IOWA ADMINISTRATIVE BULLETIN

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August 9, 2000 Pages 189 to 312

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

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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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
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Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
5	**Friday, August 18, 2000**	**September 6, 2000**
6	**Friday, September 1, 2000**	**September 20, 2000**
7	**Friday, September 15, 2000**	**October 4, 2000**

PLEASE NOTE:

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

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

PUBLICATION PROCEDURES

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

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

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

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

bcarr@legis.state.ia.us
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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.

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

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

To All Agencies:

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

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Interest in a retail establishment, 16.2 IAB 8/9/00 **ARC 0036B**	Commerce Board Room 1918 SE Hulsizer Rd. Ankeny, Iowa	August 29, 2000 2 p.m.
CORRECTIONS DEPARTMENT[201]		
North central correctional facility, 26.1 to 26.3 IAB 8/9/00 **ARC 0042B**	Conference Room—2nd Floor 420 Keo Way Des Moines, Iowa	August 29, 2000 11 a.m. to 1 p.m.
DENTAL EXAMINERS BOARD[650]		
Registration of dental assistants, amendments to chs 1, 6, 10, 14, 15, 21, 22, 25, 27, 30 to 34 IAB 8/9/00 **ARC 0039B**	Board Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	August 29, 2000 3 to 4 p.m.
Dental assistants, ch 20 IAB 8/9/00 **ARC 0038B**	Board Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	August 29, 2000 1 to 3 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Accelerated career education program, ch 20 IAB 8/9/00 **ARC 0035B** (See also **ARC 0034B** herein)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 29, 2000 2 p.m.
Rural resource coordination programs for fire services, ch 42 IAB 8/9/00 **ARC 0031B**	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	August 29, 2000 10 a.m.
VAAPFAP loan guarantee; loan or grant funds, 57.2, 57.6 IAB 8/9/00 **ARC 0032B**	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	August 29, 2000 1 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
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.

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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.

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Refunds for storm water general permit coverage—pilot project, 64.16(4) IAB 8/9/00 **ARC 0052B** (See also **ARC 0051B** herein)	Conference Room—Fifth Floor Wallace State Office Bldg. Des Moines, Iowa	September 1, 2000 1:30 p.m.

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Confidential records, 2.13, 2.14(5) IAB 8/9/00 **ARC 0021B**	Director's Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 29, 2000 10 a.m.

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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.

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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.
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	ICN Classroom Mormon Trail Jr.-Sr. High School Main Street Garden Grove, Iowa	August 29, 2000 10 a.m.
	ICN Classroom Lone Tree Jr.-Sr. High School 303 S. Devoes St. Lone Tree, Iowa	August 29, 2000 10 a.m.
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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

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].

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ARC 0036B

ALCOHOLIC BEVERAGES DIVISION[185]

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 123.21 and 123.186, the Alcoholic Beverages Division of the Iowa Department of Commerce hereby gives Notice of Intended Action to amend Chapter 16, "Trade Practices," Iowa Administrative Code.

The Alcoholic Beverages Division of the Iowa Department of Commerce is considering a rule to interpret statutory language in Iowa Code section 123.45. Under this statute, a person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer, shall not, directly or indirectly, be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under Iowa Code chapter 123 to sell at retail or hold a retail liquor control license or retail wine or beer permit.

In 1995, the office of the Attorney General issued an advice letter to the Alcoholic Beverages Division and analyzed this statutory language as prohibiting any holdings or subsidiaries of Bass Ale, a brewer, bottler and importer of alcoholic beverages, from obtaining a permit or license to operate an Iowa retail establishment. Over the past five years, numerous jurisdictions have examined this issue under similar statutory provisions and concluded that the corporate connection of a manufacturer, bottler, or wholesaler may be so remote that rigid application of the statutory prohibition to an applicant for a license or permit is unreasonable. At least 13 states have reviewed their tied house laws and concluded that an industry member may have a corporate connection to a retail establishment that is sufficiently remote so as not to constitute either a direct or indirect interest in the retail outlet. The states that have permitted these arrangements have established conditions similar to those set forth in the proposed rule. Accordingly, the Alcoholic Beverages Division, with the advice of the Attorney General's office, is undertaking this rule making to examine whether a rule should be adopted in Iowa to define "interest" more narrowly and exclude remote corporate connections that do not affect the retail business directly or indirectly.

The proposed rule set forth in the Notice of Intended Action is a draft which may be significantly amended through the rule-making process. The Alcoholic Beverages Division will examine factors that should be considered in determining whether the corporate connection of an industry member is sufficiently remote to exclude it from the statutory prohibition. The factors may include matters not expressly reflected in this proposed rule. The Division intends to seek input from industry members in addition to public comment through the rule-making procedures required by Iowa Code section 17A.4.

There will be a public hearing on the proposed amendment at 2 p.m., August 29, 2000, in the Commerce Board Room, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Alcoholic Beverages Division by telephone at (515) 281-7407 or by fax at (515)281-7385 no later than 4:30 p.m. on Monday, August 28, 2000.

Any interested person may make written suggestions or comments on the proposed amendment on or before Tuesday, August 29, 2000. Written comments should be addressed to Lynn M. Walding, Administrator, at the above address, faxed to (515)281-7385, or E-mailed to Walding@IowaABD.com.

This amendment is intended to implement Iowa Code sections 123.45 and 123.186.

The following amendment is proposed.

Amend rule 185—16.2(123) as follows:

185—16.2(123) Interest in a retail establishment.

16.2(1) An industry member is prohibited, directly or indirectly, from:

~~1.~~ *a.* Acquiring or holding a partial or complete ownership interest in a retail establishment.

~~2.~~ *b.* Acquiring or holding an interest in the real or personal property owned, occupied or used by the retailer in the conduct of the retail establishment.

~~3.~~ *c.* Acquiring a mortgage on the real or personal property owned by the retailer.

~~4.~~ *d.* Guaranteeing any loan or paying a financial obligation of the retailer, including, but not limited to, personal loans, home mortgages, car loans, operating capital obligations, or utilities.

~~5.~~ *e.* Providing financial, legal, administrative or other assistance to a retailer to obtain a license or permit.

