-01	Perry	85.36%	1,780.71
25-05	Redfield	9.19%	191.71
25-08	Bouton	1.48%	30.87
25-13	Minburn	3.97%	82.71
25-24	TOTAL	100.00%	2,086.00

DAVIS COUNTY**DECATUR COUNTY**

27-01	Lamoni	70.74%	708.12
27-02	Leon	0.00%	0.00
27-03	Davis City	6.63%	66.33
27-04	Decatur City	4.41%	44.10
27-05	Garden Grove	5.77%	57.77
27-06	Grand River	4.26%	42.65
27-07	Leroy	0.80%	8.05
27-08	Pleasanton	1.29%	12.92
27-09	Van Wert	6.10%	61.05
27-10	Weldon	0.00%	0.00
27-22	Unincorporated	0.00%	0.00
27-24	TOTAL	100.00%	1,000.99

DELAWARE COUNTY

28-01	Manchester	25.36%	986.55
28-02	Earlville	3.87%	150.38
28-03	Edgewood	2.85%	110.79
28-04	Hopkinton	3.40%	132.30
28-05	Colesburg	2.22%	86.48
28-06	Delaware	0.80%	31.20
28-07	Delhi	2.34%	90.86
28-08	Dundee	0.77%	29.99
28-09	Dyersville	0.15%	5.96
28-10	Greeley	1.31%	50.93

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

28-11	Masonville	0.62%	24.00	32-02	Armstrong	68.15%	813.09
28-13	Ryan	1.86%	72.32	32-03	Ringsted	31.85%	379.91
28-22	Unincorporated	54.45%	2,118.26	32-04	Dolliver	0.00%	0.00
28-24	TOTAL	100.00%	3,890.02	32-05	Gruver	0.00%	0.00
DES MOINES COUNTY				32-06	Wallingford	0.00%	0.00
29-01	Burlington	60.51%	4,278.57	32-22	Unincorporated	0.00%	0.00
29-02	Mediapolis	3.27%	231.19	32-24	TOTAL	100.00%	1,193.00
29-03	West Burlington	7.25%	512.75	FAYETTE COUNTY			
29-04	Middletown	0.72%	50.78	33-01	Oelwein	29.17%	1,321.82
29-05	Danville	1.90%	134.46	33-02	Fayette	5.16%	233.67
29-22	Unincorporated	26.35%	1,863.25	33-03	West Union	10.44%	473.08
29-24	TOTAL	100.00%	7,071.00	33-04	Arlington	1.87%	84.54
DICKINSON COUNTY				33-05	Clermont	2.02%	91.71
30-01	Milford	12.50%	560.13	33-06	Elgin	2.46%	111.25
30-02	Spirit Lake	24.00%	1,075.72	33-07	Fairbank	0.57%	25.72
30-03	Arnolds Park	6.40%	286.99	33-08	Hawkeye	1.78%	80.56
30-04	Lake Park	5.81%	260.59	33-09	Maynard	2.03%	92.14
30-05	Okoboji	5.26%	235.96	33-11	Randalia	0.32%	14.31
30-07	Orleans	3.22%	144.42	33-12	St. Lucas	0.65%	29.60
30-08	Superior	0.85%	38.24	33-13	Wadena	0.87%	39.36
30-09	Terrill	2.16%	96.70	33-14	Waucoma	1.05%	47.72
30-10	Wahpeton	2.91%	130.60	33-15	Westgate	0.79%	35.92
30-11	West Okoboji	1.49%	66.80	33-22	Unincorporated	40.82%	1,849.61
30-22	Unincorporated	35.38%	1,585.86	33-24	TOTAL	100.00%	4,531.01
30-24	TOTAL	99.98%	4,482.01	FLOYD COUNTY			
DUBUQUE COUNTY				34-01	Charles City	43.17%	1,545.49
31-01	Dubuque	63.33%	7,188.27	34-02	Nora Springs	7.67%	274.42
31-02	Cascade	1.42%	161.19	34-03	Rockford	4.30%	154.07
31-03	Dyersville	3.69%	418.85	34-04	Colwell	0.46%	16.33
31-04	Epworth	1.38%	156.60	34-05	Floyd	1.79%	64.15
31-05	Farley	1.34%	152.00	34-06	Marble Rock	1.88%	67.44
31-06	Asbury	1.92%	217.94	34-07	Rudd	2.18%	78.14
31-07	Balltown	0.07%	7.46	34-22	Unincorporated	38.55%	1,379.96
31-08	Bankston	0.03%	3.44	34-24	TOTAL	100.00%	3,580.00
31-09	Bernard	0.12%	13.20	FRANKLIN COUNTY			
31-10	Centralia	0.11%	12.10	35-01	Hampton	33.52%	953.27
31-12	Graf	0.08%	9.56	35-03	Sheffield	8.87%	252.26
31-13	Holy Cross	0.28%	32.14	35-04	Dows	0.67%	19.15
31-14	Luxemburg	0.25%	28.56	35-06	Coulter	1.89%	53.77
31-15	New Vienna	0.37%	42.36	35-07	Geneva	1.26%	35.94
31-16	Peosta	0.12%	14.04	35-08	Hansell	0.64%	18.20
31-17	Sageville	0.25%	28.32	35-09	Latimer	3.26%	92.65
31-18	Sherrill	0.13%	14.70	35-10	Popejoy	0.64%	18.15
31-19	Worthington	0.44%	49.52	35-22	Unincorporated	49.25%	1,400.62
31-20	Zwingle	0.08%	8.69	35-24	TOTAL	100.00%	2,844.01
31-21	Rickardsville	0.17%	19.45	FREMONT COUNTY			
31-22	Unincorporated	24.42%	2,771.62	36-01	Hamburg	13.29%	280.38
31-24	TOTAL	100.00%	11,350.01	36-02	Sidney	12.78%	269.53
EMMET COUNTY				36-03	Tabor	9.08%	191.45
32-01	Estherville	0.00%	0.00				

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

36-04	Farragut	5.08%	107.23
36-05	Imogene	0.86%	18.12
36-06	Randolph	2.37%	49.94
36-07	Riverton	3.24%	68.32
36-08	Thurman	2.31%	48.72
36-22	Unincorporated	50.99%	1,075.30
36-24	TOTAL	100.00%	2,108.99

CITY OF SHENANDOAH

36-00	Shenandoah	100.00%	9.00
36-00A	TOTAL	100.00%	9.00

GREENE COUNTY**GRUNDY COUNTY**

38-01	Grundy Center	23.93%	514.10
38-02	Reinbeck	0.00%	0.00
38-03	Conrad	0.00%	0.00
38-04	Dike	8.24%	177.08
38-05	Wellsburg	6.05%	130.06
38-06	Beaman	1.77%	38.01
38-07	Holland	1.88%	40.38
38-08	Morrison	1.05%	22.49
38-09	Stout	1.62%	34.86
38-22	Unincorporated	55.45%	1,191.01
38-24	TOTAL	99.99%	2,147.99

GUTHRIE COUNTY**HAMILTON COUNTY****HANCOCK COUNTY**

41-01	Britt	15.35%	438.48
41-02	Garner	21.25%	607.13
41-03	Kanawha	5.58%	159.45
41-04	Klemme	4.29%	122.70
41-05	Corwith	2.44%	69.60
41-06	Crystal Lake	1.77%	50.67
41-07	Goodell	1.32%	37.73
41-08	Woden	1.74%	49.80
41-22	Unincorporated	46.25%	1,321.44
41-24	TOTAL	99.99%	2,857.00

HARDIN COUNTY

42-01	Iowa Falls	27.03%	1,166.52
42-02	Ackley	7.45%	321.66
42-03	Eldora	14.52%	626.46
42-04	Alden	4.06%	175.13
42-05	Hubbard	3.67%	158.47
42-06	Radcliffe	2.50%	108.08
42-07	Buckeye	0.49%	21.04
42-08	New Providence	1.02%	44.15
42-09	Owasa	0.17%	7.51

42-10	Steamboat Rock	1.57%	67.72
42-11	Union	1.96%	84.73
42-12	Whitton	0.60%	25.98
42-22	Unincorporated	34.94%	1,507.52
42-24	TOTAL	99.98%	4,314.97

HARRISON COUNTY

43-01	Dunlap	14.83%	354.61
43-02	Logan	17.24%	412.12
43-03	Missouri Valley	34.72%	830.11
43-04	Woodbine	16.80%	401.77
43-05	Little Sioux	2.05%	49.07
43-06	Magnolia	2.11%	50.54
43-07	Modale	3.59%	85.88
43-08	Mondamin	3.57%	85.46
43-09	Persia	2.71%	64.91
43-10	Pisgah	2.36%	56.54
43-22	Unincorporated	0.00%	0.00
43-24	TOTAL	99.98%	2,391.01

HENRY COUNTY

44-01	Mt. Pleasant	36.27%	1,479.26
44-02	New London	8.45%	344.77
44-03	Wayland	3.88%	158.35
44-04	Winfield	4.59%	187.22
44-05	Coppock	0.14%	5.60
44-06	Hillsboro	0.72%	29.17
44-07	Mount Union	0.61%	24.80
44-08	Olds	0.90%	36.61
44-09	Rome	0.50%	20.47
44-10	Salem	1.84%	75.04
44-11	Westwood	0.47%	19.32
44-22	Unincorporated	41.64%	1,698.39
44-24	TOTAL	100.01%	4,079.00

HOWARD COUNTY

45-01	Cresco	33.63%	890.46
45-02	Elma	5.46%	144.46
45-03	Lime Springs	3.84%	101.62
45-04	Riceville	2.55%	67.62
45-05	Chester	1.39%	36.93
45-06	Protivin	2.56%	67.89
45-22	Unincorporated	50.57%	1,339.02
45-24	TOTAL	100.00%	2,648.00

HUMBOLDT COUNTY**IDA COUNTY**

47-01	Holstein	0.00%	0.00
47-02	Ida Grove	0.00%	0.00
47-03	Battle Creek	0.00%	0.00
47-04	Arthur	0.00%	0.00
47-05	Galva	100.00%	502.00

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

47-22	Unincorporated	0.00%	0.00
47-24	TOTAL	100.00%	502.00

IOWA COUNTY

48-01	Marengo	12.99%	512.44
48-02	North English	5.16%	203.70
48-03	Williamsburg	13.92%	549.46
48-04	Victor	5.03%	198.48
48-05	Ladora	1.69%	66.76
48-06	Millersburg	1.01%	39.71
48-07	Parnell	1.13%	44.57
48-22	Unincorporated	59.07%	2,330.89
48-24	TOTAL	100.00%	3,946.01

JACKSON COUNTY

49-01	Maquoketa	27.57%	1,132.43
49-02	Bellevue	10.16%	417.47
49-03	Preston	4.40%	180.62
49-04	Sabula	2.94%	120.67
49-05	Andrew	1.78%	73.21
49-06	Baldwin	0.56%	22.88
49-09	Lamotte	1.28%	52.45
49-10	Miles	1.79%	73.61
49-11	Monmouth	0.68%	27.93
49-12	Spragueville	0.49%	19.98
49-13	Springbrook	0.69%	28.36
49-14	Zwingle	0.04%	1.52
49-15	St. Donatus	0.59%	24.05
49-22	Unincorporated	47.05%	1,932.82
49-24	TOTAL	100.02%	4,108.00

JASPER COUNTY

JEFFERSON COUNTY

51-01	Fairfield	53.68%	2,009.12
51-02	Batavia	2.61%	97.57
51-03	Coppock	0.00%	0.00
51-04	Libertyville	1.36%	51.08
51-05	Lockridge	1.33%	49.77
51-06	Packwood	1.09%	40.89
51-07	Pleasant Plain	0.61%	23.01
51-22	Unincorporated	39.32%	1,471.57
51-24	TOTAL	100.00%	3,743.01

JOHNSON COUNTY

JONES COUNTY

53-01	Anamosa	23.45%	838.70
53-02	Monticello	17.36%	620.69
53-03	Cascade	1.47%	52.56
53-04	Olin	3.06%	109.31
53-05	Oxford Junction	2.61%	93.35
53-06	Wyoming	3.00%	107.34

53-07	Center Junction	0.72%	25.65
53-09	Morley	0.36%	12.90
53-10	Onslow	0.93%	33.29
53-22	Unincorporated	47.04%	1,682.21
53-24	TOTAL	100.00%	3,576.00

KEOKUK COUNTY

KOSSUTH COUNTY

55-01	Algona	29.92%	958.43
55-02	Bancroft	4.02%	128.69
55-03	Burt	2.56%	81.95
55-04	Lu Verne	1.33%	42.62
55-05	Swea City	3.11%	99.68
55-06	Titonka	2.81%	89.86
55-07	Wesley	2.17%	69.55
55-08	West Bend	0.02%	0.78
55-09	Whittemore	2.48%	79.35
55-10	Fenton	1.59%	50.93
55-11	Lakota	1.23%	39.30
55-12	Ledyard	0.76%	24.42
55-13	Lone Rock	0.84%	26.96
55-22	Unincorporated	47.16%	1,510.51
55-24	TOTAL	100.00%	3,203.03

LEE COUNTY

56-01	Fort Madison	28.22%	1,734.87
56-02	Keokuk	30.66%	1,884.86
56-03	Donnellson	2.03%	124.60
56-04	Montrose	2.01%	123.71
56-05	West Point	2.28%	139.96
56-06	Franklin	0.30%	18.67
56-07	St. Paul	0.26%	16.22
56-08	Houghton	0.32%	19.81
56-22	Unincorporated	33.92%	2,085.30
56-24	TOTAL	100.00%	6,148.00

LINN COUNTY

57-13	Bertram	50.61%	789.08
57-16	Prairieburg	49.39%	769.92
57-24	TOTAL	100.00%	1,559.00

LOUISA COUNTY

LUCAS COUNTY

59-01	Chariton	84.07%	1,422.40
59-02	Russell	8.29%	140.24
59-03	Derby	1.95%	32.93
59-04	Lucas	3.33%	56.28
59-05	Williamson	2.37%	40.15
59-22	Unincorporated	0.00%	0.00
59-24	TOTAL	100.01%	1,692.00

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

LYON COUNTY

60-01	Rock Rapids	20.62%	512.84
60-02	George	8.22%	204.43
60-03	Doon	3.54%	88.12
60-04	Inwood	6.32%	157.07
60-06	Little Rock	3.65%	90.72
60-07	Alvord	1.50%	37.19
60-08	Lester	1.90%	47.27
60-22	Unincorporated	54.26%	1,349.38
60-24	TOTAL	100.01%	2,487.02

MADISON COUNTY**MAHASKA COUNTY**

62-01	Oskaloosa	45.74%	1,948.57
62-02	Eddyville	0.67%	28.53
62-03	New Sharon	4.30%	183.04
62-04	Beacon	1.79%	76.14
62-05	University Park	2.27%	96.90
62-06	Barnes City	0.76%	32.32
62-07	Fremont	2.80%	119.16
62-08	Leighton	0.54%	22.81
62-09	Rose Hill	0.63%	26.78
62-10	Keomah Village	0.38%	16.14
62-22	Unincorporated	40.13%	1,709.62
62-24	TOTAL	100.01%	4,260.01

MARION COUNTY**MARSHALL COUNTY**

64-01	Marshalltown	62.43%	4,418.97
64-02	State Center	2.72%	192.39
64-03	Albion	1.26%	89.15
64-04	Gilman	1.26%	89.09
64-05	Melbourne	1.45%	102.31
64-06	Clemons	0.36%	25.22
64-07	Ferguson	0.34%	24.14
64-08	Laurel	0.58%	41.15
64-09	LeGrand	1.80%	127.45
64-10	Liscomb	0.55%	38.94
64-11	Rhodes	0.57%	40.23
64-12	Saint Anthony	0.23%	16.49
64-13	Haverhill	0.30%	20.97
64-22	Unincorporated	26.16%	1,851.50
64-24	TOTAL	100.01%	7,078.00

MILLS COUNTY

65-02	Malvern	63.62%	659.72
65-03	Emerson	22.94%	237.86
65-05	Tabor	3.51%	36.44
65-07	Henderson	9.93%	102.98
65-24	TOTAL	100.00%	1,037.00

MITCHELL COUNTY

66-01	Osage	28.09%	767.47
66-02	St. Ansgar	8.91%	243.42
66-03	Riceville	4.30%	117.56
66-04	Stacyville	3.74%	102.17
66-05	Carpenter	0.79%	21.64
66-06	McIntire	1.12%	30.53
66-07	Mitchell	1.27%	34.78
66-08	Orchard	0.69%	18.73
66-22	Unincorporated	51.09%	1,395.69
66-24	TOTAL	100.00%	2,731.99

MONONA COUNTY

67-01	Onawa	24.96%	679.76
67-02	Mapleton	10.81%	294.47
67-03	Ute	3.22%	87.59
67-04	Whiting	6.66%	181.39
67-05	Blencoe	2.06%	55.99
67-06	Castana	1.25%	33.92
67-07	Moorhead	2.06%	56.17
67-08	Rodney	0.57%	15.42
67-09	Soldier	1.62%	44.09
67-10	Turin	0.73%	19.97
67-22	Unincorporated	46.06%	1,254.22
67-24	TOTAL	100.00%	2,722.99

MONROE COUNTY**MONTGOMERY COUNTY**

69-01	Red Oak	48.44%	1,245.44
69-02	Villisca	9.11%	234.19
69-03	Stanton	4.68%	120.39
69-04	Coburg	0.37%	9.54
69-05	Elliott	2.73%	70.23
69-06	Grant	0.80%	20.59
69-22	Unincorporated	33.86%	870.63
69-24	TOTAL	99.99%	2,571.01

MUSCATINE COUNTY

70-01	Muscatine	53.40%	3,520.98
70-02	West Liberty	6.68%	440.13
70-03	Wilton	5.78%	381.11
70-04	Atalissa	0.71%	46.49
70-05	Conesville	0.67%	43.95
70-06	Nichols	0.75%	49.21
70-07	Stockton	0.38%	24.95
70-08	Durant	0.00%	0.00
70-10	Fruitland	1.02%	67.16
70-22	Unincorporated	30.62%	2,019.02
70-24	TOTAL	100.01%	6,593.00

O'BRIEN COUNTY

71-01	Sheldon	30.42%	1,115.07
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REVENUE AND FINANCE DEPARTMENT[701](cont'd)

71-02	Hartley	8.76%	321.22
71-03	Paullina	6.83%	250.45
71-04	Primghar	5.31%	194.75
71-05	Sanborn	7.63%	279.69
71-06	Sutherland	3.95%	144.86
71-07	Archer	0.80%	29.41
71-08	Calumet	0.89%	32.71
71-22	Unincorporated	35.40%	1,297.84
71-24	TOTAL	99.99%	3,666.00

OSCEOLA COUNTY**PAGE COUNTY**

73-01	Clarinda	30.98%	1,025.17
73-02	Shenandoah	29.19%	965.83
73-03	Essex	4.52%	149.60
73-04	Blanchard	0.31%	10.32
73-05	Braddyville	1.01%	33.31
73-06	Coin	1.28%	42.32
73-07	College Springs	1.06%	35.04
73-08	Hepburn	0.18%	6.00
73-09	Northboro	0.35%	11.58
73-10	Shambaugh	0.85%	28.28
73-11	Yorktown	0.45%	14.95
73-22	Unincorporated	29.82%	986.61
73-24	TOTAL	100.00%	3,309.01

PALO ALTO COUNTY

74-01	Emmetsburg	33.02%	724.47
74-02	Graettinger	6.51%	142.90
74-03	Ruthven	5.74%	125.91
74-04	West Bend	6.79%	148.97
74-05	Ayrshire	1.50%	32.81
74-06	Curlew	0.44%	9.58
74-07	Cylinder	0.90%	19.74
74-08	Mallard	2.94%	64.43
74-09	Rodman	0.45%	9.94
74-22	Unincorporated	41.72%	915.25
74-25	TOTAL	100.01%	2,194.00

PLYMOUTH COUNTY

75-01	LeMars	0.00%	0.00
75-02	Akron	0.00%	0.00
75-03	Kingsley	43.35%	676.21
75-04	Remsen	0.00%	0.00
75-05	Merrill	22.40%	349.49
75-06	Brunsville	0.00%	0.00
75-07	Craig	0.00%	0.00
75-08	Hinton	24.56%	383.12
75-09	Oyens	3.42%	53.41
75-10	Struple	1.86%	29.01
75-11	Westfield	4.41%	68.76
75-22	Unincorporated	0.00%	0.00

75-24	TOTAL	100.00%	1,560.00
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POCAHONTAS COUNTY**POLK COUNTY**

77-10	Polk City	94.43%	2,431.66
77-15	Sheldahl	5.57%	143.34
77-24	TOTAL	100.00%	2,575.00

POTTAWATTAMIE COUNTY

78-01	Council Bluffs	62.75%	6,087.01
78-02	Avoca	1.56%	151.36
78-03	Carter Lake	3.32%	321.87
78-04	Oakland	1.49%	144.82
78-05	Carson	0.73%	70.64
78-06	Neola	0.91%	88.66
78-07	Walnut	0.90%	87.72
78-08	Crescent	0.43%	41.46
78-09	Hancock	0.21%	20.11
78-10	Macedonia	0.27%	25.76
78-11	McClelland	0.14%	13.36
78-12	Minden	0.55%	53.81
78-13	Treynor	0.97%	93.85
78-14	Underwood	0.53%	51.14
78-22	Unincorporated	25.25%	2,449.42
78-24	TOTAL	100.01%	9,700.99

POWESHIEK COUNTY**RINGGOLD COUNTY****SAC COUNTY****SCOTT COUNTY**

82-01	Davenport	58.91%	9,084.05
82-02	Bettendorf	17.60%	2,714.62
82-03	Buffalo	0.78%	120.64
82-04	Durant	0.00%	0.15
82-05	LeClaire	1.58%	243.25
82-06	Blue Grass	0.68%	104.55
82-07	Eldridge	1.98%	305.12
82-08	Princeton	0.49%	75.95
82-09	Walcott	0.78%	120.71
82-10	Dixon	0.12%	18.83
82-11	Donahue	0.17%	26.90
82-12	Long Grove	0.32%	49.30
82-13	Maysville	0.09%	14.18
82-14	McCausland	0.17%	26.28
82-15	New Liberty	0.07%	10.73
82-16	Panorama Park	0.07%	10.52
82-18	Riverdale	0.41%	63.89
82-22	Unincorporated	15.76%	2,430.31
82-24	TOTAL	99.98%	15,419.98

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

SHELBY COUNTY

83-01	Harlan	0.00%	0.00
83-02	Elk Horn	21.58%	377.15
83-03	Shelby	20.36%	355.98
83-04	Defiance	10.55%	184.33
83-05	Earling	15.11%	264.05
83-06	Irwin	15.77%	275.65
83-07	Kirkman	2.88%	50.36
83-08	Panama	0.00%	0.00
83-09	Portsmouth	6.60%	115.33
83-10	Tennant	2.51%	43.85
83-11	Westphalia	4.65%	81.30
83-22	Unincorporated	0.00%	0.00
83-24	TOTAL	100.01%	1,748.00

SIOUX COUNTY

84-01	Hawarden	7.57%	439.89
84-02	Alton	3.30%	191.65
84-03	Hull	5.41%	314.38
84-04	Orange City	15.25%	885.71
84-05	Rock Valley	7.70%	447.22
84-06	Sioux Center	14.89%	864.53
84-07	Boyden	1.99%	115.38
84-08	Hospers	1.92%	111.23
84-09	Ireton	1.82%	105.78
84-10	Chatsworth	0.27%	15.76
84-11	Granville	0.88%	50.96
84-12	Matlock	0.26%	15.23
84-13	Maurice	0.69%	39.96
84-14	Sheldon	0.20%	11.50
84-22	Unincorporated	37.86%	2,198.81
84-24	TOTAL	100.01%	5,807.99

STORY COUNTY

85-01	Ames	59.23%	5,462.65
85-02	Nevada	7.65%	705.30
85-03	Story City	3.56%	328.57
85-04	Cambridge	0.80%	74.04
85-05	Colo	0.90%	83.12
85-06	Maxwell	0.90%	82.91
85-07	Roland	1.21%	112.03
85-08	Slater	1.57%	144.69
85-09	Zearing	0.70%	64.43
85-10	Collins	0.54%	49.52
85-11	Gilbert	0.94%	87.05
85-12	Kelley	0.29%	27.08
85-13	Huxley	2.39%	220.22
85-14	McCallsburg	0.35%	32.15
85-15	Sheldahl	0.17%	15.62
85-22	Unincorporated	18.80%	1,733.61
85-24	TOTAL	100.00%	9,222.99

TAMA COUNTY**TAYLOR COUNTY****UNION COUNTY****VAN BUREN COUNTY****WAPELLO COUNTY**

90-01	Ottumwa	63.53%	2,992.16
90-02	Eldon	2.39%	112.55
90-03	Eddyville	1.95%	92.01
90-04	Agency	1.43%	67.42
90-05	Blakesburg	0.75%	35.37
90-06	Chillicothe	0.00%	0.00
90-07	Kirkville	0.38%	18.02
90-22	Unincorporated	29.56%	1,392.46
90-24	TOTAL	99.99%	4,709.99

WARREN COUNTY**WASHINGTON COUNTY****WAYNE COUNTY****WEBSTER COUNTY**

94-01	Fort Dodge	59.12%	749.04
94-02	Gowrie	2.21%	28.06
94-03	Dayton	1.76%	22.33
94-04	Lehigh	1.17%	14.81
94-05	Otho	1.05%	13.32
94-06	Stratford	0.07%	0.85
94-07	Badger	1.17%	14.84
94-08	Barnum	0.36%	4.53
94-09	Callendar	0.78%	9.84
94-10	Clare	0.41%	5.16
94-11	Duncombe	1.00%	12.65
94-12	Harcourt	0.61%	7.74
94-13	Moorland	0.44%	5.63
94-14	Vincent	0.43%	5.49
94-15	Farnhamville	0.00%	0.00
94-22	Unincorporated	29.42%	372.73
94-24	TOTAL	100.00%	1,267.02

WINNEBAGO COUNTY

95-01	Forest City	32.35%	783.31
95-02	Buffalo Center	8.10%	196.09
95-03	Lake Mills	16.09%	389.59
95-04	Thompson	3.71%	89.91
95-05	Leland	2.12%	51.26
95-06	Rake	1.88%	45.57
95-07	Scarville	0.62%	15.07
95-22	Unincorporated	35.12%	850.20
95-24	TOTAL	99.99%	2,421.00

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

WINNESHIEK COUNTY

96-01	Decorah	35.03%	1,535.78
96-02	Calmar	4.27%	187.10
96-03	Ossian	3.44%	150.79
96-04	Castalia	0.69%	30.36
96-05	Fort Atkinson	1.41%	61.70
96-06	Jackson Junction	0.34%	14.95
96-07	Ridgeway	1.12%	49.08
96-08	Spillville	1.55%	67.79
96-22	Unincorporated	52.15%	2,286.46
96-24	TOTAL	100.00%	4,384.01

WOODBURY COUNTY

97-01	Sioux City	76.57%	8,918.64
97-02	Moville	1.07%	124.16
97-03	Anthon	0.53%	62.22
97-04	Correctionville	0.73%	85.50
97-05	Danbury	0.36%	42.30
97-06	Sergeant Bluff	2.46%	287.04
97-07	Sloan	0.78%	91.37
97-08	Cushing	0.20%	22.99
97-09	Hornick	0.19%	21.80
97-10	Lawton	0.40%	46.52
97-11	Oto	0.10%	11.28
97-12	Pierson	0.29%	33.96
97-13	Salix	0.30%	34.78
97-14	Smithland	0.20%	23.63
97-15	Bronson	0.17%	20.11
97-22	Unincorporated	15.64%	1,821.70
97-24	TOTAL	99.99%	11,648.00

WORTH COUNTY

98-01	Manly	14.12%	262.96
98-02	Northwood	21.37%	397.91
98-03	Fertile	3.86%	71.84
98-04	Grafton	2.90%	54.05
98-05	Hanlontown	2.19%	40.80
98-06	Joice	2.60%	48.47
98-07	Kensett	3.10%	57.77
98-22	Unincorporated	49.85%	928.21
98-24	TOTAL	99.99%	1,862.01

WRIGHT COUNTY

GRAND TOTAL 271,988.10

The following amendments are proposed.

ITEM 1. Amend 701—Chapter 107 by adopting the following **new** rule:

701—107.16(422B) Recovery of fees. Beginning on and after July 1, 2000, the department will charge all jurisdictions imposing local option sales and service taxes a fee to recover direct costs incurred by the department on and after July 1, 2000, in the administration of the local option sales and service taxes. The term “local option sales and service taxes”

includes local option sales and service taxes imposed pursuant to Iowa Code chapter 422B, as implemented by 701—Chapter 107, and also includes local option school infrastructure sales and service taxes imposed pursuant to Iowa Code chapter 422E and implemented by 701—Chapter 108.

107.16(1) How fees are determined. Fees to be imposed on local option sales and service tax jurisdictions are for recovery of direct costs incurred by the department beginning on and after July 1, 2000, in the collection and distribution of the local option sales and service tax. “Direct costs” include, but are not limited to, costs related to taxpayer contacts and presentations, return processing, additional data entry, increased error processing, estimation, audits, and distribution of revenues. Fees do not include such indirect costs as policy and systems development, general agency administrative costs and collection costs.

107.16(2) Computation of fees for each county. Fees imposed to recover direct costs of administering local option sales and service taxes by the department shall be based on the number of times the county occurs on the returns processed by the department during the 2001 fiscal year. An “occurrence” is defined as an entry on a quarterly sales tax return reporting local option sales and service tax for a county. Each occurrence represents the total taxable transactions for a county for the given tax period. The department will divide the cost to be recovered into four quarterly amounts. The number of occurrences in each quarter will be divided into the quarterly cost to arrive at a cost per occurrence. This amount is multiplied by the number of occurrences for a county, which will determine the amount to be charged to each county.

107.16(3) Allocation of costs to eligible jurisdictions within a county. The department will apply charges for each eligible jurisdiction within each county against the estimated local option sales and service tax payments due each eligible jurisdiction for the months of October, January, April, and July of each fiscal year. For the purpose of this rule, an eligible jurisdiction is an area entitled to receive local option sales and service taxes. Each city or unincorporated area shall receive the same proportionate shares of the cost as received in revenues for that jurisdiction. Computation for the distribution of costs will be based on the formula used for distribution of revenues for each jurisdiction. For additional information regarding estimated payments see 701—107.10(422B).

This rule is intended to implement 2000 Iowa Acts, House File 2545, section 28.

ITEM 2. Amend rule 701—108.4(422E) as follows:

701—108.4(422E) Similarities to the local option sales and service tax imposed in Iowa Code chapter 422B and 701—Chapter 107. The administration of the tax imposed under this chapter is similar to the local option tax imposed under Iowa Code chapter 422B and 701—Chapter 107. As a result, a few of the rules set forth in 701—Chapter 107 are also applicable and govern the local option sales and service school infrastructure tax as well. Accordingly, the following rules are incorporated by reference into this chapter and will govern their respective topics in relation to the local option sales and school infrastructure tax:

1. to 4. No change.

5. **701—107.16(422B) Recovery of fees.**

This rule is intended to implement Iowa Code section 422E.3 and 2000 Iowa Acts, House File 2545, section 28.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Holmes Foster, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for July is 8.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a com-

mitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective July 13, 2000, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 5.70%
- 32-89 days Minimum 5.80%
- 90-179 days Minimum 6.00%
- 180-364 days Minimum 6.10%
- One year to 397 days Minimum 6.10%
- More than 397 days Minimum 6.30%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 9997A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, 166D.1 and 2000 Iowa Acts, Senate File 2312, the Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

These amendments are intended to implement 2000 Iowa Acts, Senate File 2312, which directs the Department of Agriculture and Land Stewardship to adopt administrative rules implementing many statutory changes relating to pseudorabies eradication in Iowa Code chapter 166D. These statutory changes include the mandatory vaccination of pigs in certain parts of Iowa; restrictions on movements of infected pigs, pigs from infected herds, and pigs from herds of unknown status; and cleanup procedures for infected herds.

There are no general waiver provisions in these amendments because 2000 Iowa Acts, Senate File 2312, does not provide the Department general waiver authority of its requirements. However, there are two specific waiver provisions in the amendments that are authorized by the legislation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 31, 2000, as **ARC 9862A**. In addition, a public hearing was held at 10 a.m., Thursday, June 22, 2000, in the Auditorium, Wallace State Office Building, East Ninth and East Grand, Des Moines, Iowa.

The Department received 75 written comments, and 30 people provided comments at the public hearing. Some of the comments have been incorporated into the changes to the noticed amendments: provision for extension of truck sealing waiver for up to four additional months, modification of the testing requirements for off-site nurseries and finishing sites, and some changes to provide clarification. Many of the comments were supportive. Many of the comments sought modification of the amendments which would put the rules at odds with statutory language.

Pursuant to Iowa Code section 17A.5(2)"b"(1), these amendments became effective upon filing on July 6, 2000. This procedure is mandated in 2000 Iowa Acts, Senate File 2312, section 23. The amendments were published under Notice and subject to review at the June 13, 2000, Administrative Rules Review Committee meeting.

These amendments are intended to implement 2000 Iowa Acts, Senate File 2312, and Iowa Code chapters 163 and 166D.

These amendments became effective July 6, 2000.

The following amendments are adopted.

ITEM 1. Amend rule **21—64.147(163,166D)** by adopting the following **new** definition in alphabetical order:

"Restricted movement" means movement of swine in accordance with 2000 Iowa Acts, Senate File 2312, section 17.

ITEM 2. Adopt **new** subrule 64.151(3) as follows:

64.151(3) Quarantine releasing procedures.

a. A herd of swine shall no longer be classified as a known infected herd after removal of all positive swine and at least one of the following three conditions have been met:

(1) All swine have been removed and the premises have been cleaned and disinfected and maintained free of swine

for 30 days or a period of time determined adequate by an official pseudorabies epidemiologist.

(2) All swine seropositive to an official test have been removed and all remaining swine, except suckling pigs, are tested and found negative 30 days or more after removal of the seropositive animals.

(3) All swine seropositive to an official test have been removed, and all breeding swine that remain in the herd and an official random sample consisting of at least 30 animals from each segregated group of grower-finisher swine over two months of age are tested and found negative 30 days or more after removal of the seropositive animals. A second test of grower-finisher swine at least 30 days after the first test is required.

b. In nurseries and finishing herds without any breeding swine and where no pigs are received from quarantined premises, quarantines may be released as follows:

(1) A negative official random-sample test consisting of at least 30 animals from each segregated group, conducted at least 30 days following depopulation with cleaning and disinfection of the premises and 7 days' downtime, or

(2) A negative official random-sample test consisting of at least 30 animals from each segregated group, conducted at least 30 days following a similar negative official random-sample test.

A similar official random-sample test must then be conducted between 60 and 90 days following quarantine release.

Any quarantine releasing procedure deviating from the above procedures or Iowa Code section 166D.9 must be approved by the official pseudorabies epidemiologist and the state veterinarian.

ITEM 3. Amend subrule 64.153(5) as follows:

64.153(5) Beginning on October 1, 1999, all swine located within three miles of a pseudorabies-infected herd are required to be vaccinated with an approved pseudorabies vaccine within seven days of notification by a regulatory official. One dose of vaccine shall be administered to growing swine prior to 14 weeks of age or 100 pounds. Swine over six months of age or greater than 200 pounds, used or intended to be used for breeding, shall receive vaccine on a schedule designed to administer at least four doses throughout a 12-month period. The department may require a herd test to monitor both the pseudorabies status and the pseudorabies vaccine status of the herd.

A waiver for this vaccination requirement may be issued by the state veterinarian, based on epidemiological investigation and risk determination. Herd testing, at a level determined by the pseudorabies epidemiologist, will be required as a condition for issuance of a vaccination waiver.

In addition, beginning April 19, 2000, all swine located in a county designated as in Stage II of the national pseudorabies eradication program are required to be vaccinated with a modified-live differentiable vaccine. Breeding swine shall at a minimum receive quarterly vaccinations. Feeder swine shall at a minimum receive one vaccination administered when the swine reach 8 to 12 weeks of age or 100 pounds. These vaccination requirements shall be waived if:

a. *The swine are part of a herd's being continuously maintained as a qualified negative herd; or*

b. *The swine are part of a herd located within a county where both of the following conditions apply:*

(1) *The department has determined that the county has a six-month history of 0 percent prevalence of pseudorabies infection among all herds in the county, and*

(2) *All contiguous counties have a 0 percent prevalence of pseudorabies infection among herds in that county.*

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

ITEM 4. Amend paragraph **64.154(2)“c”** as follows:

c. ~~Restricted movement slaughter swine. When the department determines that a majority of herds within a program area have been tested, all herds not tested within 12 months and all~~

(1) All infected herds not on an approved herd cleanup plan shall only move swine directly to slaughter by restricted movement. All animals from infected herds must move by restricted movement to slaughter (slaughtering plant or fixed concentration point) or to an approved premises detailed in the herd cleanup plan. The department may, until a herd plan is approved and showing progress, require the movement of all slaughter swine by “direct movement,” to slaughter only, by a Permit for Restricted Movement to Slaughter which provides a description of the animals, the owner, the consignee, the date of movement, the destination, and the identification or vehicle seal number if applicable. These “restricted movement to slaughter only swine” shall be individually identified by approved metal ear tags applied at the farm of origin, if required. The identification requirement is waived if the consignment of swine is sealed within the transport vehicle at the farm of origin by an official seal available from the department. The transportation vehicle must be sealed at the farm of origin. This seal shall be applied by an accredited veterinarian. This seal shall be removed by an accredited veterinarian, USDA official, department official, or the person purchasing the swine upon arrival of the consignment at the destination indicated on the Permit for Restricted Movement to Slaughter.

The ear tags shall have an alphabetic or numeric numbering system to provide unique identification with each herd, each lot, or each individual swine. They shall be applied prior to movement and listed on the Permit for Restricted Movement to Slaughter, *if required*. This Permit for Restricted Movement to Slaughter shall be issued and distributed by an accredited veterinarian as follows:

1. Original to accompany shipment.
2. Mail a copy to the department.
3. Veterinarian issuing permit will retain a copy.

(2) The vehicle sealing requirement may be waived by the department. Written application for waiver must be directed to the state veterinarian's office, and written waivers may be granted for herds in compliance with an approved herd cleanup plan. The minimal requirements for granting a waiver shall be:

1. No clinical disease in the herd for the past 30 days.
2. Complete herd vaccination documentation.
3. Compliance with herd plan testing requirements.
4. Concurrence of herd veterinarian and regulatory district veterinarian.

No waiver shall be granted, and waivers already granted shall be voided, for herds still classified as infected four months from the initial infection date. The department may impose additional requirements on a case-by-case basis.

The department may grant an extension to this waiver for a period of up to four additional months on a case-by-case basis. Written application for waiver extension must be directed to the state veterinarian's office, and written waivers may be granted for herds in compliance with an approved herd cleanup plan.

ITEM 5. Amend subrule 64.156(2) as follows:

64.156(2) Iowa monitored feeder pig herd.

a. Test requirements for a monitored feeder pig herd status include a negative herd test every ~~12~~ six months of randomly selected breeding animals according to the following schedule:

1 - 10 head	Test all
11 - 35 head	Test 10
36 or more	Test 30 percent or 30, whichever is less.

Effective July 1, 2000, all breeding herd locations in Stage II counties must have a monitored or better status or move by restricted movement.

b. A monitored identification card will be sent by first-class mail to the herd owner shown on the test chart if test results qualify the herd as monitored. An expiration date which is ~~12~~ six months from the date that the certifying tests were drawn will be printed on the card.

It is the owner's responsibility to retest the herd ~~annually~~ *semiannually*. The monitored status is voided on the date of expiration. A monitored herd status is revoked if:

(1) A positive test is recognized and interpreted by a pseudorabies epidemiologist and interpreted as infected.

(2) Pseudorabies infection is diagnosed.

(3) Recertification test is not done on time.

(4) Not enough tests, according to herd size and vaccination status, are submitted.

c. Additions of swine to a monitored herd shall be from noninfected herds, according to Iowa Code section 166D.7.

d. Feeder pigs may be sold for further feeding without additional testing while the “monitored” status is maintained *and the feeder pigs have been maintained on the same site as the breeding herd.*

e. Monitored, or higher, status feeder pigs sold may regain, and maintain, monitored status by a negative test of all or a random sample of 30 head of each segregated group, whichever is less, within 30 days prior to resale.

f. ~~Nursery units located in counties with a county pseudorabies prevalence of 3 percent or greater Stage II counties and not in the vicinity of the breeding herd are required to maintain a monitored status on the nursery unit in order for the swine to be eligible to move be relocated to a finishing premises, irrespective of whether there is a change of ownership. An official random-sample test shall be required for each segregated group of swine on an individual premises every six months for the maintenance of this monitored status. These testing requirements also apply to swine eligible for relocation movement. Testing requirements for this random sampling are:~~

Test 10 head per building, minimum 14 head per site.

Effective July 1, 2000, all nursery locations in Stage II counties must have a monitored or better status or move by restricted movement.

g. ~~Off-site finishing units located in the Stage II counties are required to maintain a monitored status on the finishing unit in order for the swine to be eligible to be sold to slaughter. An official random-sample test will be required for each segregated group of swine on an individual premises every six months for the maintenance of this monitored status. These testing requirements also apply to swine eligible for relocation movement. Testing requirements for this random sampling are:~~

Test 10 head per building, minimum 14 head per site.

Effective July 1, 2000, all finishing locations in Stage II counties must have a monitored or better status or move by restricted movement.

ITEM 6. Amend paragraph **64.156(3)“a”** as follows:

a. Recertification of a qualified differentiable negative herd will include ~~quarterly~~ or monthly testing, as detailed in Iowa Code section 166D.7. A minimum of ~~14~~ five breeding swine or 10 percent of the breeding herd, whichever is greater, must be tested each ~~quarter~~ month. ~~If the total number of~~

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

~~breeding swine in the herd is less than 14, then all breeding swine shall be tested.~~

ITEM 7. Amend rule 21—64.157(166D) as follows:

21—64.157(166D) Herd cleanup plan for infected herds (eradication plan).

64.157(1) The herd cleanup plan shall be a written plan approved and on file with the department.