16.2(2) *For the purposes of this rule, a subsidiary or an affiliate of an industry member shall not be considered to have any interest in the ownership, conduct or operation of a retailer provided all of the following conditions are satisfied:*

a. The industry member and the retail establishment do not share any common officers or directors.

b. The industry member does not control the retail establishment.

c. The industry member is not involved, directly or indirectly, in the operation of the retail establishment.

d. The retail establishment is free from control or interference by the industry member with respect to the retailer's ability to make choices as to the types, brands and quantities of alcoholic beverages purchased and sold.

e. The retail establishment sells brands of alcoholic beverages that are produced or distributed by competing industry members with no preference given to the industry member that holds a financial interest in the retailer.

f. There is no exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by competing industry members that constitutes a substantial impairment of commerce.

g. The retail establishment shall not purchase more than 20 percent of the combined annual total of all alcoholic beverages (measured by gallons) from the industry member.

h. The primary business of the retail establishment is not the sale of alcoholic beverages.

i. All purchases of alcoholic beverages by the retail establishment are made pursuant to Iowa's three-tier system as provided for in Iowa Code chapter 123.

j. A retail establishment shall file verification with the alcoholic beverages division that it is in compliance with the

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

conditions set forth in this rule upon application, renewal or request of the agency.

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

ARC 0049B

COLLEGE STUDENT AID COMMISSION[283]

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 261.3 and 261.37(5) and 2000 Iowa Acts, Senate File 2439, section 8, the College Student Aid Commission proposes to adopt a new Chapter 19, "Accelerated Career Education Grant Program," Iowa Administrative Code.

The new chapter provides a rule for administering the Accelerated Career Education Grant Program established by the Legislature in 2000 Iowa Acts, Senate File 2439.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)242-3344, by 4:30 p.m. August 29, 2000.

This rule is intended to implement 2000 Iowa Acts, Senate File 2439, section 8.

The following **new** chapter is proposed.

CHAPTER 19
ACCELERATED CAREER EDUCATION GRANT PROGRAM

283—19.1(261) ACE grants. Educational grants based on financial need may be awarded to Iowa residents enrolled in accelerated career education (ACE) programs at Iowa community colleges.

19.1(1) Student financial need.

a. Financial need shall be evaluated annually on the basis of a confidential financial statement, filed on forms designated by the commission, which must be received by the processing agency by the priority date specified in the application instructions.

b. Financial need is defined as the difference between total program expenses at the community college the student plans to attend and the estimated amount of family resources available for college, as determined by the commission. Need determination will include evaluation of all student financial aid received by the student including, but not limited to, federal Pell Grants, Iowa vocational-technical tuition grants, and institutional awards.

19.1(2) Student eligibility.

a. A recipient must be an Iowa resident. The criteria used by the state board of regents to determine residency for tuition purposes, 681—1.4(262), are adopted for this program.

b. A recipient must be enrolled in an accelerated career education program leading to a certificate, diploma, associate of science degree, or associate of applied science degree and in accordance with the provisions of Iowa Code chapter 260G.

c. A recipient must be a full-time student as defined by the college unless the financial aid administrator recommends an award to a part-time student based on extenuating circumstances.

d. A recipient may receive moneys under this program for not more than 150 percent of the length of time required for a full-time student to complete the accelerated career education program.

e. A recipient must meet and maintain the academic eligibility requirements established by the community college.

f. A recipient may receive no more than the amount specified by Iowa law or the amount of the student's established financial need, whichever is less.

19.1(3) Priority for grants. Industries and occupations with high levels of shortages of workers based on the level of statewide need for skills and occupations will be identified by the Iowa department of economic development and the workforce development department. The commission will award grants based on the level of need for the identified skills and occupations for which technical workers are in the highest demand as defined by the Iowa department of economic development and the workforce development department.

Applicants who apply by the priority date specified in the application and who are enrolled in designated educational programs will be ranked in order of need, and awards will be granted to those who demonstrate need from highest need to lowest need, insofar as funds permit.

19.1(4) Award notification. Grant recipients will be notified of the awards by community college officials. Community college officials are responsible for verifying eligibility and coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. Community college officials will report changes of student eligibility to the commission.

19.1(5) Maximum annual award. For purposes of this program, a student must be enrolled four quarters or two semesters plus a summer session to receive the maximum annual award.

19.1(6) Award transfers and adjustments. Recipients are responsible for promptly notifying the appropriate community college officials of changes in enrollment or financial situation. Community college officials will make necessary changes and notify the commission.

19.1(7) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for accelerated career education grants. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapter 5.

This rule is intended to implement 2000 Iowa Acts, Senate File 2439, section 8.

ARC 0050B

COLLEGE STUDENT AID COMMISSION[283]

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 261.3, the College Student Aid Commission proposes to adopt new Chapter 21, "Approval of Postsecondary Schools," Iowa Administrative Code.

The new chapter provides rules for the approval of postsecondary schools seeking to register with the Secretary of State.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)242-3344, by 4:30 p.m. on August 29, 2000.

This rule is intended to implement Iowa Code chapter 261B as amended by 2000 Iowa Acts, Senate File 2248.

The following **new** chapter is proposed:

CHAPTER 21
APPROVAL OF POSTSECONDARY SCHOOLS

283—21.1(78GA,SF2248) Approval criteria. The college student aid commission shall approve applicant schools that:

1. Are accredited by an agency recognized by the United States Department of Education or its successor agency.
2. Are approved for operation by the appropriate state agencies in all other states in which the school operates or maintains a presence.
3. Are not subject to a limitation, suspension or termination order issued by the United States Department of Education.
4. Are free of sanctions from the school's accrediting agencies and appropriate state agencies in all other states in which the school operates or maintains a presence.
5. Enroll students in Iowa or employ an Iowa faculty.
6. Comply with Iowa Code section 261B.7 limiting the use of references to the secretary of state, state of Iowa, or college student aid commission in promotional material.
7. Comply with the requirements of Iowa Code section 261.9(1)"e" to "h."
8. File annual reports that the commission requires from all Iowa colleges and universities.

This rule is intended to implement Iowa Code chapter 261B as amended by 2000 Iowa Acts, Senate File 2248.

ARC 0042B

CORRECTIONS DEPARTMENT[201]

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 904.108, the Department of Corrections gives Notice of Intended Action to amend Chapter 26, "North Central Correctional Facility," Iowa Administrative Code.

These rules provide for the days and hours of visits, tours, and offender trips.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 29, 2000. Such written materials should be sent to the Director of Policy and Legal Services, Corrections Department, 420 Keo Way, Des Moines, Iowa 50309.