64.157(2) The herd cleanup plan shall contain:

- a. Owner's name, location and herd number.
- b. Type of herd plan selected, e.g., offspring segregation, test and removal, depopulation.
- c. Description of the plan, which shall include the following requirements:

(1) The breeding herd shall be maintained on an approved vaccination program, at least four times per year;

(2) The progeny shall be weaned and segregated by five weeks of age or less, and progeny group isolation shall be maintained according to the terms of the herd plan;

(3) The herd must be visited on a regular basis (at least quarterly) by the herd veterinarian to monitor progress of the herd cleanup plan. This will include monthly testing if applicable, overseeing management procedures which may include all-in-, all-out swine movement, ventilation, sanitation, disinfection, and vaccine handling;

(4) Vaccine shall be administered to the progeny swine at least once, or more often if required by the herd plan;

(5) Feeder pig movement or relocation from the premises of origin must be detailed in writing in the herd cleanup plan. *Feeder pig movement or relocation from the premises of origin will only be allowed to approved premises and must be detailed in writing in the herd cleanup plan. Movement will not be allowed from the herd if the herd has experienced clinical symptoms of pseudorabies in the past 30 days. If this movement, or relocation, involves more than one district veterinarian's area, all participants must concur with the cleanup plan.* Effective March 15 April 19, 2000, all movements from infected premises, ~~except to slaughter,~~ shall be accompanied by an Iowa Restricted Movement Permit restricted movement. "Movement" in this paragraph includes movement to a premises in the production system not in the vicinity of the current location, irrespective of whether there is a change of ownership;

(6) Culled breeding swine must move *by restricted movement* directly to slaughter (*slaughtering plant or fixed concentration point*) or to an approved premises in compliance with Iowa Code section 166D.10 as amended by 2000 Iowa Acts, Senate File 2312, section 16, and as detailed in the herd cleanup plan. No swine moved from infected herds may be represented as breeding swine;

(7) ~~All herd plans for infected herds identified prior to August 1, 1999, shall be designed to complete herd cleanup before January 1, 2000.~~ Herds identified as infected on or after August 1, 1999, with breeding swine, shall implement a test and removal herd cleanup plan which allows for the phased test and removal of bred animals for one farrowing cycle, followed by a whole herd test and removal plan. *Effective August 1, 2000, a whole herd test and removal plan shall be implemented for all infected breeding herds.* The herd plan shall include the following:

1. All breeding swine, including boars, shall be tested within 14 days of the herd's being classified as infected. Testing shall also include progeny, if applicable.

2. All breeding swine must be identified by an approved ear tag, or other approved identification method, at the time of blood collection.

3. ~~All~~ *Until August 1, 2000, all seropositive, unbred breeding swine must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days after blood collection. All seropositive, bred swine must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days of weaning. All replacement breeding stock must be vaccinated prior to addition into the herd and must be retested 60 days after entry into the herd. Effective August 1, 2000, all seropositive animals, bred or unbred, must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days of the whole herd test. All known positive animals in the herd on August 1, 2000, must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), by August 15, 2000.*

4. A whole herd test shall be required within 30 days after the removal of the last known positive animal. Any additional seropositive animals must be removed *from the herd by restricted movement, direct to slaughter, within 15 days of the collection date. Whole herd retests shall be required at 30-day intervals, with removal of positive animals within 15 days of the test, until it has been determined that the herd is noninfected.*

5. Seropositive swine must be removed from the herd, *by restricted movement, direct to a buying station or to a slaughtering establishment.*

All swine movement from infected herds must be *by restricted movement* directly to slaughter or to an approved premises as detailed in the herd cleanup plan according to 64.154(2) "c," unless exempted by a "feeder pig cooperator" plan.

When a herd is designated a noninfected herd, or has been depopulated, by procedures detailed in Iowa Code section 166D.9, the plan is completed;

(8) Beginning October 1, 1999, a herd cleanup plan shall be implemented for all infected finishing herds which shall include the following:

1. A description of the premises, including the location, capacity, physical layout, owner's name, and herd number.

2. Vaccination requirements:

- Every animal, unless such animal is within three weeks of anticipated slaughter, must be vaccinated with an approved pseudorabies vaccine within seven days of notification by a regulatory official.

- New animals introduced into the infected premises are to be vaccinated with an approved pseudorabies vaccine according to the timetable outlined in the herd plan.

- If, through subsequent testing, additional buildings on the site are determined to be infected, all swine on the site shall be ~~re-vaccinated~~ *managed by all-in, all-out production.*

3. Testing requirements:

- A minimum of 14 swine, selected randomly, per building, shall be tested immediately.

- Swine shall be retested, at a minimum of 14 animals, selected randomly, per building, every 45 days, if necessary, until the premises are determined to be noninfected.

4. Description, restrictions, and requirements of pig flow through the facilities.

5. *All movements from infected finishing sites shall be by restricted movement and only to slaughter.*

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d. Specific movement limitations which may include approved destination locations, "restricted movement to slaughter," or other appropriate animal movement control measures.

e. Signatures of the herd owner, the owner's veterinarian, and the epidemiologist or the epidemiologist's representative.

64.157(3) and **64.157(4)** No change.

64.157(5) If this herd cleanup plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd and is subject to "restricted movement to slaughter," according to **64.154(2)"e," 2000 Iowa Acts, Senate File 2312, section 17**, until a new and approved cleanup plan is in place and showing progress according to a designated epidemiologist.

64.157(6) No change.

64.157(7) A deviation from a herd cleanup plan may be used in exigent circumstances if the deviation has the approval, *in writing*, of the epidemiologist *and the state veterinarian*.

ITEM 8. Amend rule 21—64.158(166D) as follows:

21—64.158(166D) Feeder pig cooperator plan for infected herds.

64.158(1) A feeder pig cooperator plan shall be a written plan approved and on file with the department.

64.158(2) Feeder Pig Cooperator Plan Agreement—revised effective April 1, 1995.

Feeder Pig Cooperator Plan Agreement—Revised

Date:

Herd I.D. Number:

Owner's Name:

Address:

Telephone Number:

The Feeder Pig Cooperator Plan Agreement shall include the following:

1. The herd has not experienced clinical signs of pseudorabies within the previous 30 days.

2. Maintain the breeding herd on an approved vaccination program, at least four times per year.

3. Wean and segregate progeny by five weeks of age or less and maintain progeny group isolation until moved as feeder pigs.

4. The herd must be visited at least quarterly by the herd veterinarian to monitor progress of herd cleanup plan; this shall include quarterly testing, if applicable, overseeing management procedures including all-in, all-out swine movement, ventilation, animal waste handling, sanitation, disinfection and vaccine handling.

5. Feeder pigs may be marketed or moved intrastate as cooperator pigs ~~of unknown status by restricted movement to approved premises detailed in the herd cleanup plan~~ provided that all requirements of this plan are followed.

6. All feeder pigs must be vaccinated prior to sale. Vaccine shall be administered according to individual's herd plan.

7. All feeder pigs must be identified prior to sale with an official pink feeder pig ear tag, or a tattoo, approved by the department, beginning with the letters PR. ~~All movement of feeder pigs from the herd shall be by restricted movement and only be allowed to approved premises detailed in the herd cleanup plan. The producer shall obtain a health certificate (which must include a permit number from the department) from the herd veterinarian prior to movement from premises of origin and said health certificate shall accompany each shipment.~~ All feeder pigs are quarantined to farm of

destination until sold to slaughter. *Movement to slaughter must be by restricted movement.*

8. Breeding swine shall move directly to slaughter, or an approved premises *in compliance with Iowa Code section 166D.10 as amended by 2000 Iowa Acts, Senate File 2312, section 16, and as detailed in the herd cleanup plan, and by restricted movement.* No swine from infected herds may be represented as breeding swine.

9. The producer shall maintain a record of all test charts, all sales transactions by way of health certificates *or restricted movement permits*, and vaccine purchases for at least two years. These records shall be available to department officials upon request.

10. When this herd is determined, through procedures as detailed in Iowa Code section 166D.9, to become a noninfected herd or is depopulated, the plan is completed.

11. I agree, if this plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd and subject to restricted movement, direct to slaughter or to an approved premises.

I am currently enrolled in an approved herd cleanup plan. I further agree to comply with all the requirements contained in this Feeder Pig Cooperator Plan Agreement.

Herd Owner:

Date:

Herd Veterinarian:

Date:

ITEM 9. Amend rule 21—64.160(166D) as follows:

21—64.160(166D) Approved premises. The purpose of an approved premises is to maintain feeder swine and feeder pigs under quarantine with movement either direct to slaughter or to another approved premises. ~~A person shall not accept swine from a quarantined herd or untested breeding swine for the purpose of feeding without receiving an approved premises permit from the department.~~ *Effective June 1, 2000, all swine moved or relocated from an infected herd on an approved herd cleanup plan may only move by restricted movement to an approved premises for further feeding or to slaughter (slaughtering plant or fixed concentration point).*

64.160(1) The following are requirements establishing, renewing, or revoking an approved premises permit:

a. A permit application, *as part of the herd cleanup plan*, must indicate the name of the premises operator and address of the premises.

b. To be valid, an *approved premises must be detailed as part of a herd cleanup plan and approved application must be completed and signed* by a department or inspection service official ~~and the premises operator~~ certifying that the facility meets the following guidelines:

(1) Must be a dry lot facility located in an area of confirmed cases of pseudorabies.

(2) Shall not be in the vicinity of a breeding herd. *Effective June 1, 2000, an approved premises shall not be located in a county designated as in Stage III of the national pseudorabies eradication program, nor shall it be located in a county which has achieved 0 percent prevalence of pseudorabies infection among all herds in the county as of March 1, 2000, or later. Effective August 1, 2000, an approved premises shall not be located within one and one-half miles of a noninfected herd or three miles of a qualified negative herd.*

(3) Shall be built such that it can be thoroughly cleaned and disinfected.

(4) The lay of the land or the facilities shall not be conducive to animal waste draining onto adjacent property.

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(5) Only feeder swine and cull swine may be moved onto this premises. Boars and sows are to be maintained separate and apart.

(6) Swine on the premises must be maintained in isolation from other livestock.

~~e. Annual renewal is required on or before December 31.~~

d c. The permittee must provide to the department or inspection service, during normal business hours, access to the approved premises and to all required records. Records of swine transfers must be kept for at least one year. The records shall include information about purchases and sales, names of buyers and sellers, the dates of transactions, and the number of swine involved with each transaction.

~~e d. Feeder swine Swine must be vaccinated for pseudorabies at the owner's expense upon arrival at the approved premises according to the herd cleanup plan. Vaccination identification tagging is not required; however, the number of swine vaccinated, vaccine product description, name, address, and signature of owner/owner's representative and signature of veterinarian distributing the vaccine, are required to be submitted to the department on a Pseudorabies Vaccination Statement provided by the department. This statement is to be submitted within ten days records must be available for inspection during normal business hours.~~

f e. Dead swine must be disposed of in accordance with Iowa Code chapter 167. The dead swine must be held so as to prevent animals, including wild animals and livestock, from reaching the dead swine.

g f. Swine must be moved direct to slaughter accompanied by a transportation certificate or to another approved premises by restricted movement and as detailed in the herd cleanup plan with a certificate of inspection, including the identification number of the approved premises of destination.

h g. An approved premises permit may be revoked by following quarantine release methods as detailed in Iowa Code section 166D.9, or failure to comply with departmental operation rules, or if swine have been removed from the premises for a period of 12 or more months.

i h. Renewal of an approved premises will not be permitted when:

~~(1) Six months following the date that a program area has tested a majority of herds and 90 percent or greater of these herds are determined to be noninfected.~~

~~(1) The approved premises is not compliant with the requirements of this rule.~~

~~(2) For noncompliance with requirements of this rule.~~

~~(3) Application for renewal has not been made.~~

~~(4) (2) Federal law prohibits approved premises.~~

~~(3) The approved premises no longer is part of an approved herd cleanup plan, or the county where the approved premises is located no longer allows approved premises or the site of the approved premises no longer complies with requirements.~~

~~j i. Failure to renew Revocation of an approved premises application will result in the issuance of a quarantine by the department effective until quarantine release methods have been followed as detailed in Iowa Code section 166D.9, or the approved premises has been depopulated by restricted movement to slaughter or to another approved premises as detailed in the herd cleanup plan.~~

~~64.160(2) An approved premises identification card will be sent by first class mail to the premises owner or owner's agent when the permit application has been approved according to the requirements of this rule. The expiration date will be printed on the card. will be considered permitted as~~

long as the approved premises is compliant with all regulations and is part of an approved herd cleanup plan.

ITEM 10. Amend rule 21—64.161(166D) as follows:

21—64.161(166D) Sales to approved premises. After ~~March 31, 1995~~ June 1, 2000, all feeder pigs and feeder swine and cull swine except those from "noninfected herds" must be moved directly to an approved premises, ~~or through a Class IV market to an approved premises, by restricted movement~~ for further feeding; however, these pigs may continue to move as cooperator pigs of unknown status if a "Feeder Pig Cooperator Plan Agreement—Revised" is approved by the department and movement is permitted by the department.

[Filed Emergency After Notice 7/6/00, effective 7/6/00]

[Published 7/26/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/26/00.

ARC 9993A

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of 2000 Iowa Acts, House File 2555, section 3, subsection 3, paragraph "b," the Risk Pool Board established by Iowa Code section 426B.5(3)"b" hereby amends Chapter 25, "Disability Services Management," appearing in the Iowa Administrative Code.

The Seventy-eighth General Assembly, in 2000 Iowa Acts, House File 2555, section 3, as amended by Senate File 2452, section 4, provided an appropriation from the Tobacco Settlement Fund to establish a risk pool fund. This fund is established to provide assistance to counties with limited county mental health, mental retardation, and developmental disabilities services fund balances to pay reimbursement increases to certain service providers that have increased the compensation of their service staff in state fiscal year 2001.

Any county wishing to receive assistance from the Tobacco Settlement Fund risk pool must apply to the Risk Pool Board by September 25, 2000. The legislature appropriated \$2 million for the fund for fiscal year 2001. The total amount of Tobacco Settlement Fund risk pool assistance to counties shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool, the Risk Pool Board shall prorate among the counties eligible for assistance the amount of assistance or adjust the percentage rate increase allowed to providers. These rules contain provisions for paying the risk pool funds under specified conditions.

These rules do not provide for waivers in specified situations because the requirements for eligibility for funds and for awarding and repayment of funds are all stated in the statute. These requirements cannot be waived by rule.

In compliance with Iowa Code section 17A.4(2), the Risk Pool Board finds that notice and public participation are unnecessary because these rules implement 2000 Iowa Acts, House File 2555, section 3, subsection 3, paragraph "b," which authorizes the Risk Pool Board to adopt rules without notice and public participation.

The Risk Pool Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these rules should be waived and these rules made effective

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August 1, 2000, as authorized by 2000 Iowa Acts, House File 2555, section 3, subsection 3, paragraph "b."

These rules are also published herein under Notice of Intended Action as **ARC 9994A** to allow for public comment.

The Risk Pool Board adopted these rules June 29, 2000.

These rules are intended to implement 2000 Iowa Acts, House File 2555, section 3, as amended by Senate File 2452, section 4.

These rules shall become effective August 1, 2000.

The following rules are adopted.

ITEM 1. Reserve rules **441—25.67** to **441—25.70**.

ITEM 2. Amend 441—Chapter 25 by adopting the following **new** Division VI.

DIVISION VI

TOBACCO SETTLEMENT FUND RISK POOL FUNDING

PREAMBLE

These rules provide for use of an appropriation from the tobacco settlement fund to establish a risk pool fund which may be used by counties with limited county mental health, mental retardation and developmental disabilities services funds to pay for increased compensation of the service staff of eligible purchase of service (POS) providers and establish the requirements for counties for receiving and repaying the funding. Implementation of the rate increases contemplated by the tobacco settlement fund in a timely manner will require cooperation among all eligible counties and providers.

441—25.71(78GA,HF2555) Definitions.

"Adjusted actual cost" means a POS provider's cost as computed using the financial and statistical report for the provider's fiscal year which ended during the state fiscal year beginning July 1, 1998 (state fiscal year 1999), as adjusted by multiplying those actual costs by 103.4 percent or the percentage adopted by the risk pool board in accordance with 2000 Iowa Acts, House File 2555, section 3, subsection 3, paragraph "c."

"Department" means the Iowa department of human services.

"Division" means the mental health and developmental disabilities division of the department of human services.

"Financial and statistical report" means a report prepared by a provider and submitted to host counties that is prepared in accordance with department rules for cost determination set forth in 441—Chapter 150.

"Host county" means the county in which the primary offices of a POS provider are located. However, if a POS provider operates separate programs in more than one county, "host county" means each county in which a separate program is operated.

"Purchase of service provider" or "POS provider" means a provider of sheltered work, work activity, supported employment, job placement, enclave services, adult day care, transportation, supported community living services, or adult residential services paid by a county from the county's services fund created in Iowa Code section 331.424A under a state purchase of service or county contract.

"Risk pool board" means that board established by Iowa Code section 426B.5, subsection 3.

"Separate program" means a POS service operated in a county other than the county in which the provider's home office is located and for which the provider allocates costs separately from similar programs located in the county where the provider's home office is located.

"Services fund" means the fund defined in Iowa Code section 331.424A.

"Tobacco settlement fund loan" or "TSF loan" means the tobacco settlement fund risk pool funds a county received in a fiscal year in which the county did not levy the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed.

441—25.72(78GA,HF2555) Risk pool board. The risk pool board is organized and shall take action and keep minutes and records as set out in rule 441—25.62(426B).

A risk pool board member cannot be a part of any presentation to the board of that board member's county's application for tobacco settlement fund risk pool funds nor can the board member be a part of any action pertaining to that application. If a risk pool board member is employed by or is a board member of a POS provider whose increases in compensation caused the host county to apply to the fund, the board member cannot be a part of any presentation to the board nor can the board member be a part of any action pertaining to that application.

441—25.73(78GA,HF2555) Rate-setting process. For services provided on or after July 1, 2000, each county shall increase its reimbursement rates for each program to the lesser of the adjusted actual cost or 105 percent of the rate paid for services provided on June 30, 2000.

25.73(1) Financial and statistical report. Each provider of POS services shall submit a financial and statistical report to each host county for each program that the provider operates within that county. These reports shall include actual costs for each separate program for the provider's fiscal year that ended during state fiscal year 1999 and state fiscal year 2000. These reports shall be submitted to the central point of coordination (CPC) administrator of the host county or counties no later than August 15, 2000.

25.73(2) Rate determination. The CPC administrator in each host county shall receive and review provider financial and statistical reports for each separate program for which that county is the host county. If the host county determines that all or part of the provider's increase in costs is attributable to increases in service staff compensation and that the adjusted actual cost is more than the rate paid by the county on June 30, 2000, the CPC administrator shall notify the provider in writing of the new rate for each program no later than September 1, 2000.

If a rate paid for services provided on June 30, 2000, exceeds the adjusted actual cost, the county shall not be required to adjust the rate for services provided on or after July 1, 2000.

The provider shall, no later than September 11, 2000, send to the CPC administrator of any other counties with consumers in those programs a copy of the rate determination signed by the CPC administrator of the host county. A county may delay payment of the reimbursement rate established pursuant to this subrule until the risk pool board has completed action as to adopting or not adopting a different percentage for the definition of adjusted actual cost, provided however that any increased rates required by 2000 Iowa Acts, House File 2555, section 3, subsection 2, paragraph "c," shall be paid retroactively for all services provided on or after July 1, 2000.

25.73(3) Exemptions.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. A POS provider that has negotiated a reimbursement rate increase with a host county as of July 1, 2000, has the option of exemption from the provisions of these rules. However, a county shall not be eligible to receive tobacco settlement funds for any rates established outside of the process established in these rules.

b. Nothing in these rules precludes a county from increasing reimbursement rates of POS providers by an amount that is greater than that specified in these rules. However, a county shall not be eligible for tobacco settlement funds for the amount of any rate increase in excess of the amount established pursuant to these rules.

441—25.74(78GA, HF2555) Application process.

25.74(1) Who may apply. If a county determines that payment of POS provider rates in accordance with these rules will cause the county to expend more funds in FY2001 than budgeted for POS services, the county may apply for assistance from the tobacco settlement fund. However, any fiscal year 2000 projected accrual basis fund balances in excess of 25 percent of fiscal year 2000 services fund gross expenditures will reduce the amount for which a county is eligible. In considering the cost of implementing these provisions, a county shall not include the cost of rate increases granted to any providers who fail to complete financial and statistical reports as provided in these rules.

25.74(2) How to apply. The county shall send the original and 15 copies of Form 470-3768, Tobacco Settlement Fund Risk Pool Application, to the division. The division must receive the application no later than 4:30 p.m. on September 25, 2000. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by the chairperson of the county board of supervisors, the county auditor, and the CPC administrator. Staff of the division shall notify each county of receipt of the county's application.

25.74(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county by October 5, 2000, and request the information needed to complete the application. The county shall submit the required information by October 16, 2000.

441—25.75(78GA, HF2555) Methodology for awarding tobacco settlement fund risk pool funding.

25.75(1) Review of applications. The risk pool board shall review all of the applications from counties for assistance from the tobacco settlement fund. If the total amount requested from the tobacco settlement fund does not exceed \$2 million, eligible counties shall be awarded funding pursuant to this division. The risk pool board shall determine for each county whether any or all of the assistance granted to that county is a TSF loan.

25.75(2) Notice of decision. The risk pool board shall notify the chair of the applying county's board of supervisors of the board's action no later than November 3, 2000. Copies shall be sent to the county auditor and the CPC administrator.

25.75(3) Distribution of funds. The total amount of the risk pool shall be limited to \$2 million. If the total dollar amount of the eligible applications exceeds the available pool, the risk pool board shall revise the percentage adjustment to actual cost to arrive at adjusted actual cost as defined in this division and prorate funding to the eligible counties. If it becomes necessary to revise the percentage adjustment used to determine adjusted actual cost, the risk pool board shall determine if applicant counties remain eligible under this program.

25.75(4) Notification of adjustment. If the risk pool board rolls back the percentage adjustment used to determine adjusted actual cost, the risk pool board shall notify the chair of the board of supervisors of all counties, and copies shall be sent to the county auditor and the CPC administrator of each county. Each host county shall recalculate the reimbursement rate under this division using the revised adjusted actual cost percentage and notify each provider in writing of the revised rate within 30 days of receiving notice of the percentage adjustment. The provider shall, within 30 days of receipt of notice, send to the CPC administrator of any other counties with consumers in those programs a copy of the revised rate determination signed by the CPC administrator of the host county.

441—25.76(78GA, HF2555) Repayment provisions.

25.76(1) Required repayment. Counties shall be required to repay TSF loans by January 1, 2002. Repayments shall be credited to the tobacco settlement fund.

25.76(2) Notification to county. In the notice of decision provided pursuant to these rules, the chairperson of the risk pool board shall notify each county of the portion, if any, of the assistance that is considered a TSF loan. If a county fails to reimburse the tobacco settlement fund by January 1, 2002, the board may request a revenue offset through the department of revenue and finance. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the CPC administrator of the county.

441—25.77(78GA, HF2555) Appeals. The risk pool board may accept or reject an application for assistance from the tobacco settlement fund risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement 2000 Iowa Acts, House File 2555, section 3, as amended by Senate File 2452, section 4.

[Filed Emergency 7/5/00, effective 8/1/00]

[Published 7/26/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/26/00.

ARC 9985A**PERSONNEL DEPARTMENT[581]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 19A.9 and 509A.8 and chapter 70A, the Department of Personnel hereby amends Chapter 1, "Definitions," Chapter 2, "Coverage and Exclusions," Chapter 4, "Pay," Chapter 5, "Recruitment, Application and Examination," Chapter 6, "Eligible Lists," Chapter 7, "Certification and Selection," Chapter 8, "Appointments," Chapter 9, "Probationary Period," Chapter 10, "Promotion, Transfer, Temporary Assignment, Reassignment and Voluntary Demotion," and Chapter 15, "Benefits," Iowa Administrative Code.

The purpose of the amendments is to comply with statutory changes enacted by the Seventy-eighth General Assembly in 2000 Iowa Acts, House File 2463, signed by the Governor on May 8, 2000. The statutory changes were made to provide enhanced flexibility to executive branch agencies in the recruitment and selection of candidates to fill state government jobs. Additionally, the emergency and intermittent types of temporary employments have been consolidated in

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a single appointment type, and the duration of appointments has been made consistent. The legislation also includes clarifying language regarding the exclusion of division administrators and policy-making positions from the merit system. 2000 Iowa Acts, House File 2463, section 12, changes the period of time former employees who resigned in good standing are eligible for reinstatement to an executive branch job from two years to an indefinite period. Finally, the statute establishes a deferred compensation funds match program that allows eligible employee contributions to be matched by the state in a qualified retirement savings investment program.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the amendments simplify the procedures relating to obtaining employment with the state, provide flexibility to the employment process associated with state government operations, and retroactively provide benefits to former state employees who resigned in good standing. The amendments thereby benefit the public in seeking employment and by requiring executive branch departments to base hiring decisions on merit principles of employment. Notice and public comment are also impracticable because of the immediate need to implement provisions of the statute as amended.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective on July 1, 2000, to coincide with the effective date of the statutory change, as the amendments confer a benefit upon applicants and executive branch operating departments.

The Department of Personnel adopted these amendments effective July 1, 2000.

These amendments are intended to implement Iowa Code sections 19A.2A, 19A.3(8), 19A.3(15), 19A.15, and 19A.19 as amended by 2000 Iowa Acts, House File 2463, sections 5, 6, 16, 18, and 19; Iowa Code Supplement sections 19A.8, 19A.9(1), 19A.9(3) to 19A.9(14), 19A.9(23), and 19A.35 as amended by 2000 Iowa Acts, House File 2463, sections 11, 12, and 20; and 2000 Iowa Acts, House File 2463, sections 13 and 14.

These amendments became effective July 1, 2000.

The following amendments are adopted.

ITEM 1. Amend rule **581—1.1(19A)**, definitions of "examination," "merit system," and "temporary," as follows:

"Examination" means the further screening of persons who meet the minimum qualifications for a job classification ~~in order to have their names and scores placed on eligible lists.~~

"Merit system" means those positions or employees in the state personnel system determined by the director to be covered by the provisions of Iowa Code chapter 19A as it pertains to qualifications, examinations, ~~competitive appointments,~~ probation, and just cause discipline and discharge hearings.

"Temporary" means *nonpermanent* employment for a limited period of time, ~~or employees with seasonal, emergency, intermittent, internship, trainee, or temporary status.~~

ITEM 2. Amend rule 581—2.2(19A) as follows:

581—2.2(19A) Merit system. The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by the provisions of Iowa Code chapter 19A, as it pertains to qualifications, examinations, ~~competitive appoint-~~

~~ments,~~ probation, and just cause discipline and discharge hearings, hereafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

~~2.2(1) Exclusion of deputy directors and division administrators and policy-making positions.~~ The appointing authority of each agency shall submit to the director for approval the position number and title of ~~deputy directors and division administrators~~ each position referred to in Iowa Code section 19A.3 proposed for exclusion from coverage by the merit system provisions referred to in Iowa Code section 19A.2A, unnumbered paragraph 3. Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

~~2.2(2) and 2.2(3) No change.~~

~~2.2(4) Career executive return rights. Rescinded IAB 1/15/97, effective 2/19/97.~~

ITEM 3. Amend subrules 4.5(4) and 4.5(5) as follows:

~~4.5(4) Internship.~~ When an appointment is made to an ~~intern class,~~ the employee may be paid from the lowest pay rate in the pay plan to which the class is assigned up to 15 percent above the minimum of the pay grade for the class.

~~4.5(5) Emergency, intermittent Temporary and seasonal.~~ When an appointment is made to a class on an ~~emergency, intermittent~~ a temporary or seasonal basis, the employee may be paid at any rate within the pay grade to which the class is assigned.

ITEM 4. Amend subrule 4.6(12) as follows:

~~4.6(12) Reinstatement.~~ When an employee is reinstated ~~in accordance with rule 581—8.6(19A),~~ the employee may be paid at any step or pay rate for the class to which reinstated. When the rate of pay is decided to be greater than the pay at the time of separation, including any pay grade, pay plan, class or general salary increases, the decision to do so must be in accordance with subrule 4.5(1). For setting eligibility dates, see subrule 4.7(5).

ITEM 5. Amend **581—Chapter 5** as follows:

CHAPTER 5

RECRUITMENT, APPLICATION AND EXAMINATION

581—5.1(19A) Recruitment. Classes are closed to application ~~from persons not employed by the state unless specifically opened for recruitment or as otherwise designated in subrule 5.2(4).~~

~~5.1(1) Open recruitment announcements.~~ The director shall give public notice of ~~classes~~ positions opened for the recruitment of persons who are not employed by the state. ~~Classes will remain open~~ for a minimum of 15 calendar days following the announcement date. Recruitment may be limited to a specific geographic area or a specific selective background area or both. Recruitment announcements shall be posted ~~in designated state offices~~ publicly. Copies may also be sent to newspapers, radio stations, educational institutions, professional and vocational associations, and other recruitment sources.

~~5.1(2) Job opportunity announcements.~~ A list of job opportunities shall be posted on bulletin boards and in other conspicuous places throughout the agency involved.

~~5.1(3) 5.1(2) Content of announcements.~~ Announcements shall specify the class job title, vacancy number, salary range, location, method for making application, closing date for receiving applications, minimum qualifications, any spe-

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cial requirements, and any selective certification requirements. All announcements must include a statement indicating that the state of Iowa is an affirmative action and equal employment opportunity employer. Announcements for continuous recruitment shall include a statement indicating that applications will be accepted until further notice.

~~5.1(4)~~ **5.1(3)** Advertising. The appointing authority shall send to the director copies of all advertisements announcing employment opportunities that are to be placed in any publication, and any additional information required by the director. The appointing authority shall comply with any policies established by the director regarding advertising.

581—5.2(19A) Applications.

5.2(1) Applicant information. Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized in a recruitment announcement. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be used or regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job classification with or without a reasonable accommodation.

5.2(2) Verifying applicant information. The director may at any time verify statements contained in an application and seek further information concerning an applicant's qualifications. If information is obtained which affects or would have affected an applicant's qualifications, standing on an eligible list, or status if already employed, the director shall may make the necessary adjustment or take other appropriate action, including termination if the applicant has already been employed.

5.2(3) Applicant files. Applications accepted for processing and necessary related materials will be placed in the applicant files in the department and retained for no less than one year. Applications for classes jobs which result in the hire of the applicant will be placed in the employee files in the department and retained for no less than the period of employment.

5.2(4) Application for eligible lists. Persons may apply to be on eligible lists as follows:

a. Promotional lists. Promotional applicants shall meet the minimum qualifications, but may be exempt from the initial examinations used for the purposes of ranking on eligible lists. Promotional applicants may be subject to keyboard tests examinations, background checks, psychological tests examinations, and other tests examinations used for further screening. The following persons may apply to be on promotional eligible lists at any time:

(1) to (3) No change.

b. Nonpromotional All-applicant lists. The following persons may apply to be on nonpromotional all-applicant lists at any time:

(1) to (4) No change.

(5) ~~Intermittent or provisional intermittent employees~~ Permanent employees, including permanent employees of the board of regents and community-based corrections;

(6) ~~Seasonal, emergency, trainee, intern or other temporary~~ Temporary employees, not on the promotional list, or and volunteers (including persons enrolled in work experience programs who are not on the promotional list) following 60 calendar days' service with the state;

(7) No change.

(8) Former permanent employees who resigned or retired from state employment in good standing may, within 60 calendar days following their termination date, make application to be included on nonpromotional lists for classes for which they were on promotional lists at the time of their termination.

5.2(5) Application pending license or graduation. An applicant who does not meet the minimum education or license requirements, but who is currently enrolled in an education program that will result in meeting such requirements, may be placed on the appropriate eligible list with a "pending graduation" or "pending license" status provided the applicant will meet or has a reasonable expectation of meeting, the requirements within the following eight nine months. If certified in the top six available scores, the The applicant may be selected for employment, but may not be appointed until all qualification requirements are met.

5.2(6) Disqualification or removal of applicants. The director may refuse to place an applicant on a list of eligibles for an unlimited period, refuse to certify an applicant to a job class or a position, refuse to refer an applicant for a vacancy, refuse to approve the appointment of a certified an applicant, or remove an applicant from the a list of eligibles for a class or a certificate for a position if it is found that the applicant:

a. Does not meet the minimum qualifications or special selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law, or as documented through identification of essential functions.

b. Is physically or mentally incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.

c. Has knowingly misrepresented the facts when submitting information relative to an application, test examination, certification, appeal, or any other facet of the selection process.

d. Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, testing examination, appeal or selection process.

e. Has obtained examination screening information to which applicants are not entitled.

f. Has failed to submit the application within the designated time limits.

g. Was previously discharged from a position in state government.

h. Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

i. Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a direct threat to state property or to the safety of others.

j. Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five work-days following removal. Applicants may informally request

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that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 581—12.3(19A). Formal appeal of disqualification or removal shall be in accordance with 581—subrule 12.2(4).

5.2(7) Qualifications. Applicants must meet the qualifications for the class as well as any selective ~~certification~~ requirements associated with a particular class or position as indicated in the class description. The director shall determine whether or not an applicant meets such qualifications and requirements.

Applicants and employees may, as a condition of the job, be required to have a current license, certificate, or other evidence of eligibility or qualification. Employees who fail to meet and maintain this requirement shall be subject to discharge in accordance with rule 581—8.9(19A) or 581—subrule 11.2(4).

Any fees associated with obtaining or renewing a license, certificate, or other evidence of eligibility or qualification shall be the responsibility of the applicant or employee unless otherwise provided by statute.

581—5.3(19A) Examinations.

5.3(1) Purpose of examinations. The director ~~or appointing authority~~ may conduct examinations to ~~determine assess the relative rank of qualified~~ *qualifications of applicants on eligible lists or, in the case of keyboard tests, to determine if an applicant meets the minimum qualifications. Unless otherwise indicated, all references to examinations in this chapter shall apply only to positions covered by merit system provisions.* Possession of a valid license, certificate, registration, or work permit required by the Iowa Code or the Iowa Administrative Code in order to practice a trade or profession may qualify as evidence of an applicant's ~~basic skills~~ *qualifications. Where these basic skills constitute the primary requirement for job performance, the names of all applicants meeting the minimum qualifications may be placed on the appropriate eligible list without further examination.*

5.3(2) Types of examinations. Examinations may include, but are not limited to, written, oral, physical, or keyboard tests, and may ~~test screen~~ for such factors as education, experience, aptitude, psychological traits, knowledge, character, physical fitness, or other standards related to job requirements.

5.3(3) Background checks. Background checks and investigations, including, but not limited to, checks of arrest ~~and~~ or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule, Iowa Code chapter 19A and 161—subrule 8.1(1). Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in their confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

a. and b. No change.

c. The director shall ~~prescribe~~ *provide* a statement that shall be presented by the appointing authority to each applicant that is to be investigated under this subrule. This state-

ment shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application ~~for employment~~ and selection process and to share the information gathered with the director.

d. No change.

e. Appointing authorities shall send information periodically to the director on forms prescribed by the director. This information shall include the following:

(1) The total number of applicants for each ~~job class position~~ who were eligible for a background check.

(2) and (3) No change.

581—5.4(19A) Development and administration of examinations.

5.4(1) Examination development. The director shall oversee the development, purchase, and use of examination materials, forms, procedures, and instructions.

5.4(2) Examination administration. The director ~~or appointing authority~~ shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. ~~The director~~ *Examinations may postpone be postponed, cancel canceled, or reschedule rescheduled the date of an examination.*

a. Examination of persons with disabilities. Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department. Persons in the certified disability program or any other formal waiver program established by the department may be exempt from examinations ~~used for the purpose of ranking qualified applicants on eligible lists.~~

b. Special admittance. Requests for special admittance ~~to an examination~~ after the closing date for application shall be submitted in writing to the director ~~or the appointing authority~~. The request shall explain why the applicant seeks special admittance ~~to the examination.~~

c. Retaking examinations. Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 581—5.6(19A). Violation of the waiting period for an examination shall result in the current examination score being voided and an additional 60-calendar-day waiting period being imposed.

Keyboard examinations, such as typing, may be retaken at any time without a waiting period, if equipment is available.

The most recent examination score shall determine the applicant's ~~rank on~~ *qualification for* the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

5.4(3) Examination materials.

a. ~~Examination~~ *All examination* materials, including working papers, test booklets, test answer sheets and test answer keys are not public records under Iowa Code chapter 22. All examination materials are the property of the depart-

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ment and shall not be released without the consent of the director.

b. No change.

581—5.5(19A) Scoring examinations. All applicants for positions covered by merit system provisions shall be given uniform treatment in all phases of the examination scoring process applicable to the job class or position and status of the applicant. Applicants may be required to obtain at least a minimum score in any or all parts of the examination process in order to receive a final score or to be allowed to participate in the remaining parts of an examination.

5.5(1) Adjustment of errors. Examination scoring errors that are called to the attention of the director will be corrected. A correction shall not, however, invalidate any certificate list already issued or any appointment already made and shall not extend the life of the score.

5.5(2) Points for veterans. Veterans' points shall be applied to veterans as defined in Iowa Code section 35C.1. Eligible veterans shall have five points added to the score attained in examinations for appointment to jobs.

a. to d. No change.

581—5.6(19A) Review of written examination questions. Applicants may request to review their incorrectly answered questions on department administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review and then only if the class is open for recruitment. Violation of this waiting period shall result in the current examination score being voided and an additional 60-calendar-day waiting period being imposed.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

ITEM 6. Amend **581—Chapter 6** as follows:

CHAPTER 6
ELIGIBLE LISTS

581—6.1(19A) Establishment of eligible lists. The director shall establish and maintain various lists of eligible applicants for use in filling vacant positions. Eligible lists shall be by job class or specific position. Eligible lists shall be continuous until abolished. Eligibility of an applicant shall not be less than one nor more than three years as determined by the director. Eligible lists may be continuous or may be abolished after a vacancy is filled. The following are types of eligible lists:

6.1(1) and 6.1(2) No change.

6.1(3) Nonpromotional All-applicant lists. Nonpromotional All-applicant lists shall consist of the names of all persons who are not eligible for placement on promotional lists who have applied for positions covered by merit system provisions, met the minimum qualifications for the class, and undergone, and as necessary passed, the designated examinations screening for the class. Persons in the certified disability program or any other formal waiver program established by the department shall be identified as such and placed on the nonpromotional all-applicant list without score or rank and shall be eligible for hire along with applicants in the top six available scores.

6.1(4) Career executive lists. Rescinded IAB 1/15/97, effective 2/19/97.

~~**581—6.2(19A) Ranking of eligibles.** After examinations, the names of applicants shall be added to the nonpromotional eligible lists in the order of their final scores. All persons with identical final scores shall have the same rank on the list.~~

~~**581—6.3(19A) Compilation of eligible lists in the absence of appropriate eligible lists.** If a vacancy exists in a job class for which there is no eligible list, the director may compile a list from one or more existing related eligible lists for classes which are similar to or higher than the class in which the vacancy exists.~~

~~**581—6.4(19A) Amendment of eligible lists.** When a new eligible list is established for a class where an eligible list already exists, the existing list may be canceled or merged with the new list as determined by the director. If the name of an individual appears on both the old and the new eligible lists and those lists are merged, the individual's standing on the new list shall be determined by the score from the new examination.~~

~~**581—6.5 6.2(19A) Removal of names from eligible lists.** The director may remove names from an eligible list for a particular job class(es) for any of the following reasons in addition to those cited in 581—subrule 5.2(6):~~

~~1. to 4. No change.~~

~~5. Appointment to a job class. Applicants appointed or promoted will be removed for job classes in the same or lower pay grades.~~

~~6. and 7. No change.~~

~~8. In the case of nonpromotional lists, attainment of permanent status.~~

~~9 8. Correction of erroneous placement on a list.~~

~~10 9. Violation of any of the provisions of Iowa Code chapter 19A or these rules. Applicants removed for this reason shall be notified in writing by the director within five workdays following removal. Appeal of removal for this reason shall be in accordance with 581—subrule 12.2(4).~~

~~11 10. Failure of the applicant to maintain contact as instructed by the department concerning current availability, mailing address and telephone number.~~

~~**581—6.6** Rescinded, effective September 16, 1987.~~

~~**581—6.7 6.3(19A) Statement of availability.** It shall be the applicant's responsibility to notify the director in writing of any change in address or other changes affecting availability for employment. The director may at any time verify the availability of applicants. The names of applicants shall be withheld from all certificates eligible lists which do not meet the stated conditions and locations under which the applicants have indicated availability.~~

~~These rules are intended to implement Iowa Code section 19A.9.~~

ITEM 7. Amend **581—Chapter 7** as follows:

CHAPTER 7
CERTIFICATION AND SELECTION
FILLING VACANCIES

~~**581—7.1(19A) Method of filling vacancies.** Vacancies shall be filled through promotion, transfer, demotion, recall, reinstatement or original appointment. The method and order in which vacancies are filled shall be determined by the director, taking into consideration the provisions of collective bargaining agreements and these rules. Vacancies shall~~

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be announced before a list of applicants is issued to an appointing authority.

581—7.2(19A) Certificate List requests. An appointing authority shall submit a ~~multiple list request form~~ when filling a vacancy in a position covered by merit system provisions.

581—7.3(19A) Types of certificates lists. The following types of certificates lists may be issued.

7.3(1) Recall certificate list. The director will ~~certify provide~~ the names of those persons who are eligible for recall on the date and time issued in accordance with the provisions of 581—subrule 11.3(6) or applicable collective bargaining agreements.

7.3(2) Nonpromotional certificate. Promotional list. The director will ~~certify provide~~ the names of qualified applicants who are ~~not~~ permanent employees and *those designated in 581—subrule 5.2(4)* who have indicated availability for the conditions and location specified in the ~~request for certification vacancy announcement.~~

7.3(3) Promotional certificate. All-applicant list. The director will ~~certify provide~~ the names of *all qualified* applicants who are permanent employees, regardless of the agency of employment, who have indicated availability for the conditions and location specified in the ~~request for certification vacancy announcement.~~

~~7.3(4) Career executive certificate. Rescinded IAB 1/15/97, effective 2/19/97.~~

581—7.4(19A) Selective certification lists. The director may ~~certify provide lists of~~ only those eligibles for a class position who possess specific education, experience or other special selective qualifications required to perform the duties of a position. The director may establish procedures for *determining and approving selective qualifications*, processing requests and issuing selective certificates lists.