There will be a public hearing on August 29, 2000, from 11 a.m. to 1 p.m. in the Second Floor Conference Room, 420 Keo Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Persons who intend to attend the public hearing and have special requirements should contact the Department of Corrections and advise of special needs.

These rules are intended to implement Iowa Code section 904.512.

The following amendments are proposed.

Amend **201—Chapter 26** as follows:

CHAPTER 26
NORTH CENTRAL CORRECTIONAL FACILITY

201—26.1(904) Visiting.

26.1(1) Visiting hours are from 8:30 a.m. to ~~3:30~~ *7:30* p.m. on Saturday~~,~~ *and* Sunday ~~and Monday.~~ *, 8:30 a.m. to 3:30 p.m. on Monday, 12:30 p.m. to 7:30 p.m. on Friday.* ~~on Thursday and Friday visiting hours are from 12:30 p.m. to 7:30 p.m.~~ There is no visiting on Tuesday, ~~and~~ Wednesday, *and Thursday* unless a recognized state holiday falls on either of these days, and then the visiting hours shall be 8:30 a.m. to 3:30 p.m.

26.1(2) Visitors are authorized to bring in only the following items to a visit: one small change purse, wallet or billfold, as long as it does not contain paper money; coin money for the purpose of purchasing items from the vending machines; and, when applicable, one baby bottle, one jar of baby food, three baby diapers, one carrying bag, and one infant seat. Tobacco products are not allowed in the visiting room as smoking is not permitted at any time.

26.1(3) Visitors shall not give any article to ~~inmates~~ *offenders* during a visit. This does not apply to purchases from the vending machines which must be consumed during the visit.

26.1(4) Visitors may leave money for ~~inmates~~ *offenders* at the facility's business office during normal business hours.

26.1(5) ~~Inmates~~ *Offenders* are permitted three-hour visits on Saturday, Sunday, and recognized state holidays, and

CORRECTIONS DEPARTMENT[201](cont'd)

four-hour visits are permitted on Monday~~, Thursday,~~ and Friday. Visits may be extended at the discretion of the warden when visitors are from great distances or when they are only able to make rare visits or in cases when an ~~inmate~~ *offender* is in need of comfort during a time of personal or family crisis. Visits may be temporarily modified, suspended, or terminated by the warden due to a disturbance, riot, fire, labor dispute, natural disaster, or other emergency; and visits may be temporarily modified or terminated by the shift supervisor due to disruptive conduct by the ~~inmate~~ *offender* or visitor or due to space restrictions in the visiting room.

26.1(6) ~~Inmates~~ *Offenders* are permitted eight visits per month from each approved person on the ~~inmate's~~ *offender's* visiting list.

26.1(7) A maximum of five persons may visit one ~~inmate~~ *offender* at a time.

26.1(8) A maximum of two ~~inmates~~ *offenders* may be visited by a visitor at a time provided both ~~inmates~~ *offenders* are members of the visitor's immediate family.

26.1(9) Visits with attorneys or chaplains shall be conducted during normal business hours unless previously approved by the warden.

26.1(10) ~~Inmates~~ *Offenders* in administrative segregation and disciplinary detention may have their visits modified as to length of time and location depending on the conduct which caused placement in that status.

201—26.2(904) Tours.

26.2(1) Tours of the facility are classified as either regular or official tours. A regular tour is given to persons with a genuine interest in corrections and for whom the tour might prove to be beneficial or enlightening, such as students, representatives of the criminal justice system, and probationers under the jurisdiction of the department of corrections or the judicial system. An official tour is given to persons directly related to the operation of the facility such as legislators and the board of corrections.

26.2(2) Sightseeing tours to the general public shall not be allowed unless approved by the warden for specific reasons.

26.2(3) Regular tours shall be conducted on Tuesday and Wednesday between the hours of 9 a.m. and 3 p.m., while official tours shall be conducted during the daytime or evening hours on a day scheduled by the warden.

26.2(4) Minimum age for regular tours is 12 years of age.

26.2(5) Tour groups larger than 30 persons, excluding nonstaff sponsors, shall not be allowed.

26.2(6) Prior approval from the warden is required for relatives or close friends of ~~inmates~~ *offenders* to tour the facility.

201—26.3(904) ~~Inmate~~ *Offender* trips. An outside group wishing to have an ~~inmate~~ *offender* from one of the facility's approved organizations visit it shall send a written request to the warden. Trips are limited to a 100-mile radius from the facility.

These rules are intended to implement Iowa Code section 904.512.

ARC 0039B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76 and 2000 Iowa Acts, House File 686, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Definitions"; Chapter 6, "Public Records and Fair Information Practices"; Chapter 10, "General"; Chapter 14, "Renewal"; Chapter 15, "Fees"; Chapter 21, "Dental Laboratory Technician"; Chapter 22, "Minimum Training Standards for Dental Assistants Engaging in Dental Radiography"; Chapter 25, "Continuing Education"; Chapter 27, "Principles of Professional Ethics"; Chapter 30, "Discipline"; Chapter 31, "Complaints and Investigations"; Chapter 32, "Mediation of Disputes"; Chapter 33, "Child Support Noncompliance"; and Chapter 34, "Student Loan Default/Noncompliance with Agreement for Payment of Obligation," Iowa Administrative Code.

These amendments implement 2000 Iowa Acts, House File 686, which requires the Board to establish procedures for the registration, renewal, and revocation or suspension of dental assistants. These amendments update Board rules to include references to dental assistant registration or registrants, add a new definition of "coronal polish," and establish fees for registration of dental assistants. Item 19 of the amendments also establishes two additional grounds for discipline for all licensees and registrants: practicing beyond training or delegating acts that are beyond the training and education of licensees or registrants.

The rules do not provide for waivers in specific circumstances as the amendments only update the rules to add the new category of dental assistant registrants to existing Board rules.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 29, 2000. Such written comments should be directed to Jennifer Hart, Agency Rules Administrator, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on August 29, 2000, from 3 to 4 p.m. in the Board of Dental Examiners Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

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

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C and 2000 Iowa Acts, House File 686.

The following amendments are proposed.

ITEM 1. Amend rule **650—1.1(153)** as follows:

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

DENTAL EXAMINERS BOARD[650](cont'd)

"Coronal polishing" means coronal polish is an adjunctive procedure that must also include removal of any calculus, if present, by a dentist or dental hygienist. "Coronal polishing" of teeth using only a rotary instrument and a rubber cup or brush for such purpose, when performed at the direction of and under the supervision of a licensed dentist, is deemed not to be the giving of prophylactic treatment.

Amend the following definition:

"Inactive status" means the status of a practitioner licensed *or registered pursuant to Iowa Code chapter 153* ~~in the state of Iowa to practice dentistry or dental hygiene~~ who is not currently engaged in the practice of dentistry, ~~or~~ dental hygiene, *or dental assisting* in the state of Iowa and who has obtained a certificate of exemption from compliance with the requirements for continuing dental education.

ITEM 2. Amend subrule **6.13(2)**, paragraphs **"b"** to **"e,"** as follows:

b. Prior to initiation of a contested case, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the board or its employees or agents which relates to licensee *or registrant* discipline. (Iowa Code section 272C.6(4))

c. Criminal history, prior misconduct or investigative information relating to an applicant for licensure *or registration*. (Iowa Code section 147.21(1))

d. Information relating to results of an examination for licensure, *registration,* or certification other than final score except for information about results of an examination which is given to the person who took the examination. (Iowa Code section 147.21(3))

e. Information relating to the contents of an examination for licensure, *registration,* or certification. (Iowa Code section 147.21(2))

ITEM 3. Amend subrules 6.14(2) and 6.14(4) to 6.14(8) as follows:

6.14(2) Information in complaint, compliance, and investigative files maintained by the board for the purposes of ~~licensee~~ discipline. This information is collected pursuant to Iowa Code sections 153.33, 272C.3, and 272C.9. This information is stored on paper only. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, information may be released to the licensee *or registrant* once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing.

6.14(4) Continuing ~~dental and dental hygiene~~ education records. These records contain educational information about ~~licensees~~ *persons registered or* licensed by the board. This information is collected pursuant to the authority granted in Iowa Code section 272C.2. This information is stored on paper only.

6.14(5) Sponsors of continuing ~~dental and dental hygiene~~ education. These records contain information concerning continuing education sponsors, annual reports, recertification forms, courses, and attendance sheets. This information is collected pursuant to Iowa Code section 272C.2. This information is stored on paper only.

6.14(6) Application records. These records contain information about applicants which may include name, address, telephone number, social security number, place of birth, date of birth, education, certifications, examinations with scores, character references, fingerprints, diplomas and any additional information the board may request. This information is collected by the board pursuant to Iowa Code sections 147.2, 153.21, 153.22, and 153.37 *and 2000 Iowa Acts, House File 686*. This information is stored on paper only. The personal information contained in these records may be confidential in whole or in part pursuant to *Iowa Code sections* 147.21(1) to 147.21(3), 22.7(1), and 22.7(19) or other provisions of law.

6.14(7) Examination records. These records contain examination information and scores for any of the following examinations: Joint Commission on National Dental Examinations; Joint Commission on National Dental Hygiene Examinations; Central Regional Dental Testing Service, Inc. examinations; Iowa jurisprudence examinations; state radiography examinations; state dental examinations; state dental hygiene examinations*; and state dental assistant registration examinations.* This information is collected by the board pursuant to Iowa Code sections 147.21 and 147.34. This information is stored on paper only. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21(2), 147.21(3), 22.7(1), and 22.7(19).

6.14(8) Licensure, *registration,* permit or certification records. These records contain information about currently, previously, or reinstated licensed dentists, dental hygienists, and dental assistants ~~issued certificates of qualification in dental radiography~~. This information includes name of license, *registration,* permit or certificate holder, license, *registration,* permit or certificate number, date issued, current renewal status and current address. This information is collected by the board pursuant to the authority granted in Iowa Code sections 136C.2, 147.2, 147.10, 153.22, 153.23, *and* 153.30. This information is stored on paper, in automated data processing systems, on microfiche, or in the state archives.

ITEM 4. Amend rules 650—10.1(153) and 650—10.2(153) as follows:

650—10.1(153) Licensed *or registered* personnel. Persons engaged in the practice of dentistry in Iowa must be licensed by the board as a dentist, and persons performing services under Iowa Code section 153.15, must be licensed by the board as a dental hygienist. *Persons engaged in the practice of dental assisting must be registered by the board pursuant to 650—Chapter 20*.*

This rule is intended to implement Iowa Code sections 147.2 and 153.17.

650—10.2(153) Display of license, *registration,* and ~~license~~ renewal. The license to practice dentistry or dental hygiene *or the registration as a dental assistant* and the current ~~license~~ renewal must be prominently displayed by the licensee *or registrant* at the principal office of employment.

10.2(1) Additional license *or registration* certificates shall be obtained from the board whenever a licensee *or registrant* practices at more than one address. If more than two additional certificates are requested, explanation must be made in writing to the board *and the appropriate fee must be paid.*

10.2(2) Duplicate licenses *or certificates of registration* shall be issued by the board upon satisfactory proof of loss or destruction of *the* original license *or certificate of registration.*

This rule is intended to implement Iowa Code sections 147.7, 147.10 and 147.80(17).

ITEM 5. Amend rules 650—14.3(153) and 650—14.5(153) as follows:

650—14.3(153) Grounds for nonrenewal of license to

*See **ARC 0038B**, p. 213 herein.

DENTAL EXAMINERS BOARD[650](cont'd)

practice dentistry or dental hygiene ***or of registration as a dental assistant.*** The board may refuse to renew, after proper notice and hearing, a license *or registration* on the following grounds:

14.3(1) Violation of Iowa Code chapter 147 or 153 during the term of the last license *or registration* or renewal of license *or registration.*

14.3(2) Commission of any acts of unprofessional conduct during the term of the last license *or registration* or renewal of license *or registration.*

14.3(3) Failure to obtain required continuing education.

This rule is intended to implement Iowa Code section 153.23 and chapter 272C.

650—14.5(153) Reinstatement of a lapsed license ***or registration.*** Application for reinstatement of a lapsed license *or registration* does not preclude the board from taking other disciplinary action as provided in this chapter.