~~581—7.5(19A) Selection. When filling a vacancy by original appointment, the appointing authority must select from among those available applicants in the top six final scores, or from persons in the certified disability program whose names are on the certificate.~~

581—7.6 7.5 (19A) Expiration of a certificate list. The expiration of a certificate list shall be ~~60~~ 90 calendar days following the date of issue unless otherwise approved by the director. All appointments or promotions must be reported to the director before the expiration date of the certificate list. Effective dates of appointments or promotions must be no later than 60 days after the expiration date of the certificate list unless otherwise authorized by the director, except that appointments or promotions “pending graduation” or “pending license” shall be allowed to be effective up to nine months following the expiration date of the certificate list.

~~581—7.7(19A) Omission of names from referrals.~~

~~7.7(1) If the appointing authority passes over the name of an applicant on three separate certificates in connection with three separate appointments for the same job class from which another person with a lower certified score was hired, the appointing authority may request that the director not refer that applicant to that appointing authority for future vacancies in that job class for a period of two years from the date removed.~~

~~7.7(2) If an applicant declines or fails to respond to three offers to interview for the same job class in connection with three separate certificates for three different vacancies, the~~

~~appointing authority may request that the director not refer the applicant to the appointing authority for that job class.~~

~~7.7(3) If approved for removal under this rule, the director shall notify the applicant within five working days following removal. The period of removal shall not exceed two years from the date removed. Appeal of removal shall be in accordance with 581—subrule 12.2(4).~~

~~581—7.8(19A) Certification from related eligible lists. The director may issue certificates from related lists of eligibles compiled in accordance with rule 581—6.3(19A).~~

581—7.9 7.6(19A) Incomplete certification lists. If the number of names available for certification on a nonpromotional list is less than six, the appointing authority will be granted provisional appointment authority.

~~581—7.10(19A) Discretionary consideration of eligibles. An appointing authority need not consider the name of an applicant on a certificate if the applicant is currently employed in a permanent position in the same class or a class in the same, comparable or higher pay grade.~~

581—7.11 7.7(19A) Referral and appointment of “conditional” applicants. The names of applicants who are on the eligible list for a class “pending graduation” or “pending license” are considered to be “conditional.” ~~In order to have these applicants referred on a certificate, the appointing authority must request that “conditional” applicants be included on the eligible list, in which case the scores of both “conditional” and qualified applicants will be referred to the agency. If a “conditional” applicant is selected, the appointment shall not be effective until the applicant has met the minimum requirements for qualification. Appointments shall be made in accordance with subrule 581—5.2(5) and rule 581—7.5(19A).~~

581—7.12 7.8(19A) Adjustment of errors. An error in the compilation or issuance of a certificate list, if called to the attention of the director prior to the expiration date of that certificate *filling of the vacancy*, shall be corrected and a new list issued. Except for a recall certificate list, such correction shall not result in the removal of any eligible already certified nor invalidate any appointment already made.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

ITEM 8. Amend 581—Chapter 8 as follows:

CHAPTER 8
APPOINTMENTS

581—8.1(19A) Filling vacancies. Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies in the state personnel system shall be subject to the provisions of these rules. No vacant position in the executive branch shall be filled until the position has been classified in accordance with Iowa Code chapter 19A and these rules.

An employee who has participated in the phased retirement program shall not be eligible for permanent employment for hours in excess of those worked at the time of retirement. An employee who has participated in the early retirement or early termination program shall not be eligible for any state employment.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

PERSONNEL DEPARTMENT[581](cont'd)

581—8.2(19A) Probationary appointment. Probationary appointments may be made only to authorized and established positions unless these rules provide otherwise. Appointments to positions covered by merit system provisions shall be made in accordance with 581—Chapter 7 when applicable.

~~581—8.3(19A) Project appointment.~~ Rescinded IAB 1/13/99, effective 2/17/99.

581—8.4 8.3(19A) Provisional appointment. If the director is unable to ~~certify the names of~~ *provide* at least six available applicants from a nonpromotional eligible list for a position, covered by merit system provisions, an appointing authority may provisionally appoint a person who meets the minimum qualifications for the class to fill the position pending the person's examination, certification and appointment from a nonpromotional *an* eligible list.

No provisional probationary appointment shall be continued for more than 30 calendar days after an adequate eligible list has been established, nor for more than a total of 180 calendar days after the date of original appointment. No provisional intermittent appointment shall be continued for more than 30 calendar days after an adequate eligible list has been established, nor for more than a total of 120 calendar days after the date of appointment.

Successive provisional appointments shall not be permitted. An employee with provisional status shall not be eligible for promotion, demotion, transfer, or reinstatement to any position nor have reduction in force or appeal rights, but provisional probationary employees shall be eligible for vacation and sick leave and other employee benefits.

An employee shall receive credit for time spent in provisional status ~~toward that is contiguous~~ to the period of probationary status.

581—8.5 8.4(19A) Intermittent Temporary appointment. Persons may be appointed with ~~intermittent temporary~~ status to any class without regard to merit system provisions. They may be paid at any rate of pay within the range for the class to which appointed.

Intermittent *Temporary* appointments may be made to established ~~intermittent temporary~~ positions or to permanent positions, or on an overlap basis to unauthorized positions, and may be made to any class and at any rate of pay within the range for the class to which appointed.

An intermittent *A temporary* appointment shall not exceed 700 ~~780~~ work hours in a fiscal year. Hours worked in non-contract classes during the period provided for seasonal appointment in rule 581—8.11(19A) shall not accumulate toward this 700-hour maximum.

An intermittent employee may be given a probationary appointment if appointed in accordance with 581—subrule 7.3(2).

An intermittent *A temporary* employee shall have no rights to appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with ~~intermittent temporary~~ status to a classification covered by a collective bargaining agreement shall only be given another temporary type of appointment to the extent that the total number of hours worked in all temporary appointments in a fiscal year does not exceed 700 ~~780~~ hours. Prior to accumulating 700 hours worked, the employee shall either be given a probationary appointment, given a temporary appointment in a noncontract class, or terminated.

581—8.6 8.5(19A) Reinstatement. A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require certification ~~appointment~~ from a list of eligibles. The period of reinstatement eligibility shall be equal to the period of continuous state employment immediately prior to the employee's separation, to a maximum of two years. Current employees and employees who have retired from state government shall not be eligible for reinstatement. Retired former employees may, however, apply for employment in accordance with 581—paragraph 5.2(4) "b."

A permanent employee who demotes may at any time be reinstated to a position in the class occupied prior to the demotion at the discretion of the appointing authority. Reinstatement shall not require certification ~~appointment~~ from a list of eligibles.

Former employees who are reinstated shall accrue vacation at the same rate as at the time they separated from state employment, and the employee's previous vacation anniversary date minus the period of separation shall be restored. This paragraph shall be effective retroactive to January 1, 1995 2000.

~~581—8.7(19A) Emergency appointment.~~ The director may authorize appointing authorities to make emergency appointments to positions. Emergency appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Emergency appointments shall not exceed 350 hours for any one person in any one fiscal year.

Persons may be appointed with emergency status without regard to merit system provisions and shall have no rights to appeal, transfer, promotion, demotion, merit pay increases, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with emergency status to a classification covered by a collective bargaining agreement shall not work in excess of 350 hours in that status in such a class or classes, nor shall that person accumulate more than 700 hours worked in any combination of temporary statuses in any agency or any combination of agencies during a fiscal year.

~~581—8.8(19A) Appointments to work-test classes.~~ Persons appointed to positions in work-test classes as provided for in Iowa Code section 19A.9, subsection 23, may be given either probationary, intermittent, emergency, or trainee status, according to provisions in these rules, and shall be subject to rules and acquire benefits according to their status. Employees who have attained permanent status and are subsequently demoted, transferred, or promoted to another permanent position in a work-test class shall retain their permanent status. Persons appointed to positions covered by merit system provisions shall be required to meet the minimum qualifications for the class, but will not require examination or certification.

581—8.9(19A) Trainee appointment. The director may authorize an appointing authority to make a trainee appointment to a permanent position covered by merit system provisions of a person who does not meet the minimum qualifications for the class. The trainee shall be a bona fide student in an accredited educational institution, or enrolled in an agency-affiliated training program approved by the director, and have successfully completed at least one semester, or its equivalent, of instruction. Appointees must be at least 14

PERSONNEL DEPARTMENT[581](cont'd)

~~years of age and possess work permits if required. Appointment may be continued up to three semesters or its equivalent, in a two-year period. Employees with trainee status shall have no rights of appeal, transfer, demotion, promotion, reinstatement, or other rights of position; nor be entitled to vacation, sick leave, or other benefits.~~

581—8.10 8.6(19A) Internship appointment. The director may authorize an appointing authority to make an internship appointment to an established position, or if funds are available, to an unauthorized position.

~~8.10 8.6(1) Internship appointments to the class of administrative intern may be made for a period not to exceed one year unless otherwise authorized by the director. Internship appointments to the class of transportation engineer intern shall expire upon attainment of an undergraduate degree.~~

8.10 8.6(2) Employees with internship status shall have no rights of appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits of state employment, nor shall credit be given for future vacation accrual purposes.

8.10 8.6(3) Successful completion of an internship appointment of at least 90 calendar days shall authorize the appointee to be certified from a promotional or all-applicant list lists for any job class for which the appointee has submitted an application and qualifies. Only persons formally enrolled in the department's intern development program are eligible to be on promotional lists. Successful completion shall be as determined by the director at the time of enrollment. ~~An intern's name may remain on the promotional list for up to two years. If an appointment has not been made by the end of the two-year period, the name will be removed from the list. The intern may then reapply through the standard nonpromotional process. After initial selection from a promotional certificate, the intern's name shall be removed from all promotional lists until permanent status has been attained.~~

581—8.11 8.7(19A) Seasonal appointment. The director may authorize appointing authorities to make seasonal appointments to positions. Seasonal appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Seasonal appointments may, however, be made only during the seasonal period approved by the director for the agency requesting to make the appointment, and must be concluded by the end of that period. To be eligible to make seasonal appointments, the appointing authority must first submit a proposed seasonal period to the director for approval. Such period shall not exceed six months in a fiscal year; however, the appointment may start as early as the beginning of the pay period that includes the first day of the seasonal period and may end as late as the last day of the pay period that includes the last day of the seasonal period.

~~Persons may be appointed with seasonal status without regard to merit system provisions and shall have no rights of appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.~~

A person appointed with seasonal status to a classification covered by a collective bargaining agreement shall not work in excess of 700 780 hours in that status in such a class or classes, nor shall that person accumulate more than 700 780 hours worked in any combination of temporary statuses in any agency or any combination of agencies during a fiscal year.

581—8.12 8.8(19A) Overlap appointment. When it is considered necessary to fill a position on an overlap basis pend-

ing the separation of an employee, the appointment of a new employee may be made in accordance with these rules for a period not to exceed 30 60 calendar days. An overlap appointment must be in the same class as the authorized position being overlapped, unless otherwise approved by the director. Any overlap appointment for a longer period must first be approved by the director.

581—8.13 8.9(19A) Rescinding appointments. If, after being appointed, it is found that an employee should have been disqualified or removed as provided for in 581—subrules 5.2(6) or 5.2(7) or rule 581—6.5(19A) or 7.7(19A) these rules, the director may rescind the appointment. An employee with permanent status may appeal the director's decision to the public employment relations board. The appeal must be filed within 30 calendar days after the date the director's decision was issued. Decisions by the public employment relations board constitute final agency action.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

ITEM 9. Amend **581—Chapter 9** as follows:

CHAPTER 9
PROBATIONARY PERIOD

581—9.1(19A) Duration. All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Employees with probationary status shall not be eligible for promotional application or certification promotion, reinstatement following separation, or other rights to positions unless provided for in this chapter, nor have reduction in force, recall, or appeal rights. ~~If, during the period of probationary status in a position covered by merit system provisions, the conditions change under which the employee was originally certified, the employee must be eligible for certification in accordance with 581—subrule 7.3(2).~~

~~Prior to the expiration of the six-month period of probationary status, the appointing authority must notify the employee, with a copy to the director, if the employee is to be terminated.~~

A six-month period of probationary status may, at the discretion of the appointing authority and with notice to the employee and the director, be required upon reinstatement, and all rules regarding probationary status shall apply during that period.

The provisions of this chapter shall apply to all executive branch employees, except employees of the board of regents, unless collective bargaining agreements provide otherwise.

581—9.2(19A) Disciplinary actions.

9.2(1) In addition to less severe progressive discipline measures, the appointing authority may demote, suspend, reduce pay within the same pay grade, or discharge an employee during the period of probationary status without right of appeal. The appointing authority shall notify the employee in writing of the effective date of the action, and in the case of a suspension or reduction in pay, the duration of the action. In no case shall suspension extend beyond 30 calendar days, nor beyond the end of the probationary period. A copy of the notice shall be sent to the director by the appointing authority.

9.2(2) Disciplinary demotion during the period of probationary status to a position covered by merit system provisions shall require ~~that eligibility for appointment from a list of eligibles in accordance with 581—subrule 7.3(2). How-~~

PERSONNEL DEPARTMENT[581](cont'd)

~~ever, a probationary employee may be disciplinarily demoted to a position covered by merit system provisions in a work-test class as long as the employee meets meet the minimum qualifications for the class. If demoted, the The total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 581—subrule 4.6(7).~~

581—9.3(19A) Voluntary demotion during the period of probationary status. Voluntary demotion during the period of probationary status to a position covered by merit system provisions shall require ~~that eligibility for appointment from a list of eligibles in accordance with 581—subrule 7.3(2). However, a probationary employee may voluntarily demote to a position covered by merit system provisions in a work-test class as long as the employee meets meet~~ the minimum qualifications for the class. The total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 581—subrule 4.6(7).

581—9.4(19A) Promotion during the period of probationary status. A probationary employee who is promoted during the period of probationary status to a position covered by merit system provisions shall be ~~certified hired~~ in accordance with 581—subrule 7.3(2). ~~However, a probationary employee may be promoted to a position covered by merit system provisions in a work-test class as long as the employee meets the minimum qualifications required for the class.~~ The total required probationary period shall include the probationary service in the class from which promoted. The rate of pay shall be set in accordance with 581—subrule 4.6(6).

581—9.5(19A) Transfer during the period of probationary status. A probationary employee who is transferred during the period of probationary status by the appointing authority to a position covered by merit system provisions must be ~~eligible for certification in accordance with 581—subrule 7.3(2) unless the transfer is to a position in the same class, in the same location, and under the same conditions for which the employee was originally certified. However, a probationary employee may be transferred to a position covered by merit system provisions in a work-test class as long as the employee meets meet~~ the minimum qualifications required for the class. The total required period of probationary status shall include the probationary time spent in the class from which transferred. The rate of pay shall be set in accordance with 581—subrule 4.6(8).

581—9.6(19A) Reclassification during the period of probationary status. ~~An employee who is reclassified during the period of probationary status must be eligible for certification in accordance with 581—subrule 7.3(2) if the new position is covered by merit system provisions. However, an employee who is reclassified during the period of probationary status to a work-test class covered by merit system provisions need only meet the minimum qualifications for the class. The total required period of probationary status shall include the probationary time spent in the previous class. The rate of pay shall be in accordance with 581—subrule 4.6(9).~~

581—9.7(19A) Leave without pay during the period of probationary status. A probationary employee may be granted leave without pay at the appointing authority's discretion in accordance with these rules. When a probationary employee is granted leave without pay, the employee's probationary period shall not be extended by the amount of leave granted unless the leave is for education or training.

581—9.8(19A) Vacation and sick leave during the period of probationary status. Probationary employees shall accrue and *may* be granted vacation and sick leave in accordance with the provisions of these rules.

581—9.9(19A) Probationary period for promoted permanent employees. This rule shall only apply to promotion within an appointing authority's department and to positions covered by merit system provisions.

An employee may be required to serve a six-month probationary period in the class to which promoted before the promotion becomes permanent.

At any time during the promotional probationary period the appointing authority may return the employee to the formerly held class. Return under this probationary period rule shall not be considered a demotion and there shall be no right to an appeal. The former salary and pay increase eligibility date shall be restored with credit allowed for the time spent in the higher class.

These rules are intended to implement Iowa Code section 19A.9.

ITEM 10. Amend 581—Chapter 10 as follows:

CHAPTER 10
PROMOTION, TRANSFER, TEMPORARY
ASSIGNMENT, REASSIGNMENT
AND VOLUNTARY DEMOTION

581—10.1(19A) Promotion.

10.1(1) An appointing authority may promote an employee with permanent status if the employee meets the minimum qualifications and other promotional screening requirements for the *class position*. ~~When required, the The~~ employee must be on the list of eligibles for the *class position* and available under the conditions stated on the *certificate list* request.

10.1(2) ~~An agency may promote an employee into a position not covered by merit system provisions in accordance with the agency's promotional policies.~~

10.1(3) 10.1(2) Agencies shall collect and ~~maintain forward~~ to the director data on the characteristics of applicants considered for promotion in accordance with ~~equal employment opportunity and affirmative action reporting the director's~~ requirements and these rules.

581—10.2(19A) Reassignment. An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 581—11.2(19A), except as provided for in the second unnumbered paragraph of this rule. If the employee is discharged, and if the employee had permanent status, and if the reassignment would have been in excess of 25 miles, the employee shall have recall rights in accordance with subrule 581—11.3(6), paragraph "c."

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

PERSONNEL DEPARTMENT[581](cont'd)

581—10.3(19A) Temporary assignments.

10.3(1) An appointing authority may assign a permanent employee to special duty when that employee is temporarily needed in a position in another class position. This assignment shall be without prejudice to the employee's rights in or to the regularly assigned position. Unless there is a statutory requirement to the contrary, the employee need not be qualified for, nor certified to, the class to which temporarily assigned.

10.3(2) No change.

10.3(3) Requests shall be submitted to the director in writing for assignments to special duty or extraordinary duty that exceed three complete pay periods, explaining and shall explain the need and the period of time requested. Temporary assignments shall not initially be approved for a period longer than one year. Extensions may be requested. Requests shall be submitted on forms prescribed by the director.

10.3(4) An appointing authority may make temporary assignments without additional pay for up to three consecutive pay periods in a fiscal year. Approval for of temporary assignments without additional pay beyond three consecutive pay periods may be granted by the director.

10.3(5) An appointing authority shall provide restricted duty work assignments, without change to an employee's class and regular pay rate, for those employees who have a medical release to return to restricted duty following a job-related illness or injury. The original period of restricted duty shall be the hourly equivalent of 20 workdays (which shall be on a pro-rata basis for part-time employees), or until the employee is medically released for full duty, whichever is less. Extensions to the original period may be requested by the appointing authority and shall be subject to the for approval of by the director. Exceptions to this subrule must be approved by the director.

581—10.4(19A) Voluntary demotion. An appointing authority may grant an employee's written request for a demotion to a lower class. If the voluntary demotion involves movement from a position covered by merit system provisions to one that is not, the request must clearly indicate the employee's knowledge of the change in merit system coverage. If the employee objects to the change in coverage, the demotion shall not take effect. Also, no demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment qualified. A copy of the voluntary demotion request shall be sent by the appointing authority to the director at the time of the demotion.

Voluntary demotion may be either intra-agency or inter-agency, and shall not be subject to appeal under these rules.

~~Voluntary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 581—9.3(19A).~~

581—10.5(19A) Merit system return rights. Rescinded IAB 1/15/97, effective 2/19/97.

581—10.6 10.5(19A) Transfer. An employee may request a voluntary transfer. The decision to grant or deny the request is the appointing authority's.

An appointing authority may involuntarily transfer an employee. To do so, any applicable collective bargaining agreement provisions regarding transfer must first be exhausted. Transfers may be interagency or intra-agency. Involuntary interagency transfers require the approval of both the sending and the receiving appointing authorities.

To be eligible to transfer, the employee must meet any minimum qualifications and selective certification requirements for the position if the position to which transferring is covered by merit system provisions. ~~Transfer of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 581—9.5(19A).~~

If the transfer of an employee would result in the loss of merit system coverage, the transfer shall not take place without the affected employee's written consent to the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

ITEM 11. Amend 581—Chapter 15 by adopting the following new rule:

581—15.14(19A) Deferred compensation match program. The director is authorized by the governing body to administer a deferred compensation match program for employees of the state of Iowa and those of other eligible participating governmental employers. The program shall be qualified under Section 401(a) IRC and Iowa Code section 509A.12. The assets and income of the program shall be held in trust for the exclusive benefit of the participating employee or the participating employee's beneficiary. The trustee shall be the director of the Iowa department of personnel. The director shall adopt various investment options for the investment of program funds by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

The program shall match eligible participant contributions to the deferred compensation plan with contributions by the employer. Eligibility of participants and the rate of employer matching contributions shall be subject to determination by the trustee and the governing body. The only voluntary participant contributions that the program shall accept are eligible rollover contributions.

ITEM 12. Amend 581—Chapter 15, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 19A.1 to 19A.9 and 2000 Iowa Acts, House File 2463, section 13.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/26/00.