14.5(1) ~~Licensees~~ *A licensee or a registrant* who ~~allow their~~ *allows a* license *or registration* to lapse by failing to renew ~~such license~~ may be reinstated at the discretion of the board by submitting the following:

a. A completed application for reinstatement of a lapsed license to practice dentistry or dental hygiene *or application for reinstatement of a lapsed registration.* The reinstatement fee of $150 shall accompany the application.

b. and c. No change.

d. ~~Other~~ *A list of other* states in which licensed *or registered* and the identifying number of each license *or registration.*

e. Character references from persons who are not licensed *or registered* in the profession concerned and such other information as the board may require to evaluate the applicant.

f. Reasons for seeking reinstatement and why license *or registration* was not maintained.

g. No change.

h. Evidence of completion of a total of 15 hours of continuing education for each lapsed year or part thereof in accordance with 650—Chapter 25. *Dental assistants shall be required to submit evidence of completion of a total of 10 hours of continuing education for each lapsed year or part thereof in accordance with 650—20.12(153,78GA,HF686).*

i. If licensed *or registered* in another state, the licensee *or registrant* shall provide certification by the state board of dentistry or equivalent authority of such state that the licensee *or registrant* has not been the subject of final or pending disciplinary action.

j. Statement as to any investigations, claims, complaints, judgments or settlements made with respect to the licensee arising out of the alleged negligence or malpractice in rendering professional services as a dentist, ~~or~~ dental hygienist, *or dental assistant.*

14.5(2) The board may require a licensee *or registrant* applying for reinstatement to successfully complete an examination designated by the board prior to reinstatement if necessary to ensure the licensee *or registrant* is able to practice ~~dentistry or dental hygiene~~ *the licensee's or registrant's respective profession* with reasonable skill and safety.

14.5(3) When the board finds that a practitioner applying for reinstatement is or has been subject to disciplinary action taken against a license *or registration* held by the applicant in another state of the United States, District of Columbia, or territory, and the violations which resulted in such actions would also be grounds for discipline in Iowa in accordance with rule 650—30.4(153), the board may deny reinstatement of a license *or registration* to practice dentistry, ~~or~~ dental hygiene, *or dental assisting* in Iowa or may impose any applicable disciplinary sanctions as specified in rule 650—30.2(153) as a condition of reinstatement.

14.5(4) No change.

This rule is intended to implement Iowa Code sections 147.10, 147.11, 153.30 and 272C.2.

ITEM 6. Adopt **new** subrules 15.1(12) to 15.1(14) as follows:

15.1(12) The fee for an application for registration as a dental assistant trainee is $10.

15.1(13) The fee for an application for registration as a registered dental assistant is $40.

15.1(14) The fee for an application for registration as an expanded function dental assistant is $40.

ITEM 7. Adopt **new** subrules 15.2(6) to 15.2(8) as follows:

15.2(6) The fee for renewal of registration as a registered dental assistant is $60.

15.2(7) The fee for renewal of registration as an expanded function dental assistant is $60.

15.2(8) Beginning July 1, 2002, the fee for renewal of a certificate of qualification in dental radiography is $30.

ITEM 8. Amend rules 650—15.3(153) and 650—15.4(153) as follows:

650—15.3(153) Late renewal fees. All fees are nonrefundable. A licensee *or registrant* who fails to renew a license *or registration* to practice following expiration shall be subject to late renewal fees pursuant to 650—Chapter 14.

650—15.4(153) Miscellaneous fees.

15.4(1) The fee for issuing a duplicate license *or registration certificate* shall be $10.

15.4(2) The fee for a certification of the Iowa license *or registration* shall be $10.

ITEM 9. Amend rule 650—21.1(153) as follows:

650—21.1(153) Definition. "Dental laboratory technician" as used in these rules shall include a person other than a licensed dentist who fabricates, constructs, makes, or repairs oral prosthetic appliances solely and exclusively for a licensed dentist and under the dentist's supervision or direction. *A dental laboratory technician who performs any of the duties of a dental assistant, as defined in 650—20.2(153, 78GA,HF686), must be registered with the board as a dental assistant.*

ITEM 10. Amend subrule 22.8(3) as follows:

22.8(3) Attendance once every ~~four~~ *two* years at an updating seminar in dental radiography approved by the board shall be required for renewal. At the time of renewal the dental assistant shall be required to sign a statement that the dental assistant has attended the required course during the previous ~~four~~ *two*-year period. Proof of attendance at such course of study shall be retained by the dental assistant and submitted to the board as further proof of compliance at the request of the board.

ITEM 11. Amend subrules 22.9(1) and 22.9(2) as follows:

22.9(1) The fee for application for a certificate of qualification or student status leading to qualification shall be $35. *Beginning July 1, 2001, the fee for application for a certificate of qualification or student status leading to qualification shall be $15.*

DENTAL EXAMINERS BOARD[650](cont'd)

22.9(2) The fee for renewal of a certificate shall be $60. *Beginning July 1, 2002, the fee for renewal of a certificate shall be $30.*

ITEM 12. Amend **650—25.1(153)** as follows:

Amend the following definition:

"Advisory committee." An advisory committee on continuing education shall be formed to review and advise the board with respect to applications for approval of sponsors or activities and requests for postapproval of activities. Its members shall be appointed by the board and consist of a member of the board, two licensed dentists with expertise in the area of professional continuing education, ~~and~~ two licensed dental hygienists with expertise in the area of professional continuing education, *and two registered dental assistants with expertise in the area of professional continuing education*. The advisory committee on continuing education may tentatively approve or deny applications or requests submitted to it pending final approval or disapproval of the board at its next meeting.

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

"Registrant" means any person registered to practice as a dental assistant in the state of Iowa.

ITEM 13. Amend rule 650—25.2(153) as follows:

Amend the catchwords as follows:

650—25.2(153) Continuing education requirements ~~for licensees~~.

Amend subrules 25.2(4) to 25.2(7) and 25.2(10) as follows:

25.2(4) It is the responsibility of each licensee *or registrant* to finance the costs of continuing education. All fees for continuing education courses shall be remitted by licensee *or registrant* directly to the sponsor or as the board may otherwise direct.

25.2(5) Every licensee *or registrant* shall maintain a record of all courses attended by keeping the certificates of attendance for four years after the end of the year of attendance. The board reserves the right to require any licensee *or registrant* to submit the certificates of attendance for the continuing education courses attended as further evidence of compliance for any year no more than four years previously.

25.2(6) Licensees *and registrants* are responsible for obtaining proof of attendance forms when attending courses. Clock hours must be verified by the sponsor with the issuance of proof of attendance forms to the licensee *or registrant*.

25.2(7) Each licensee *or registrant* shall file a signed continuing education reporting form reflecting ~~a~~ *the required* minimum ~~of 30~~ *number of* continuing education credit hours in compliance with this chapter *and 650—Chapter 20*. Such report shall be filed with the board at the time of application for renewal of a dental or dental hygiene license *or renewal of dental assistant registration*.

25.2(10) A licensed dental hygienist *or registered dental assistant* shall furnish evidence of ~~a~~ valid ~~annual~~ certification for cardiopulmonary resuscitation which shall be credited toward the ~~dental hygienist's~~ continuing education requirement for renewal of ~~a~~ *the* license *or registration*. Such evidence shall be filed at the time of renewal of the license *or registration*. Credit hours awarded shall not exceed ~~six~~ *three* continuing education credit hours per biennium. Valid ~~annual~~ certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the hygienist *or dental assistant* has been properly certified for each year covered by the ~~license~~ renewal period.

ITEM 14. Amend subrules 25.3(1), 25.3(2) and 25.3(4) to 25.3(7) as follows:

25.3(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee *or registrant*; and

25.3(2) It pertains to common subjects or other subject matters which relate integrally to the practice of dentistry, ~~or~~ dental hygiene, *or dental assisting* which are intended to refresh and review, or update knowledge of new or existing concepts and techniques; and

25.3(4) Activity types acceptable for continuing dental education credit may include:

a. Attendance at a multiday convention-type meeting. A multiday, convention-type meeting is held at a national, state, or regional level and involves a variety of concurrent educational experiences directly related to the practice of dentistry. Effective July 1, 2000, attendees shall receive three hours of credit with the maximum allowed six hours of credit per biennium. Prior to July 1, 2000, attendees shall receive five hours of credit with the maximum allowed ten hours of credit per biennium. Four hours of credit shall be allowed for pres-entation of an original table clinic at a convention-type meeting as verified by the sponsor when the subject matter conforms with 25.3(7). Attendees at the table clinic session of a dental, ~~or~~ dental hygiene, *or dental assisting* convention shall receive two hours of credit as verified by the sponsor.

b. to e. No change.

25.3(5) Prior approval of activities. An organization or person other than an approved sponsor, which desires prior approval of a course, program or other continuing education activity or who desires to establish approval of the activity prior to attendance, shall apply for approval to the board at least 90 days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny the application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information. Applications may include the following:

a. Original presentation of continuing dental education courses shall result in credit double that which the participant receives. Credit will not be granted for repeating presentations within the biennium. Credit is not given for teaching which represents part of the licensee's *or registrant's* normal academic duties as a full-time or part-time faculty member or consultant.

b. Publications of scientific articles in professional dental, ~~and~~ dental hygiene, *or dental assistant* related journals shall result in a maximum of 5 hours per article; maximum of 20 hours per biennium.

c. Home study activities shall result in a maximum of 6 hours *of* credit per biennium; *the* licensee *or registrant* must submit a written report of activity. Activity may include television viewing, video programs, correspondence work or research.

25.3(6) Postapproval of activities. A licensee *or registrant* seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor ~~nor~~ *or* otherwise approved may submit to the board, within 60 days after completion of such activity, its dates, subjects, instructors, and their qualifications, the number of credit hours and proof of attendance therefor. Within 90 days after receipt of such application the board shall advise the licensee *or registrant* in writing by ordinary mail whether the activity is approved and the number of hours allowed

therefor. All requests may be reviewed by the advisory committee on continuing education prior to final approval or denial by the board. A licensee *or registrant* not complying with the requirements of this paragraph may be denied credit for such activity.

25.3(7) Subject matter acceptable for continuing dental education credit:

a. No change.

b. ~~Nonacceptable~~ *Unacceptable* subject matter includes personal development, business aspects of practice, personnel management, government regulations, insurance, collective bargaining, and community service presentations. While desirable, those subjects are not applicable to ~~the~~ dental ~~and dental hygiene~~ skills, knowledge, and competence ~~as expressed in the legislation~~. Therefore, such courses will receive no credit toward ~~relicensure~~ *renewal*. The board may deny credit for any course. Courses in patient treatment record keeping, risk management, and OSHA regulations are acceptable subject matter.

ITEM 15. Amend subrule 25.4(3) as follows:

25.4(3) The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees *or registrants* in attendance and send a signed copy of such attendance record to the board office upon completion of the activity, but in no case later than July 1 of even-numbered years. The report shall be sent to the Iowa Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

ITEM 16. Amend rules 650—25.6(153) to 650—25.10(153) as follows:

650—25.6(153) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, ~~or~~ licensee, *or registrant* shall have the right, within 20 days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer designated by the board. If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript of the hearing with the proposed decision of the hearing officer. The decision of the board or decision of the hearing officer after adoption by the board shall be final.

650—25.7(153) Waivers, extensions and exemptions.

25.7(1) Waivers. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions 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 ~~shall be~~ *is* made on forms provided by the board and signed by the licensee *or registrant* and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee *or registrant* must reapply for an extension of the waiver. The board may, as a condition of the waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by methods prescribed by the board.

25.7(2) Extensions or exemptions. Extensions or exemptions of continuing education requirements will be considered by the board on an individual basis. *Licensees or registrants will be exempt from the continuing education requirements for:*

a. ~~A dentist or dental hygienist licensed to practice in this state shall be deemed to have complied with the continuing education requirements of this state during periods~~ *Periods* that the person serves honorably on active duty in the military services~~, or for~~;

b. ~~periods~~ *Periods* that the person practices ~~dentistry or dental hygiene~~ *the person's profession* in another state or district having a continuing education requirement ~~for dentistry or dental hygiene~~ and *the licensee or registrant* meets all requirements of that state or district for practice therein~~, or for~~;

c. ~~periods~~ *Periods* that the ~~dentist or dental hygienist~~ *person* is a government employee working in the person's licensed *or registered* specialty and assigned to duty outside the United States~~,~~; or

d. ~~for other~~ *Other* periods of active practice and absence from the state approved by the board.

650—25.8(153) Exemptions for inactive practitioners. A licensee *or registrant* who is not engaged in ~~the~~ practice in the state of Iowa, residing in or out of the state of Iowa, may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of ~~dentistry or dental hygiene~~ *the applicant's profession* in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

650—25.9(153) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of dentistry, ~~or~~ dental hygiene, *or dental assisting* in the state of Iowa, satisfy the following requirements for reinstatement:

25.9(1) No change.

25.9(2) Furnish in the application evidence of one of the following:

a. The full-time practice of ~~dentistry or dental hygiene~~ *the profession* in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under the rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for ~~such applicant~~ *a dentist or dental hygienist, or by multiplying 10 by the number of years a certificate of exemption shall have been in effect for a dental assistant*; or

c. Successful completion of CRDTS or other Iowa state license *or registration* examination conducted within one year immediately prior to the submission of such application for reinstatement; or

d. The licensee *or registrant* may petition the board to determine the continuing education credit hours required for reinstatement of ~~their~~ *the* Iowa license *or registration*.