ARC 9989A

**PUBLIC SAFETY
DEPARTMENT[661]**

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 100.35, the Department of Public Safety hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Provisions were included in legislation passed by the General Assembly during its 2000 regular session for changes in and additions to fees collected by the Fire Marshal Division. 2000 Iowa Acts, House File 2552, section 20, amended Iowa Code section 100.1 to require the adoption of rules designating a fee to be assessed to each building, structure, or facility for which a fire inspection is required as a condition of licensure. 2000 Iowa Acts, Senate File 2430, section 23, amended Iowa Code section 101.22 to provide for renewal of registrations of aboveground petroleum storage tanks. Registration of these tanks has been required since 1989, and a one-time registration fee of \$10 per tank has been collected and deposited in the general fund as the tanks were registered. The additional language provides for an annual fee of \$10 per tank for renewal of the registration. These amendments provide for the required fire inspection fees and for annual renewal of aboveground petroleum storage tank registrations and the accompanying fees.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impracticable. The statutory requirements for annual renewal of aboveground petroleum storage tank registrations and payment of annual fees and the language requiring payment of fees for fire inspections required for licensure took effect on July 1, 2000. These amendments are needed to implement these new requirements.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments made effective July 1, 2000, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by enabling the implementation of requirements for renewal of registrations of aboveground petroleum storage tanks and the collection of fees for renewals of these registrations and for fire inspections required for licensure in a timely manner.

Notice of Intended Action regarding these amendments is published herein as **ARC 9990A**. The Notice of Intended Action provides for a period of public comment and participation, including a public hearing. This process will culminate in adoption through the normal rule-making process after consideration of any public input received during the comment period.

These amendments are intended to implement Iowa Code section 100.1 as amended by 2000 Iowa Acts, House File 2552, and section 101.22 as amended by 2000 Iowa Acts, Senate File 2430.

These amendments became effective July 1, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 661—5.5(17A) as follows:

661—5.5(17A,100) Certificates for license and inspection fees.

5.5(1) Certificates for license. Several Iowa statutes provide that a license to conduct certain functions cannot be issued until the fire marshal has approved the building to be used for such function. Upon receipt of a written request, the fire marshal conducts or has conducted an inspection using the procedures contained in the building inspection rule 5.4(17A,100,101,101A). Upon completion of an inspection showing the building to be in compliance, the fire marshal issues a certificate. If the building is found to be in noncompliance, the certificate applicant may file a petition requesting a review and the same procedure is used as if an order were being requested to be reviewed. Upon completion of

the review process, if the building is found to be in compliance, a certificate is then issued.

5.5(2) Inspection fees. *The following fees shall apply respectively to inspections of the facilities of the types listed where a certificate of inspection from the fire marshal is required in order to obtain licensure or certification under Iowa law. The inspection fee shall be paid by check made payable to "Fire Marshal Division, Iowa Department of Public Safety" prior to the issuance of the certificate provided for in subrule 5.5(1).*

a. The inspection fee for a health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135C or a group home licensed or seeking licensure in this state is \$2 per bed.

b. The inspection fee for an elder group home certified or seeking certification pursuant to Iowa Code chapter 231B or an assisted living facility licensed or seeking licensure pursuant to Iowa Code chapter 231C is \$7.50 per bed.

c. The inspection fee for a child care facility licensed or seeking licensure pursuant to Iowa Code chapter 237A is \$20 per facility.

d. When an initial inspection which requires a fee pursuant to paragraphs "a," "b," or "c" of this subrule results in a finding of a deficiency or deficiencies which require a reinspection, the initial reinspection shall be performed without the imposition of any additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of \$100 for each additional reinspection after the initial reinspection is required until the original deficiency or deficiencies have been corrected.

e. The fee for a suitability inspection of a prospective site for a facility which may seek licensure or certification from the state of Iowa is \$100.

This rule is intended to implement Iowa Code chapter 100 as amended by 2000 Iowa Acts, House File 2552.

ITEM 2. Amend rule 661—5.307(101) as follows:

661—5.307(101) Reporting Registration of existing and new tanks—fees.

5.307(1) All existing, new, replacement and out-of-service aboveground tanks of 1101 gallon capacity or greater shall be registered with the state fire marshal. This includes aboveground tanks storing regulated substances as defined in 40 Code of Federal Regulations, Parts 61 and 116, and Section 401.15, July 1, 1988, including, but not limited to, petroleum which includes crude oil, heating oil offered for resale, motor fuels and oils such as gasoline, diesel fuels and motor oil.

5.307(2) 5.307(1) Registration form. *Registration forms for aboveground storage tanks may be obtained from the fire marshal division. The A completed registration notice form shall be submitted to the fire marshal division by the date on which it is due and accompanied by a fee check made payable to the "Fire Marshal Division, Iowa Department of Public Safety" of \$10 for each tank registered or reregistered. Fees must be in the form of a check or money order payable to the Treasurer, State of Iowa. No cash will be accepted.*

5.307(3) 5.307(2) Registration deadlines and late fees. *All tanks registered prior to October 1, 1999, are due to be reregistered on October 1, 2000, and October 1 of each year thereafter. Any tank registered for the first time on or after October 1, 1999, is due to be reregistered on the first day of the month following the anniversary date of the initial registration and on the same date of each year thereafter. A late*

PUBLIC SAFETY DEPARTMENT[661](cont'd)

fee of \$25 per tank shall be imposed for failure to register ~~the a tank or tanks within the guidelines of Iowa Code section 101.102 prior to the last day of the month in which the registration fee is due.~~

~~5.307(4)~~ **5.307(3)** *Registration tag or decal.* Upon receipt of the required registration form and fees, a separate tag or decal for each tank and a copy of the registration form shall be returned to the sender. The tag or decal must be attached to the fill pipe within one foot of where it connects to the tank. Where such installation is impracticable, the tag or decal may be applied to the fill pipe within one foot of where the transport connection is made or to the tank within one foot of the fill pipe.

~~Rules 5.306 and Rule 5.307 are~~ is intended to implement Iowa Code chapter 101 as amended by 2000 Iowa Acts, Senate File 2430.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/26/00.

ARC 9988A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 692A.10, the Department of Public Safety hereby amends Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

The Sex Offender Registry was established by the adoption of Iowa Code chapter 692A by the Iowa General Assembly in 1995. The Registry is intended to facilitate the tracking of sex offenders by criminal and juvenile justice agencies in order to accomplish two related purposes: (1) enhance the capability of criminal and juvenile justice agencies to obtain information about convicted sex offenders useful in investigation of offenses, apprehension of suspects, and prosecution of crimes, especially sex offenses, and (2) enable members of the public to obtain information about convicted sex offenders that may assist them in protecting themselves.

Iowa Code chapter 692A was amended this year by 2000 Iowa Acts, Senate File 2031, in which the time limit for registrants to report changes of address, telephone number, or name was reduced from ten days to five days. These amendments incorporate this change. In addition, completion of risk assessments by juvenile court officers, which was previously inadvertently omitted from the rules, is added, and two elements of the rules are removed. One of the deleted elements is a requirement that registrants receive a completed copy of the risk assessment form when they receive notice of possible affirmative public notification. This information will be provided to the registrant if an appeal of affirmative public notification is filed. These amendments also remove the requirement that the forms displaying registrants for purposes of affirmative public notification contain the signature of the chief executive of the agency undertaking affirmative public notification.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impracticable, as it was the intent of the General Assembly that the Department imple-

ment the provisions of 2000 Iowa Acts, Senate File 2031, as soon as the legislation became effective.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments should be waived and the amendments made effective July 1, 2000, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by providing for immediate implementation of the shorter time limit for registrants to report changes in status to a county sheriff.

These amendments as also published herein under Notice of Intended Action as **ARC 9986A**. 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 amendments through the normal rule-making process after consideration of any public input received during the comment period.

These amendments are intended to implement Iowa Code chapter 692A as amended by 2000 Iowa Acts, Senate File 2031.

These amendments became effective July 1, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule **8.303(2)**, paragraph "b," introductory paragraph, as follows:

b. Form DCI-145 shall also be used to report changes of residence, telephone number, or name of registrants. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant's place of residence, telephone number, or name changes within ~~ten~~ five days of the change of residence, telephone number, or name, whether within or outside the state of Iowa. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

ITEM 2. Amend subrule 8.304(1) as follows:

Amend the introductory paragraph as follows:

8.304(1) Affirmative public notification for public protection. A criminal or juvenile justice agency may initiate affirmative public notification regarding the identity and location of a specific registrant subsequent to the completion of a risk assessment of the registrant by the division of criminal investigation, the department of corrections, or the department of human services, *or a juvenile court officer* which has resulted in a finding that the registrant is "at risk." A request for confirmation that a risk assessment resulting in classifying the registrant as "at risk" has been completed may be sent to the division of criminal investigation by mail, electronic mail via the Internet to isor@dps.state.ia.us, ~~fax~~ *facsimile* transmission or via the Iowa on-line warrants and articles (IOWA) system.

Amend paragraph "d," subparagraph (1), as follows:

(1) When a risk assessment has been completed by the division of criminal investigation, the department of corrections, or the department of human services, the agency which conducted the risk assessment shall notify, or cause to be notified, the registrant of the initial finding, by providing to the registrant a completed copy of Form DCI-152 ~~and of the risk assessment~~. Procedures for notifying a registrant of the results of a risk assessment and providing for appeals thereof shall be subject to the rules of the agency conducting the risk assessment. Copies of the risk assessment and related documents, including any appeals and documentation of the results of appeals, shall be provided to the division of criminal investigation. When a risk assessment has been completed

PUBLIC SAFETY DEPARTMENT[661](cont'd)

by a juvenile court officer, the juvenile court officer shall notify the division of criminal investigation of the results of the risk assessment and provide a copy of the risk assessment to the division of criminal investigation.

When a risk assessment has been completed by the division of criminal investigation or the division of criminal investigation has received a completed risk assessment from a juvenile court officer, notice shall be given by the division of criminal investigation to the registrant by personal service or by certified mail, return receipt requested, 14 days prior to the commencement of any affirmative public notification, unless it is impracticable to give timely notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of certified mail or if certified mail is undeliverable because the registrant has not complied with registry requirements to provide a current address. The notice shall contain the following information:

1. The result of the risk assessment;
2. A description of the scope of affirmative public notification which may result from the risk assessment;
3. That unless application is made for a hearing on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant;
4. That the offender may make application for a hearing by filing a written request for a hearing and mailing or serving it on the department at an address prescribed on the notice so it is received on or by the date mentioned in the notice;
5. That if application is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice, there will be no affirmative public notification until and unless the result of the risk assessment is affirmed, or is modified, through the hearing process.

Amend paragraph "e" as follows:

e. Affirmative public notification initiated by other criminal or juvenile justice agency. A criminal or juvenile justice agency may initiate affirmative public notification with regard to a registrant subsequent to the completion by

the division of criminal investigation, the department of corrections, ~~or~~ the department of human services, *or a juvenile court officer* of a risk assessment finding that the registrant is "at risk." Prior to initiating affirmative public notification, the agency initiating it shall provide notice to the registrant of the agency's decision to initiate affirmative public notification, of the intended scope and manner of affirmative public notification, and of the registrant's right to contest the decision. A copy of the notice shall be submitted to the division of criminal investigation at the same time as it is transmitted to the registrant. The notice shall contain instructions to the registrant as to the procedures for contesting the decision and the time allowed to do so. Affirmative public notification shall not proceed until the time allowed for contesting the decision has expired or, if the decision is contested, until the decision has been upheld. Any written or published form of affirmative public notification shall prominently display the identity of the agency initiating the notification ~~and the signature of the chief executive of that agency.~~

Any criminal or juvenile justice agency initiating affirmative public notification regarding any registrant is authorized to request assistance in carrying out affirmative public notification from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant's residence, place of employment or school, or other places which the registrant is known to frequent.

ITEM 3. Amend **661—Chapter 8**, implementation clause, as follows:

These rules are intended to implement Iowa Code *Supplement* chapter 692A as amended by ~~1999 Iowa Acts, House File 136 and Senate File 294~~ *2000 Iowa Acts, Senate File 2031*.

[Filed Emergency 6/29/00, effective 7/1/00]

[Published 7/26/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/26/00.

ARC 9996A

INSPECTIONS AND APPEALS
DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5), 137C.6, 137D.2(4) and 137F.2, the Department of Inspections and Appeals hereby amends Chapter 30, "Food and Consumer Safety," Chapter 31, "Food Establishment and Food Processing Plant Inspections," Chapter 34, "Home Food Establishments," and Chapter 37, "Hotel and Motel Inspections," Iowa Administrative Code.

The Department of Inspections and Appeals adopted these amendments July 5, 2000. Notice of Intended Action was published in the Iowa Administrative Bulletin on May 31, 2000, as **ARC 9856A**.

These amendments implement 1999 Iowa Acts, chapter 208 [House File 782]. Items 1 and 2 allow not potentially hazardous food products to be prepared in the home and sold to the general public for consumption off the premises without licensing. Item 3 permits the sale of wild morel mushrooms in restaurants and grocery stores, allows aged cheeses to be sold without date marking and exempts from the consumer advisory requirement the preparation and serving of whole red muscle meats that are undercooked. Item 4 updates labeling requirements for home food establishments that sell bakery products to grocery stores and restaurants to bring them into compliance with the Federal Food, Drug and Cosmetic Act which requires that an ingredient statement be present when a food has two or more ingredients. Item 5 updates hotel rules referring to the 1976 Food Service Establishment Ordinance in reference to the design of equipment used to store or handle ice.

The following amendments are not subject to waiver because they are specifically mandated by statute.

At the request of the Administrative Rules Review Committee, the term "potentially hazardous food" is being defined in 481—30.1(10A). This new definition, added since the Notice of Intended Action, is identical to the definition provided in Iowa Code section 137F.1.

These amendments are intended to implement Iowa Code section 10A.104, Iowa Code chapters 137C, 137D, and 137F, and 1999 Iowa Acts, chapter 208 [House File 782].

These amendments shall become effective August 30, 2000.

The following amendments are adopted.

ITEM 1. Amend rule **481—30.2(10A)** as follows:

Amend the definitions of "farmers market" and "food establishment" as follows:

"Farmers market" means a marketplace which operates seasonally as a common market for fresh fruits and vegetables on a retail basis for consumption elsewhere.

The following products may be sold at a farmers market without being licensed under Iowa Code section 137F.4 at the market location:

1. Baked goods except the following: soft pies and bakery products with custard or cream fillings, as well as other potentially hazardous items. These products must be labeled in accordance with rule 481—34.3(137D).

2. Wholesome, fresh eggs.

3. Honey which is labeled per rule 481—34.3(137D).

4. Prepackaged, ~~nonhazardous~~ *not hazardous* food products prepared in an establishment licensed under Iowa

Code section 137F.4 as a food establishment or a food processing establishment.

5. Fresh fruits and vegetables.

6. *Not potentially hazardous food prepared on the premises of a residence. This exemption does not include "home-style" canning, since food in hermetically sealed containers must come from a licensed food processing plant.*

7. Jams and jellies.

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. "Food establishment" does not include the following:

1. A food processing plant.

2. An establishment that offers only prepackaged foods that are ~~nonpotentially~~ *not potentially* hazardous.

3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.

5. Premises which operate as a farmers market.

6. Premises of a residence in which food that is ~~nonpotentially~~ *not potentially* hazardous is sold for consumption off the premises *to a consumer customer*, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. "~~Not potentially hazardous food~~" means only the following:

• ~~Baked goods, except the following: soft pies, bakery products with custard or cream fillings, or any other potentially hazardous goods.~~

• ~~Wholesome, fresh eggs that are kept at a temperature of 45 degrees Fahrenheit or 7 degrees Celsius or less.~~

• ~~Honey which is labeled with the name of the product, and the name and address of the person preparing the food.~~

7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

8. A private home that receives catered or home-delivered food.

9. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

10. Supply vehicles, vending machine locations or boarding houses for permanent guests.

11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.

12. Premises covered by a current Class "A" beer permit as provided in Iowa Code chapter 123.

13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.

14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.

Adopt the following new definition in alphabetical order: "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. "Potentially hazardous food" includes an animal

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. "Potentially hazardous food" does not include the following:

1. An air-cooled hard-boiled egg with shell intact.
2. A food with a water activity value of 0.85 or less.
3. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees Centigrade or 75 degrees Fahrenheit.
4. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

ITEM 2. Amend subrule 31.1(2) to read as follows:

31.1(2) Food prepared in a home food establishment, licensed under Iowa Code section 137D.2 ~~or a premises as provided in Iowa Code section 137F.1(8)"f,"~~ can be offered for sale.

ITEM 3. Amend rule 481—31.1(137F) by adopting the following **new** subrules:

31.1(14) Paragraph 3-201.16(B) shall be amended to permit wild morel mushrooms to be sold in food establishments.

31.1(15) Paragraphs 3-501.17(C) and (D) shall be amended so that aged cheese is not required to be date-marked.

31.1(16) Section 3-603.11 shall be amended so that a consumer advisory is not required when a food establishment serves undercooked whole muscle red meats.

ITEM 4. Amend rule 481—34.3(137D) to read as follows:

481—34.3(137D) Labeling requirement. All labels shall contain the following information in legible English:

1. Name and address of the person(s) preparing the food, ~~and~~
2. Common name of the food,
3. *The names of all ingredients in the food, beginning with the one present in the largest proportion and continuing in descending order of predominance, and*
4. *The quantity of the contents in terms of weight, measure or numerical count.*

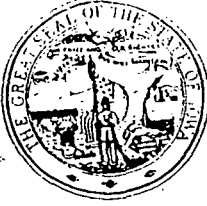
ITEM 5. Amend subrule 37.5(3) to read as follows:

37.5(3) Ice kept for guests to use shall be protected from contamination. Lids on ice machines or storage bins shall be tight. Containers used to store ice shall be continuously drained and there shall be an air gap in addition to the drain. ~~Standards in Chapter 4, "Equipment and Utensil Materials" of the 1976 edition of the Food Service Establishment Ordinance are to be met for equipment and utensils used to store or handle ice. Ice containers and utensils shall be designed so that the surfaces are made of a material that is safe for use as a food contact surface and so that the surface can be adequately cleaned.~~

[Filed 7/5/00, effective 8/30/00]

[Published 7/26/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/26/00.


State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** PROCLAMATION OF DISASTER EMERGENCY**

WHEREAS, ON WEDNESDAY, MAY 31, 2000, AND CONTINUING, A SEVERE STORM SYSTEM MOVED ACROSS PORTIONS OF IOWA; AND

WHEREAS, THIS STORM SYSTEM SPAWNED HEAVY RAINS, HAIL, AND INTENSE WINDS, CAUSING DAMAGES TO PRIVATE AND PUBLIC PROPERTY INCLUDING RESIDENCES, BUSINESSES, INFRASTRUCTURE, AND AGRICULTURE, IN COUNTIES IN NORTHEAST IOWA; AND

WHEREAS, SURVEYS AND REPORTS FORWARDED BY LOCAL AND STATE OFFICIALS INDICATE THAT STATE ASSISTANCE WILL BE NEEDED TO RESPOND TO AND RECOVER FROM THE EFFECTS OF THIS STORM:

NOW, THEREFORE, I, THOMAS J. VILSACK, GOVERNOR OF THE STATE OF IOWA, DO HEREBY PROCLAIM A STATE OF DISASTER EMERGENCY FOR ALLAMAKEE, HOWARD AND WINNESHIEK COUNTIES, OF THE STATE OF IOWA, FOR THE AFOREMENTIONED REASONS. THIS PROCLAMATION OF DISASTER EMERGENCY AUTHORIZES LOCAL AND STATE GOVERNMENT TO RENDER GOOD AND SUFFICIENT AID TO ASSIST THIS AREA IN ITS TIME OF NEED.



IN TESTIMONY WHEREOF, I HAVE HERE-
UNTO SUBSCRIBED MY NAME AND
CAUSED THE GREAT SEAL OF THE STATE
OF IOWA TO BE AFFIXED. DONE AT DES
MOINES THIS 9TH DAY OF JUNE IN THE
YEAR OF OUR LORD TWO THOUSAND.



 THOMAS J. VILSACK
 GOVERNOR

ATTEST:



 CHESTER J. CULVER
 SECRETARY OF STATE

*Reproduced as submitted

* SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED JULY 6, 2000

Note: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

98-1461. DETTMANN v. KRUCKENBERG.

Appeal from the Iowa District Court for Sac County, Ronald H. Schechtman, Judge. **AFFIRMED.** Considered en banc. Opinion by McGiverin, C. J. (23 pages \$9.20)

Plaintiff, Marc Dettmann, brought this wrongful death action as executor of his wife Laurie's estate. Laurie died when her vehicle was struck by an intoxicated driver, Michael Kruckenberg. Michael's father Keith owned the car. Prior to the accident, Kruckenberg and friend, Aaron Jones, stole and later drank beer from a beer truck driven by David Anderson and owned by Ike Auen Distributing Company. Michael was subsequently convicted of vehicular homicide. See Iowa Code § 707.6A (1995). Dettmann sued Michael and Keith, alleging Michael negligently operated the vehicle. He also sued Auen and Anderson, alleging they were negligent in failing to lock the truck, thereby allowing the theft of beer. Michael and Keith denied Michael was driving the vehicle but the court disallowed an attempted cross-claim alleging that Aaron Jones was driving the vehicle. The court also concluded that Michael's vehicular homicide conviction precluded the Kruckenbergs from litigating the identity of the driver in the wrongful death action. The court dismissed the claim against Auen and Anderson concluding they owed Laurie no legal duty. The jury found Michael's negligence the proximate cause and the court entered judgment against the Kruckenbergs for \$640,462. Kruckenbergs appeal. **OPINION HOLDS:** I. We conclude that in appropriate cases a criminal conviction may be preclusive in a later civil suit as to those issues previously litigated in the criminal proceeding. We reject Keith's contention that even if Michael's criminal conviction is preclusive as to Michael, it is not preclusive as to the issue of Keith's liability under Iowa Code section 321.493(1)(b) as the vehicle owner. We conclude Michael's conviction was preclusive in the present civil suit on the driver issue. II. We find no error in the court's refusal to allow expert testimony as to the speed the vehicle was traveling at the time of the accident. III. We conclude Anderson owed no duty to plaintiff's decedent to guard against theft from the beer truck.