25.9(3) Applications must be filed with the board along with the following:

a. Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of ~~dentistry or dental hygiene~~ *the applicant's profession* that the applicant has not been the subject of final or pending disciplinary action.

b. Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of

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the alleged negligence or malpractice in rendering professional services as a dentist, ~~or~~ dental hygienist, *or dental assistant.*

650—25.10(153) Noncompliance with continuing dental education requirements. It is the licensee's *or registrant's* personal responsibility to comply with these rules. The license *or registration* of individuals not complying with the continuing dental education rules may be subject to disciplinary action by the board.

Inquiries relating to acceptability of continuing dental education activities, approval of sponsors, or exemptions should be directed to: Advisory Committee on Continuing Dental Education, Iowa Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

ITEM 17. Adopt **new** subrule 27.1(3) as follows:

27.1(3) Dental assistant ethics. Dental assistants shall utilize the principles of professional dental and dental hygiene ethics for guidance, and the laws and rules governing the practice of dental assisting.

ITEM 18. Amend rules 650—27.5(153) and 650—27.6(153) as follows:

650—27.5(153) Use of ~~auxiliary~~ personnel. Dentists shall protect the health of their patients by ~~only~~ assigning to qualified ~~auxiliaries~~ *personnel only* those duties which can be legally delegated. Dentists shall supervise the work of all ~~auxiliary~~ personnel working under their direction and control.

650—27.6(153) Evidence of incompetent treatment.

27.6(1) ~~Dentists~~ *Licensees or registrants* shall report to the board instances of gross or continual faulty treatment by other ~~dentists~~ *licensees or registrants.*

27.6(2) ~~Dentists~~ *Licensees or registrants* may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

ITEM 19. Amend rule **650—30.2(153)**, numbered paragraphs **"1"** to **"3,"** as follows:

1. Revocation of license *or registration.*
2. Suspension of license *or registration* until further order of the board or for a specified period.
3. Nonrenewal of license *or registration.*

ITEM 20. Amend rule **650—30.3(153)**, numbered paragraph **"7,"** as follows:

7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee *or registrant.*

ITEM 21. Amend rule **650—30.4(153)** as follows:

Amend numbered paragraphs **"1,"** **"2,"** **"4,"** **"6,"** **"15,"** **"19,"** **"21,"** **"22,"** **"24,"** **"30,"** **"32,"** **"34,"** and **"39"** as follows:

1. Fraud or deceit in procuring a resident dentist license, faculty permit, or license to practice dentistry or dental hygiene, *or registration as a dental assistant,* whether by examination or credentials. Fraud or deceit shall mean any false or misleading statement of a material fact or omission of information required to be disclosed.

2. Fraud or deceit in renewing a resident dentist license, faculty permit, or other license to practice dentistry or dental hygiene, *or registration as a dental assistant,* including but not limited to false or misleading statements concerning continuing education required for renewal.

4. Conviction of a felony if the ~~felony~~ conviction relates to the practice of ~~dentistry or dental hygiene~~ *the profession.*

6. Practicing dentistry, ~~or~~ dental hygiene, *or dental assisting* while in a state of advanced physical or mental disability where such disability renders the licensee *or registrant* incapable of performing professional services or impairs functions of judgment necessary to the practice.

15. Engaging in the practice of dentistry, ~~or~~ dental hygiene, *or dental assisting* in Iowa after failing to renew a license *or registration* to practice in Iowa within 90 days of expiration of the license *or registration.*

19. Encouraging, assisting or enabling the unauthorized practice of dentistry, *dental hygiene, or dental assisting* in any manner.

21. Failure to prominently display the ~~name~~ *names* of all persons who are practicing dentistry, *dental hygiene, or dental assisting* within an office.

22. Employment of or permitting an unlicensed ~~dentist~~ *or unregistered person* to practice dentistry, *dental hygiene, or dental assisting.*

24. Failure to report any of the following:

Any acts or omissions which could result in the suspension or revocation of a license *or registration* when committed by a person licensed *or registered* to practice dentistry, ~~or~~ dental hygiene, *or dental assisting.*

Every adverse judgment in a professional malpractice action to which the licensee *or registrant* was a party.

Every settlement of a claim against the licensee *or registrant* alleging malpractice.

30. Knowingly submitting a false continuing education reporting form or failure to meet the continuing education requirements for renewal of an active license *or registration.*

32. Failure to report a license *or registration* revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if the disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board when the board is so notified.

34. Engaging in the practice of dentistry, ~~or~~ dental hygiene, *or dental assisting* with an expired or inactive renewal.

39. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's *or registrant's* profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

Adopt the following **new** numbered paragraphs:

43. Practicing beyond training.

44. Delegating any acts to any licensee or registrant that are beyond the training or education of the licensee or registrant, or that are otherwise prohibited by rule.

ITEM 22. Amend rule 650—31.1(272C) as follows:

650—31.1(272C) Complaint review. The board shall, upon receipt of a complaint, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee *or registrant* discipline. All complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee. The committee shall review the complaint and make a recommendation to the board.

ITEM 23. Amend rule **650—31.2(153)**, numbered paragraph **"2,"** as follows:

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2. The full name, address, and telephone number of the licensee *or registrant.*

ITEM 24. Amend rule 650—31.6(153) as follows:

650—31.6(153) Board appearances. The board may request a licensee *or registrant* to appear before the board to discuss a pending investigation. By electing to participate in the board appearance, the licensee *or registrant* waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds of a personal investigation and a combination of investigative and adjudicative functions. If the executive director participates in the appearance, the licensee *or registrant* further waives any objection to having the executive director assist the board in the contested case proceeding.

ITEM 25. Amend subrules 31.7(1) and 31.7(3) as follows:

31.7(1) The board shall determine which peer review committee will review a case involving a dentist *or dental assistant* and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board. The board may use the peer review committee system organized under the dental care programs council of the Iowa dental association, *a peer review committee system organized by the Iowa dental assistants association,* or a specifically constituted peer review committee designated by the board for matters involving dentists *or dental assistants.*

31.7(3) The Iowa dental association, ~~and~~ the Iowa dental hygienists' association *and the Iowa dental assistants association* shall register yearly and keep current their peer review systems with the board. ~~Board or dental hygiene committee appointed peer~~ *Peer* review committee members shall be registered with the board when appointed.