No. 98-559. EXOTICA BOTANICALS v. E.I. DU PONT DE NEMOURS & CO.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell, Judge. **REVERSED.** Considered en banc. Opinion by McGiverin, C.J. (17 pages \$6.80)

Mark Kalafut is vice-president and general counsel of Terra International, Inc. (Terra). Terra formulated or assembled Benlate 50 DF, a fungicide, for E.I. Du Pont De NeMours & Company, Inc. (Du Pont). Du Pont received complaints that trees and plants treated with Benlate were suffering damages, and informed Terra that its Benlate was contaminated with atrazine. Terra began paying claims for growers' damages. Litigation ensued, and in one case (*Du Bose*) Terra and Du Pont retained consulting expert Dr. Cowett. Kalafut learned from Cowett that atrazine levels in Terra's Benlate could not have caused the growers' damages. Cowett began to work exclusively for Terra. In a later case (*Bush Ranch*) Kalafut testified, explaining how claims against Du Pont were processed and how he learned from Cowett during the *Du Bose* litigation that atrazine at the levels found in the Benlate could not have caused the growers' damages. Exotica Botanicals, Inc. and Productora Semillas, SA filed a RICO complaint against Du Pont in Florida state court. Exotica subpoenaed Kalafut for documents generated by Cowett in his capacity either as a consulting expert for Terra, Du Pont, or both. Kalafut refused to produce the documents, alleging they were attorney work product and not discoverable. Exotica moved to compel production, and the district court ordered Kalafut to produce the Cowett documents. Terra and Kalafut appeal. **OPINION HOLDS:** I. We disagree with the district court's conclusion that Kalafut's testimony in the *Bush Ranch* case and correspondence with Du Pont attorneys amounts to a waiver of work product privilege with respect to the detailed Cowett documents in Kalafut's possession. Kalafut testified generally of Cowett's opinions and did not discuss in detail how he had reached his conclusions. As to the correspondence, Kalafut was trying to learn the true nature of the growers' problems with Benlate during the time that Terra was paying claims on Du Pont's behalf. To say that Kalafut waived the privilege concerning information that might potentially absolve Terra of liability, simply by discussing the general nature of that information with Du Pont, would mean an attorney could never discuss the positive aspects of his or her case with opposing counsel for fear this would amount to a waiver of the work product privilege as to all documents supporting that position. We conclude that the district court abused its discretion in ordering Kalafut to produce the Cowett documents on the basis of waiver of the work product privilege. II. We are not convinced that Exotica has made the proper showing of substantial need and undue hardship under Iowa Rule of Civil Procedure 122(c) for discovery of the Cowett documents. As to other issues raised on appeal, we conclude they either were not preserved or have no merit. We reverse the district court's decision.

No. 99-599. OPPERMAN v. PRUISNER.

On further review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, K. D. Briner, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered en banc. Per Curiam.

(4 pages \$1.60)

On October 9, 1998 William and Debra Opperman sued their insurer, Allied Mutual Insurance Company, for underinsured motorist (UIM) benefits following an automobile accident with Sara Pruisner and Cynthia Gitch, which occurred on December 18, 1995. The Oppermans had previously sued Pruisner and Gitch on December 9, 1997, but their recovery of Pruisner's policy limits was insufficient to compensate them for their damages. Allied obtained summary judgment on the basis the Oppermans were barred from suing after December 18, 1997. Allied relied on a clause in its policy which provided "We may not be sued unless all the terms of this policy are complied with. We may not be sued under the Underinsured Motorist coverage on any claim that is barred by the tort statute of limitations." The Oppermans appealed, and the court of appeals affirmed. We granted the Oppermans further review. **OPINION HOLDS:** This case is controlled by our recent decision in *Hamm v. Allied Mutual Insurance Co.*, __ N.W.2d __ (Iowa 2000), where we reviewed the same policy language and found that its purpose was to disallow a UIM claim if the insured has allowed the underlying tort claim to become barred by not settling or bringing suit within the limitations period. We also found that because the UIM claim is based upon a contractual theory, a ten-year limitations period applies, running from the date the insurer denies benefits. The Oppermans brought suit within this period. We vacate the court of appeals' decision, reverse the district court's summary judgment ruling, and remand this case for further proceedings.

No. 99-0092. AHRENDSEN v. IOWA DEP'T OF HUMAN SERVS.

Appeal from the Iowa District Court for Audubon County, Timothy O'Grady, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J.

(9 pages \$3.60)

In August 1991, William and Lydia Ahrendsen transferred farmland to their son, Glen, and his sister for a consideration of two dollars. Their attorney advised them that this transfer would render them ineligible for Medicaid benefits for an unspecified period of time. In September 1992, after the parents entered a nursing home, Glen filed an application for Medicaid benefits for his parents with the Iowa Department of Human Services (DHS). On September 30, 1992, DHS denied the Ahrendsens' application. The decision incorrectly indicated that they would be ineligible for Medicaid payments until August 1997. The correct date for regaining eligibility was February 1994. In September 1996 Glen filed a new application for his mother, Lydia, and also sought to obtain retroactive benefits for his deceased father. The application was approved for Lydia only with retroactive payments to June 1, 1996. Glen then requested an extended period of retroactivity based on the fact that the agency had given incorrect information concerning the period of ineligibility. This request was denied. On judicial review, the

(continued)

No. 99-0092. AHRENDSEN v. IOWA DEP'T OF HUMAN SERVS.
(continued).

district court affirmed the agency decision. Glen appealed. **OPINION HOLDS:** I. The concept of an enlargement of the time for commencing legal proceedings until the basis of the claim is discovered is not applicable to a situation in which a claim has already been presented and ruled on by an adjudicative tribunal. In such a situation, the claimant must challenge the ruling within the time provided by law. Furthermore, a belated appeal of the decision on the September 1992 application could not, by itself, bring the Ahrendsens the relief they are seeking in the absence of a new application for benefits. A new application is subject to the rule limiting retroactivity. II. The Ahrendsens may not prevail on their estoppel claim when the failure to obtain Medicaid benefits at an earlier date has not come about from any change of position on the part of DHS. III. Neither DHS nor the State was unjustly enriched by denying an application for Medicaid benefits on a ground that was consistent with federal statutory law and the DHS regulations. The district court judgment is affirmed.

No. 98-1518. CRIPPS v. IOWA DEP'T OF TRANSP.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J.
(9 pages \$3.60)

Pursuant to implied-consent procedures, Chad Cripps gave a breath sample that was analyzed by an Intoxilyzer 4011A. Based on the device's test result of .106, the Iowa Department of Transportation (IDOT) revoked Cripps motor vehicle operating privileges pursuant to Iowa Code section 321J.12 (1997). Based on evidence produced at a hearing on a review sought by Cripps, the ALJ found that, when the margin of error for the Intoxilyzer 4011A was taken into consideration under Iowa Code section 321J.12(6), the breath alcohol concentration was insufficient to warrant revocation of Cripps' license. The agency reversed the ALJ's decision. On judicial review the district court upheld the agency's final order. Cripps appeals. **OPINION HOLDS:** I. Cripps' notice of appeal was not filed within thirty days of the district court's decision but was filed within thirty days of that court's ruling on Cripps' postdecision motion labeled as a motion under Iowa Rule of Civil Procedure 179(b). The motion sought to have the district court remand the proceeding to the agency for further proceedings. The challenged motion is a proper rule 179(b) motion, even if such a request for an amended decision lacks legal merit because the request for such relief is generally within the court's authority to grant. Although section 17A.19(7) requires a request for the taking of additional evidence before the agency to precede the hearing on the petition for judicial review, we are not convinced that the court could not order that relief in the absence of a request prior to that time. Accordingly, Cripps' notice of appeal was timely filed. II. A. The IDOT may satisfy the margin-of-error provisions of Iowa Code section 321J.12(6) by establishing the deviation with respect to the particular device with which a subject is tested, rather than having to chart the deviation from a known sample among various Intoxilyzer 4011A devices. B. Cripps may not establish that an improper method of
(continued)

No. 98-1518. CRIPPS v. IOWA DEPT' T OF TRANSP. (continued).

testing the Intoxilyzer was employed when he has presented no evidence on the method used. C. There is nothing in the record from which we can verify Cripps' assertion that the margin of error for the testing accuracy of the machine must be at least as great as the range of calibration. Accordingly, the final agency decision was supported by substantial evidence. The district court judgment is affirmed.

No. 98-1595. THOMPSON v. HERRON.

Appeal from the Iowa District Court for Crawford County, John D. Ackerman, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J.
(5 pages \$2.00)

Motor vehicle tort claimant, Donna Thompson, commenced this action against Larry Herron, the personal representative of deceased motorist, Raymond Herron. The accident occurred on May 10, 1991. The estate was opened on May 20, 1991, in Dallas County and closed on December 17, 1991. Thompson moved to reopen the estate for this suit in 1993, but her application was denied. Thompson then filed suit in Crawford County against the estate and others, which that court dismissed because the estate had been closed for more than sixteen months. Thompson appealed both cases. We affirmed the Crawford County dismissal in *Thompson v. Estate of Herron*, 561 N.W.2d 33 (Iowa 1997), but we remanded the Dallas County proceeding, and later affirmed the district court's reopening of the estate. Thompson then filed a new action against the estate in Crawford County, serving the personal representative with original notice on July 28, 1997. The district court subsequently granted the defendant-executor's motion for summary judgment on grounds the action was barred by the statute of limitations for personal injuries. Iowa Code § 614.1(2). Thompson appeals. **OPINION HOLDS:** We agree Thompson's refiled claim was barred by Iowa Code section 614.1(2). We reject Thompson's argument that her claim is saved by the final paragraph of section 633.415. The purpose of that paragraph was to chart procedure for filing a facially barred action that has been saved by the six-month extension of section 614.2. Because the latter statute has no application in the present case, Thompson receives no benefit from section 633.415.

No. 00-0231. IN RE INQUIRY CONCERNING SANDRA J. HOLIEN.

On application of the Iowa Commission on Judicial Qualifications. **DISTRICT ASSOCIATE JUDGE REMOVED.** Considered en banc. Opinion by Larson, J. (17 pages \$6.80)

The commission on judicial qualifications applied to this court for an order removing a Marshall County District Associate Judge, Sandra J. Holien, for cause. The commission charged violations of eight canons of judicial ethics and two statutory violations. **OPINION HOLDS:** I. The statutory provisions clearly contemplate that the commission will act as fact finder, and there is no provision for the appointment of an independent body for that
(continued)

No. 00-0231. IN RE INQUIRY CONCERNING SANDRA J. HOLIEN.
(continued)

purpose. II. After the filing of specific charges by the commission, the judge should be given the same right of discovery as that available to members of other professions who face charges of misconduct before boards or agencies. However, the commission's failure to allow discovery of the complaints in this case did not prejudice the respondent because all of the charges against her were set forth in detailed and precise allegations of events in which she was personally involved. III. The commission properly considered the investigative report to make its initial determination of whether further proceedings were necessary, and the respondent was not prejudiced at her hearing by the commission's familiarity with the report. IV. The respondent adamantly refused to follow the rules of criminal procedure and the statutory provisions for an open court. Her refusal to abide by statutes and rules with respect to public access to her courtroom and with respect to accepted procedures violated Canon 1 of our Code of Judicial Conduct (a judge should uphold the integrity and independence of the judiciary), and Canon 2 (a judge should avoid impropriety and the appearance of impropriety in all activities). V. The respondent consistently engaged in hostile, volatile, and disrespectful, treatment toward court personnel, attorneys, and the public. Civility toward fellow judges, court employees, attorneys, and the public was almost totally lacking. VI. The respondent is simply and unalterably unsuited to be a judge. We order she be removed from office effective thirty days from the filing of this opinion unless she has, in the meantime, resigned her position.

No. 98-1440. STATE v. WISEMAN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered en banc. Opinion by Larson, J. (4 pages \$1.60)

Larry Wiseman was convicted in 1997 of operating a motor vehicle while intoxicated (OWI). Based on a 1991 OWI conviction resulting from a guilty plea, the district court found him guilty of a second offense and enhanced his sentence accordingly. Wiseman appealed. The court of appeals affirmed, rejecting Wiseman's argument that because his earlier offense was based on a guilty plea entered more than six years before his present offense and outside the six-year window of Iowa Code section 321J.2(3) (1997) (subsequently amended), it could not enhance the penalty. We granted Wiseman further review. **OPINION HOLDS:** We agree with the district court and court of appeals that the operative terms of section 321J.2(3) (1997) are convictions and deferred judgments—not pleas of guilty. In fact, we believe a guilty plea standing alone is irrelevant on the enhancement issue until a conviction or deferred judgment is entered. The district court correctly held that the date of the conviction, not the date of the guilty plea, controlled for enhancement purposes. Wiseman's conviction was within the six-year window of that section, and the court properly enhanced his sentence.

No. 98-2282. HEER v. THOLA.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Jackson County, John Nahra, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT REVERSED.** Considered en banc. Opinion by Larson, J. Dissent by Cady, J. (11 pages \$4.40)

In 1973, Lawrence and Mildred Schilling purchased a two-acre parcel of land and gave the southern portion to their daughter, Mary Heer. Mary and her husband, Robert, built and moved into a house on the land. In the fall of 1973, Lawrence Schilling and Robert Heer decided on a boundary line and erected a fence. The fence was removed in 1978 when the Schillings built a house, but the parties maintained the same boundary line. In 1990, Schilling established a trust and conveyed his property to the trust by a quitclaim deed. In 1994, Mary Heer, by a trustee's deed, conveyed the Schilling house and property to the defendant, Robert J. Thola. In August 1997 Thola had his property surveyed and learned his recorded property line was about twenty-two feet south of where he had understood it to be. In November 1997, the Heers filed a petition to establish a boundary line, based on acquiescence under Iowa Code chapter 650 (1997), at the previously maintained boundary. The district court initially dismissed the Heers' petition as barred by the statute of limitation under Iowa Code section 614.114(5)(b) (one-year limitation on challenge to trustee's deed). In response to the Heers' rule 179(b) motion, however, the court entered judgment for the Heers, concluding that they had acquired the strip by acquiescence. The court of appeals affirmed the district court's opinion, and we granted further review. **OPINION HOLDS:** We conclude that the Heers' claim of title by acquiescence could not have been established under chapter 650 prior to a court's finding of the necessary elements of such a claim. Therefore, at the time Schilling deeded the land to the trust, he was still the owner of it. The Heers' claim to establish title, having been brought more than a year following delivery of the trustee's deed, was barred by Iowa Code section 614.14(5)(b). We vacate the opinion of the court of appeals, reverse the district court judgment, and remand for dismissal of the petition. **DISSENT ASSERTS:** I would affirm the district court and the court of appeals. The Heers' claim arose independent of the trustee's deed and the statute of limitations under section 614.14(5) does not apply.

No. 98-1821. McCLURE v. WALGREEN CO.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered en banc. Opinion by Lavorato, J.; Dissent by Cady, J. (21 pages \$8.40)

In 1997, Deb McClure went to the Walgreen's pharmacy on Ingersoll Avenue in Des Moines to fill prescriptions for her mother, Shari, who was being treated for cancer. One of the prescriptions was for Pepcid to control stomach acid. The on-duty pharmacist, however, filled the prescription with Paxil, an antidepressant. Over the next month, Shari took the drug twice daily, and she deteriorated sharply both mentally and physically. In August 1997,
(continued)

No. 98-1821. McClure v. Walgreen Co. (continued).

Shari injured herself in a fall, and she was admitted to Wesley Acres Retirement Home. While there, a nurse discovered the prescription error and informed the McClures. However, Walgreen did not inform the McClures of the side effects from discontinued use of Paxil. Several days later, Shari again fell and was injured. She ultimately sued Walgreen and the on-duty pharmacist for injuries sustained as a result of their negligence. A jury awarded Shari \$100,000 in compensatory and \$150,000 in punitive damages. Walgreen has appealed, and Shari has cross-appealed. **OPINION HOLDS:** I. Viewing the evidence in a light most favorable to Shari, we conclude there was sufficient evidence to submit the punitive-damage issue to the jury, especially since Walgreen failed to warn Shari of Paxil's side effects even after learning of its mistake. II. We find the civil jury instructions on punitive damages submitted to the jury complied with the constitutional requirements set forth in *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991). III. We conclude there was no constitutional violation in admitting into evidence information regarding Walgreen's worldwide financial condition rather than limiting such information to Walgreen's Iowa operations. IV. We find the district court did not abuse its discretion in admitting thirty-four incident reports involving claimed errors at the Walgreen in question, since this information was vital to Shari's efforts to establish Walgreen's pattern of conduct. V. We conclude the statement of charges and the stipulation and consent order in the license disciplinary proceedings against Walgreen were irrelevant and inadmissible, since there was nothing in this evidence that amounted to an admission of wrongdoing. The district court erred in admitting this prejudicial evidence, and we reverse and remand for a new trial on the punitive-damages issue. Our holding renders Shari's cross-appeal moot. **DISSENT ASSERTS:** I would conclude there was insufficient evidence to support submission of punitive damages to the jury as a matter of law. The duty of a pharmacist to a customer does not change the nature of the relationship between the customer and the treating physician. It was reasonable for Walgreen to assume the physician would take the appropriate action in response to its mistake. The failure to warn under these circumstances falls far short of the standard of willful and wanton disregard for Shari's safety.

No. 99-0301. STATE v. WOODY.

Appeal from the Iowa District Court for Jasper County, William H. Joy, Judge. **SENTENCE VACATED; REMANDED FOR RESENTENCING.** Considered en banc. Opinion by Lavorato, J. (5 pages \$2.00)

In 1998, Dennis Woody was charged with first-degree robbery for an offense that allegedly occurred in 1995. The State later added a count alleging he was an habitual offender based on 1991 and 1996 convictions. Woody and the State entered into a plea agreement whereby the State amended the original charge to second-degree robbery, and Woody admitted to being an habitual offender. The district court sentenced him to an indeterminate, fifteen-year term of imprisonment. Woody appeals. **OPINION HOLDS:** I. (continued)

No. 99-0301. STATE v. WOODY. (continued)

Woody's enhanced sentence for being an habitual offender was clearly not appropriate under Iowa Code sections 902.8 and 902.9(2) (1995) and is therefore void. The enhancement applies only when the previous convictions precede the commission of the current offense, and the State relied on a conviction that occurred after the date of the offense at issue here. II. The guilty plea to second-degree robbery was valid, and only the sentence was illegal. In these circumstances, we think it is appropriate to vacate the illegal sentence and remand for a correct sentence for second-degree robbery.

No. 98-1648. BROWN v. STAR SEEDS.

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Neuman, J. (7 pages \$2.80)

Charles L. Brown, Sr., sustained injuries while engaging in seasonal work for Star Seeds, Inc. Brown's principal occupation was farming. Brown suffered both temporary permanent disability and a sixty-percent loss of earning capacity, calculated as an industrial disability to the body as a whole. Based on Iowa Code section 85.36(9) (1993) Star Seeds paid Brown a weekly benefit of \$534.46. The deputy industrial commissioner reduced Brown's weekly benefit dramatically based on an intervening Iowa Court of Appeals decision, *Hartman v. Clarke County Homemakers*, 520 N.W.2d 323 (Iowa App. 1994), which determined that under section 85.36(10), wages earned by a claimant as an independent contractor must be excluded from the weekly benefits calculation. The deputy concluded *Hartman's* rationale applied with equal force to Brown's situation as a farmer, and the deputy's decision was affirmed by the industrial commissioner and on judicial review. Brown appeals. **OPINION HOLDS:** We agree with Brown that the reference in 85.36(9) to earnings from "all occupations" distinguishes the benefit calculation for seasonal employees from the one in section 85.36(10) using the language "all employment." We reject Star Seeds' contention that section 85.36(9) embraces only earnings from employer-employee relationships. We believe non-covered concurrent employment, in this case farming, is included in the benefit calculation for an injured worker under section 85.36(9). We reverse and remand to the agency for a re-calculation of Brown's benefits.

No. 98-1115. STATE v. BARNHOLTZ.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge. **AFFIRMED IN PART; REVERSED IN PART.** Considered en banc. Opinion by Lavorato, J. (11 pages \$4.40)

A jury convicted Roger Barnholtz of making a public document in violation of Iowa Code section 718.5 (1995) for executing a damage disclosure statement for a 1992 Mazda. Bonnie Barnholtz and Barnholtz Automotive Group, Inc. (Barnholtz) were convicted of violating the same statute in connection with the execution of an application for certificate of title for a 1976 Buick automobile. In addition, Bonnie was convicted of one count of forgery, and
(continued)

No. 98-1115. STATE v. BARNHOLTZ. (continued).

Barnholtz was convicted of two counts of theft in the second degree and four counts of forgery. With the exception of Bonnie's forgery conviction, the defendants appealed all convictions. **OPINION HOLDS:** I. Action by a public officer is necessary to make a record or document a "public record." When the damage disclosure statement and the application for certificate of title were filed, they became public documents, as statutory law requires some public official to record them. II. As Roger, Bonnie, and Barnholtz's alleged actions with respect to those documents occurred before the documents were filed, the reach of section 718.5 did not encompass those actions. III. Insufficient evidence existed to convict Barnholtz of one of the counts of theft by deception when there was no evidence that the salesman who made the representation of low mileage on the automobile was a high managerial agent or that his actions were authorized, requested, or tolerated by the board of directors or by a high managerial agent. IV. Insufficient evidence existed to convict Barnholtz of one of the counts of forgery on the execution of a title to an automobile when the State's expert could not identify the author of the document, nor was there proof that the board of directors or a high managerial agent had authorized, requested, or tolerated the forgery. V. Insufficient evidence existed to convict Barnholtz of another count of forgery when the State alleged that Bonnie had forged a signature to the title assignment of a vehicle when the State's expert witness could only say that the signature was *probably* made by Bonnie. Given Bonnie's subsequent acquittal of this charge, there was no evidence that a high managerial agent of the corporation had authorized, requested, or tolerated the forgery, and there was no evidence the board of directors had done so either. VI. Barnholtz could be convicted of one count of theft and two counts of forgery, submitted by the district court or specific-intent crimes, as section 703.5 gives a corporation, under certain circumstances, the same level of culpability as an individual committing the crime.

No. 98-835. STATE v. CASTANEDA.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Michael S. Walsh, Phillip S. Dandos, Judges. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT REVERSED; CASE REMANDED FOR NEW TRIAL.** Considered en banc. Opinion by Lavorato, J. Dissent by Cady, J. (24 pages \$9.60)

John Castaneda allegedly sexually abused his ten-year-old adopted daughter. The jury was unable to reach a unanimous verdict in his first trial. At his second trial, his former wife testified that she performed sex acts on him while he was observing children. The court found the daughter was unavailable to testify at both trials and admitted a videotaped interview of her and a transcript of that interview. Castaneda was convicted of second-degree sexual abuse and appealed. We transferred the case to the court of appeals, which affirmed. We granted further review. **OPINION HOLDS:** I. We find the testimony of Castaneda's former wife regarding prior sex acts was not relevant, and the district court had no discretion to admit it and erred in doing (continued)

No. 98-835. STATE v. CASTANEDA (continued).

so. The only rationale for admitting the testimony was that a person involved in prior unnatural sex acts was likely to have committed a similar act in this case, and Iowa Rule of Evidence 404(b) was designed to prevent a jury from making this kind of character inference. II. We conclude his former wife's testimony was unfairly prejudicial, and that prejudice outweighed its minimal probative value. Such evidence would arouse a jury's sense of horror and provoke its instinct to punish and base its decision on it. III. We conclude that, if a trial court finds that a residual hearsay statement has particularized guarantees of trustworthiness and the declarant is unavailable to testify, the statement is admissible even in the absence of face-to-face confrontation and cross-examination. We reached the same conclusion in *State v. Rojas*, 524 N.W.2d 659 (Iowa 1994). IV. We adopt the stringent standard of "relatively impossible and not merely inconvenient" for determining whether a witness is psychologically unavailable to be present or to testify at trial. In applying this standard, trial judges shall consider the probability of psychological injury as a result of testifying, the degree of anticipated injury, the expected duration of the injury, and whether the expected psychological injury is substantially greater than the reaction of the average victim of a rape, kidnapping, or terrorist act. We vacate the decision of the court of appeals, reverse the judgment of conviction and sentence, and remand for a new trial. **DISSENT ASSERTS:** The majority concludes that rule 404(b) evidence to prove intent is not admissible when a defendant denies committing the criminal act charged because intent is not at issue. I agree that evidence of intent is inadmissible when intent is not at issue, but disagree that there is no issue of intent when the defendant denies committing an act in which the intent to act can be inferred from the act itself. Our legal principles require the State to prove all elements of the crime charged, not merely the criminal act. I understand the fear involved in the use of evidence of prior bad acts where the close relationship between the act and intent may cause jurors to use the evidence not as proof of intent, but as evidence that the defendant acted in conformity with the prior act. However, rule 404(b) is applied in conjunction with rule 403 to address the fear of unfair prejudice. Under our standard of review, I cannot conclude the trial court abused its discretion in admitting evidence of Castaneda's prior sex acts.

No. 98-1492. FITZGERALD v. SALSBURY CHEMICAL, INC.

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Cady, J. (22 pages \$8.80)

Tom Fitzgerald was terminated from his employment as a production foreman with Salsbury Chemical Company. Salsbury asserted Fitzgerald was terminated for failing to properly supervise a production worker, Richard Koresh, whose conduct had created a potentially dangerous incident at work. Fitzgerald instituted a wrongful discharge action against Salsbury, alleging his termination violated a public policy to protect workers who oppose the unlawful termination of a co-worker. He also claimed Salsbury's motivation to
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No. 98-1492. FITZGERALD v. SALSBURY CHEMICAL, INC.
(continued)

terminate him violated a public policy to provide truthful testimony in court proceedings threatened by Koresh. The trial court granted summary judgment for Salsbury. Fitzgerald appeals. **OPINION HOLDS:** I. We reject Fitzgerald's claim that the Iowa Civil Rights Act and Title VII of the Civil Rights Act of 1964 establish a public policy in this state which protects an employee from discharge by an employer for opposing the wrongful termination of a co-employee. Those statutes do not expressly protect his conduct and we find nothing which can be inferred from their language to establish the broad public policy suggested. We also observe Fitzgerald has failed to show how any such public policy would be jeopardized by his dismissal. Fitzgerald offered no evidence that he expressed opposition to Koresh's discharge because it was unlawful. II. A. We conclude a public policy does exist in this state against discharge of an employee for giving or intending to give truthful testimony in a legal proceeding. B. We view the good faith intent to engage in a protected activity the same as performing the protected activity. Thus, Fitzgerald must only show he had a good faith intent to truthfully testify. C. The facts in the record permit a reasonable inference that Fitzgerald, prior to his discharge, expressed an intent to testify in future litigation against his employer. D. We reject Salsbury's argument that it could not be liable as a matter of law because it never requested Fitzgerald to commit perjury. We believe the dismissal of an employee can jeopardize public policy when the employee has engaged in conduct consistent with public policy without a request by the employer to violate public policy just as it can when the employee refuses to engage in conduct which is inconsistent with public policy when requested by the employer. E. There is sufficient evidence as to a causal connection between the conduct engaged in by Fitzgerald and the discharge to preclude summary judgment. We reverse the district court's ruling and remand for further proceedings.

No. 98-2025. ST. ANSGAR MILLS, INC. v. STREIT.

Appeal from the Iowa District Court for Carroll County, David R. Danilson, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Cady, J. (12 pages \$4.80)

A grain dealer appeals from an order by the district court granting summary judgment in an action to enforce an oral contract for the sale of corn based on a written confirmation. The district court held the oral contract was unenforceable because the written confirmation was not delivered within a reasonable time after the oral contract as a matter of law. **OPINION HOLDS:** I. The written confirmation exception to the statute of frauds, Iowa Code section 554.2201(2) (1995), employs a flexible standard of reasonableness to establish the time in which the confirmation must be received. II. All relevant circumstances, including custom and practice of the parties, must be considered in determining what constitutes a reasonable time under section 554.2201(2). III. Where the parties had developed a custom or practice to
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No. 98-2025. ST. ANSGAR MILLS, INC. v. STREIT (continued).

delay delivery of the confirmation and the parties had maintained a long-time amicable business relationship and had engaged in many other similar business transactions without incident, the issue of whether the delay in delivering the written confirmation was reasonable was an issue for a jury and summary judgment was not appropriate.

No. 99-937. IN RE B.J.P.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Ruth B. Klotz, Associate Probate Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered en banc. Opinion by Cady, J.
(8 pages \$3.20)

In 1992, Janet Peek was appointed guardian of her grandson B.J.P. In 1996, B.J.P. was removed from the Peek home after the child was adjudicated to be in need of assistance. In 1998, the juvenile court terminated the rights of B.J.P.'s parents and awarded custody to the Department of Human Services for purposes of adoption. The juvenile court additionally granted the probate court concurrent jurisdiction under Iowa Code section 232.3(2) (1997) to terminate the guardianship. Following a hearing, the associate probate judge issued an order terminating Janet's guardianship. Janet appealed. The court of appeals ruled it lacked jurisdiction because Janet failed to initially appeal the associate probate judge's order to the district court. We subsequently granted further review. **OPINION HOLDS:** I. We conclude that under section 633.20(3), an order issued by an associate probate judge is considered to be final for purposes of appellate review. We therefore conclude this case is properly before us on appellate review. II. We reject Janet's claim the hearing should have provided her an opportunity to present evidence of the special needs of B.J.P. and her ability to meet those needs as a guardian. The issue Janet sought to litigate in probate court through the introduction of evidence of her ability to meet the special needs of B.J.P. had been decided by the juvenile court. After the juvenile court ordered the termination of parental rights and selected the guardian and custodian to carry out the adoption, the only action to be taken by the probate court was to terminate the prior guardianship. Under these circumstances, the probate court provided Janet an appropriate hearing and properly terminated the guardianship. We vacate the court of appeals' decision and affirm the district court's ruling.

No. 99-364. STATE v. OETKEN.

Appeal from the Iowa District Court for Des Moines County, John C. Miller, Judge. **AFFIRMED.** Considered en banc. Opinion by Snell, J.
(16 pages \$6.40)

Ryan Oetken and Robby Inghram entered into a scheme to burglarize homes in a rural area. They drove through sparsely populated areas in search of unoccupied homes during regular working hours. They broke into two
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No. 99-364. STATE v. OETKEN (continued).

residences on two consecutive days and stole various items, including weapons, from both homes. The men neither used nor brandished the weapons, and two of the three weapons were in cases. A jury found Oetken guilty of two counts of second-degree burglary, and he admitted to being an habitual offender. He appeals. **OPINION HOLDS:** I. There was sufficient evidence for the jury to adduce Oetken had possession of a weapon during the commission of the crimes for the purposes of Iowa Code section 713.5(1) (1997), and trial counsel was not ineffective for failing to preserve error on this issue. II. The jury correctly concluded Oetken intended to commit theft by breaking into private residences and stealing property. He was not prejudiced by the jury's understanding of the term "theft" or application of the commonly accepted meaning of "possession," and it is unnecessary for us to consider whether his attorney abrogated a duty by failing to request further instruction in these regards. III. The State filed a substitute and supplemental trial information to comply with Iowa Rule of Criminal Procedure 6(5), and at no point did it expressly or impliedly indicate intent to drop the habitual offender charges. The trial court discharged its duty to inform Oetken of the ramifications of an habitual offender adjudication, and there is nothing in the record to indicate he failed to understand the nature of an habitual offender decree or the significance of his admission. We find no error was committed with respect to the habitual offender enhancement. IV. There is sufficient evidence of a common scheme or plan with a single continuing motive, and counsel was not ineffective in failing to move to sever the two counts of the trial information. V. His claim, that trial counsel was ineffective for not requesting reporting of opening statements, closing arguments, and voir dire, is without merit. The district court did not prohibit transcription, and he does not maintain anything untoward occurred during any stage of these proceedings. We have duly considered Oetken's other assertions of error and have found them wholly without merit. The trial court's judgment is affirmed.

No. 99-128. STATE v. CRONKHITE.

Appeal from the Iowa District Court for Jefferson County, James Blomgren, Judge. **AFFIRMED.** Considered en banc. Opinion by Snell, J.
(8 pages \$3.20)

Defendant pled guilty to second-degree murder and was sentenced to an indeterminate term of imprisonment not to exceed fifty years. Under the sentencing guidelines of Iowa Code sections 902.12 and 903A.2 (1997), he must serve 100% of the maximum term of his sentence without eligibility for work release or parole, subject only to a possible 15% reduction for good conduct. Defendant appeals. **OPINION HOLDS:** Sections 902.12 and 903A.2 do not violate defendant's rights to due process or equal protection of the law under the state or federal constitutions. Nor does the sentence imposed constitute a cruel or unusual punishment. We affirm defendant's sentence.

No. 98-2274. STATE v. LAMBERT.

Appeal from the Iowa District Court for Muscatine County, J. Hobart Darbyshire, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered en banc. Opinion by Snell, J. Concurrence by Carter, J. (11 pages \$4.40)

Jerry Michael Lambert appeals his conviction for first-degree burglary in violation of Iowa Code section 713.1 (1997) and assault in violation of Iowa Code sections 708.1 and 708.2(4). He claims there was insufficient evidence upon which to base a conviction for burglary, and that he received ineffective assistance of counsel. He further claims the assault conviction should have been merged with that for burglary. **OPINION HOLDS:** I. We hold there is sufficient evidence to sustain a conviction for first-degree burglary. Evidence indicated Lambert entered the home of his estranged wife without permission, in the dead of night, wearing gloves, and wielding a lead pipe. The evidence also suggested Lambert confronted his wife in violation of a restraining order, that he threatened her with imminent bodily harm, and that he assaulted her when she refused to accede to his requests. Most of this evidence was corroborated by eyewitness testimony. II. We also hold that defendant was not prejudiced by counsel's failure to object to the jury instructions. In light of the evidence, we find that even if counsel erred in failing to object to the jury instruction stating "a metal pipe is, by law, a 'dangerous weapon,'" there is not a reasonable probability that the result would have been different. III. The trial court did, however, err by failing to merge the burglary and assault convictions. The district court's decision is affirmed in part, reversed in part, and remanded for merger. **CONCURRENCE ASSERTS:** I join in the opinion of the court as to all issues other than the merger issue. On that issue, I agree that there must be merger of convictions because the situation falls squarely under Iowa Code section 701.9. I do not agree with that portion of the court's analysis that searches for legislative intent beyond the application of that statute.

No. 98-2050. DETERMAN v. JOHNSON.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered en banc. Opinion by Ternus, J. (10 pages \$4.00)

Plaintiff, Lisa Determan, discovered significant structural problems in the home she had purchased from the defendants, James and Diane Johnson. The beam system supporting the roof was inadequate and did not comply with the applicable building code. In addition, a vapor barrier had not been properly installed, resulting in significant moisture problems. Determan's consultants indicated that the roof could be in danger of collapsing. Determan filed a negligence action against the Johnsons to recover her repair costs, loss of use, inconvenience, emotional distress, and mental pain and suffering. The trial court ultimately directed a verdict in favor of the Johnsons on Determan's negligence claims. Determan appealed and the court of appeals affirmed, (continued)

No. 98-2050. DETERMAN v. JOHNSON (continued).

holding that Determan's damages were not recoverable under tort law. We granted further review. **OPINION HOLDS:** I. In deciding the proper remedy for the plaintiff's loss, we look to the nature of the defect, the type of risk, and the manner in which the injury arose. In addition, the type of damages that the plaintiff seeks to recover is necessarily relevant to our consideration of these factors. II. Here, the defects at issue involve the quality of the home Determan purchased. Although the defects present a genuine safety hazard to persons and property, that risk has not come to pass. Determan is not seeking to recover damages from any sudden or dangerous occurrence. The injury at present, and the one for which recovery is sought, is limited to the repair of the defective construction. III. Based on a weighing of all of these factors, we conclude that Determan's claim is based on her unfulfilled expectations with respect to the quality of the home she purchased. Accordingly, her remedy lies in contract law, not tort law. IV. Viewing the facts in a light most favorable to Determan, we conclude the evidence is insufficient to support a recovery under the tort theories upon which she relies. The trial court correctly directed a verdict for the Johnsons on these claims.

No. 98-1047. CARROLL AREA CHILD CARE CENTER v. CARROLL COUNTY BD. OF REVIEW.

Appeal from the Iowa District Court for Carroll County, William C. Ostlund, Judge. **AFFIRMED.** Considered en banc. Opinion by Ternus, J.
(13 pages \$5.20)

The Carroll Area Child Care Center (Center) filed a claim for property tax exemption with the county assessor. The assessor denied the exemption and assessed the property at full value. The Center filed a protest to the county board of review. The board concluded that thirty percent of the value was exempt. On appeal, the district court concluded the Center's property was fully exempt. The board has appealed. **OPINION HOLDS:** I. We conclude the board may not challenge on appeal its own determination that the Center was entitled to a partial exemption. II. We hold that in order to qualify as a charitable endeavor, a facility must show (a) that it provides some level of care as opposed to mere housing, and (b) the care is made available on a gratuitous or partly gratuitous basis. Gratuitous or partly gratuitous care can be shown by either (1) subsidizing the care of those unable to pay, or (2) using charitable contributions to cover the costs of establishing the facility and some portion of operating expenses, thereby subsidizing the facility's cost for all persons who use it regardless of their ability to pay. We conclude the Center meets all these criteria and is entitled to a full exemption. We affirm the district court judgment.

No. 98-1838. NICODEMUS v. MILWAUKEE MUT. INS. CO.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.
REVERSED AND REMANDED. Considered en banc. Opinion by Ternus, J.
 (8 pages \$3.20)

Donna Nicodemus had underinsured motorist (UIM) coverage under an insurance policy issued by Milwaukee Mutual Insurance Co. The policy contained a provision commonly known as an exhaustion requirement, requiring that the insured exhaust the tortfeasor's liability insurance by judgment or settlement in order to trigger UIM coverage. The policy also contained a term prohibiting any suit against Milwaukee Mutual until the insured had complied with all policy terms, and placing a two-year time limitation on such a suit, running from the date of the accident. On November 19, 1994, Nicodemus was injured in an automobile accident with an underinsured motorist. She sued the tortfeasor and settled that lawsuit on October 2, 1997. Nicodemus filed this action against Milwaukee Mutual for UIM benefits on April 10, 1998. Milwaukee Mutual was granted summary judgment on the ground Nicodemus had failed to file her suit within two years of the accident. Nicodemus appealed. **OPINION HOLDS:** I. The practical effect of these policy provisions is that an insured like Nicodemus has no claim for UIM benefits against Milwaukee Mutual and may not even institute suit against it until she has obtained a judgment against, or reached a settlement with, the tortfeasor. Yet the two-year limitations period commences at the time of the motor vehicle accident, which is before the insured has ascertained the extent of her underinsured damages, and before she is permitted, under the policy, to file suit against her insurer. We conclude that this time frame for filing suit under the policy is unreasonable, and therefore, unenforceable. The district court erred in applying the two-year contractual limitations period in determining whether the insured's action was timely filed. II. Since the contractual limitations provision is invalid, the ten-year statutory limitations period of Iowa Code section 614.1(5) (1999) governs. The undisputed facts establish that the present action was filed within this ten-year period. Therefore, Nicodemus's suit is not time barred. We reverse the district court's summary judgment ruling and remand the case for further proceedings.

No. 98-0939. PERKINS v. MADISON COUNTY LIVESTOCK & FAIR ASS'N.

Appeal from the Iowa District Court for Madison County, Donna L. Paulsen, Judge. **AFFIRMED ON APPEAL; AFFIRMED ON CROSS-APPEAL OF PLAINTIFFS WISE, HAINES, AND BLYTHE; REVERSED ON CROSS-APPEAL OF PLAINTIFF PERKINS; AND REMANDED FOR FURTHER PROCEEDINGS.** Considered en banc. Opinion by Ternus, J.
 (18 pages \$7.20)

Property owners Perkins, Wise, Haines, and Blythe, own property near the fairgrounds. The fairgrounds had an arena that was used primarily for rodeo events and various motorized events including tractor pulls, three and four wheeler races and motorcycle moto-cross races. Most of these events took place during the week of the county fair. In 1996, the Fair Association constructed a racetrack at the fairgrounds and began holding figure-eight races there about seven times per year. The property owners sought to have the race-

(continued)

No. 98-0939. PERKINS v. MADISON COUNTY LIVESTOCK & FAIR ASS'N (continued).

track removed or to permanently enjoin figure-eight racing at the fairgrounds. The district court held the races were not a nuisance, but concluded that the Association had violated the county zoning ordinance by not obtaining the necessary permit and variance for construction of the racetrack. Property owners were denied damages but the Association was enjoined from holding figure-eight races until it had obtained a special use permit and variance from the zoning board. The Association appealed and the property owners cross-appealed. **OPINION HOLDS:** I. Iowa Code section 174.3 (1995) exempts the Association from city zoning ordinances but not county zoning ordinances. II. While the Association's original racetrack was a protected nonconforming use of the property, the Association lost that protection when the rodeo arena was enlarged and reconstructed to its current figure-eight configuration. In addition, the impact of the races on the surrounding neighborhood is significantly different from the uses to which the prior arena was put. III. Property owners have priority of location even though not all of the plaintiffs had purchased their land prior to the establishment of the fairgrounds in 1948, where all the plaintiffs moved onto their land prior to the construction of the racetrack and the commencement of the figure-eight races. IV. We agree with the trial court that the races did not rise to the level of a nuisance with respect to Wise, Haines, and Blythe. V. The races are a nuisance to property owner Perkins even though the races only occur seven times per year where the interference caused by the figure-eight races with Perkins' use and enjoyment of her property and home is intense and severe. VI. We affirm the district court's issuance of an injunction until the Association has completely complied with the county zoning ordinance. We also affirm the dismissal of Wise's, Haines' and Blythe's claims. We reverse the dismissal of Perkins' claim and remand for a determination, on the record already made, of the proper remedy.

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