ITEM 26. Amend rules 650—31.10(272C) to 650—31.14(272C) as follows:

650—31.10(272C) Confidentiality of investigative files. Complaint files, investigation files, all other investigation reports, and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relate to licensee *or registrant* discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee *or registrant* and the board, its employees and agents involved in licensee *or registrant* discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee *or registrant* discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

650—31.11(272C) Reporting of judgments or settlements. Each licensee *or registrant* shall report to the board every adverse judgment in a malpractice action to which the licensee *or registrant* is a party and every settlement of a claim against the licensee *or registrant* alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

650—31.12(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees *or registrants* involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of complaints.

650—31.13(272C) Reporting acts or omissions. Each licensee *or registrant* having knowledge of acts or omissions set forth in rule 650—30.4(153) shall report to the board those acts or omissions when committed by another person licensed *or registered* by the board. The report shall include the name and address of the licensee *or registrant* and the date, time and place of the incident.

650—31.14(272C) Failure to report licensee *or registrant.* Upon obtaining information that a licensee *or registrant* failed to file a report required by rule 31.13(272C) within 30 days from the date the licensee *or registrant* acquired the information, the board may initiate a disciplinary proceeding against the licensee *or registrant* who failed to make the required report.

ITEM 27. Amend rule 650—32.2(153) as follows:

650—32.2(153) Mediation authorized. The board has the authority to provide for mediation of disputes between licensees *or registrants* and their patients when requested by either party or recommended by the board and agreed to by the parties.

32.2(1) The board may recommend for mediation those cases that are appropriate, which could include, but are not limited to, cases involving fee disputes.

32.2(2) The board's referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee *or registrant.* There is no obligation that the licensee *or registrant* participate in mediation and the licensee *or registrant* shall not be subject to disciplinary action for failure to participate in a board recommended mediation.

ITEM 28. Amend subrules 32.3(1) and 32.3(2) as follows:

32.3(1) Subsequent to an investigation by the board, the board may recommend mediation to address a dispute between a licensee *or registrant* and a patient.

32.3(2) If mediation is recommended by the board, the board shall notify the licensee *or registrant,* the patient and a mediation center of the recommendation within 30 days.

ITEM 29. Amend rule **650—33.1(252J,598)** as follows:

Amend the following definitions:

"Certificate" means a document known as a certificate of noncompliance which is provided by the child support unit certifying that the named licensee *or registrant* is not in compliance with a support order or with a written agreement for payment of support entered into by the child support unit and the licensee *or registrant.*

"Denial notice" means a board notification denying an application for the issuance or renewal of a license *or registration* as required by the Act.

"Revocation or suspension notice" means a board notification suspending a license *or registration* for an indefinite or specified period of time or a notification revoking a license *or registration* as required by the Act.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the child support unit certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license *or registration.*

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

"Registration" means registration to practice as a dental assistant trainee, registered dental assistant, or expanded function dental assistant.

ITEM 30. Amend rules 650—33.2(252J,598) and 650—33.3(252J,598) as follows:

650—33.2(252J,598) Issuance or renewal of a license *or registration*—denial. The board shall deny the issuance or renewal of a license *or registration* upon the receipt of a certificate from the child support unit. This rule shall apply in addition to the procedures set forth in the Act.

33.2(1) Service of denial notice. Notice shall be served upon the licensee, *registrant,* or applicant by certified mail, return receipt requested; by personal service; or through authorized counsel.

33.2(2) Effective date of denial. The effective date of the denial of issuance or renewal of a license *or registration,* as specified in the denial notice, shall be 60 days following service of the denial notice upon the licensee, *registrant,* or applicant.

33.2(3) Preparation and service of denial notice. The executive director of the board is authorized to prepare and serve the denial notice upon the licensee, *registrant,* or applicant.

33.2(4) Licensee, *registrant,* or applicant responsible to inform board. Licensees, *registrants,* and applicants shall keep the board informed of all court actions, and all child support unit actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal of certificates issued by the child support unit.

33.2(5) Reinstatement following license *or registration* denial. All board fees required for application, license *or registration* renewal, or license *or registration* reinstatement shall be paid by licensees, *registrants,* or applicants before a license *or registration* will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license *or registration* pursuant to the Act.

33.2(6) Effect of filing in district court. In the event a licensee, *registrant,* or applicant files a timely district court action following service of a board notice, the board shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license *or registration,* the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

33.2(7) Final notification. The board shall notify the licensee, *registrant,* or applicant in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license *or registration,* and shall similarly notify the licensee, *registrant,* or applicant if the license *or registration* is issued or renewed following the board's receipt of a withdrawal certificate.

650—33.3(252J,598) Suspension or revocation of a license *or registration.* The board shall suspend or revoke a license *or registration* upon the receipt of a certificate from the child support unit according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

33.3(1) Service of revocation or suspension notice. Revocation or suspension notice shall be served upon the licensee *or registrant* by certified mail, return receipt requested; by personal service; or through authorized counsel.

33.3(2) Effective date of revocation or suspension. The effective date of the suspension or revocation of a license *or registration,* as specified in the revocation or suspension notice, shall be 60 days following service of the revocation or suspension notice upon the licensee *or registrant.*

33.3(3) Preparation and service of revocation or suspension notice. The executive director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee *or registrant* and is directed to notify the licensee *or registrant* that the license *or registration* will be suspended unless the license *or registration* is already suspended on other grounds. In the event that the license *or registration* is on suspension, the executive director shall notify the licensee *or registrant* of the board's intention to revoke the license *or registration.*

33.3(4) Licensee *or registrant* responsible to inform board. The licensee *or registrant* shall keep the board informed of all court actions, and all child support unit action taken under or in connection with the Act, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal certificates issued by the child support unit.

33.3(5) Reinstatement following license *or registration* suspension or revocation. A licensee *or registrant* shall pay all board fees required for license *or registration* renewal or ~~license~~ reinstatement before a license *or registration* will be reinstated after the board has suspended a license *or registration* pursuant to the Act.

33.3(6) Effect of filing in district court. In the event a licensee *or registrant* files a timely district court action pursuant to the Act and following service of a revocation or suspension notice, the board shall continue with the intended action described in the revocation or suspension notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

33.3(7) Final notification. The board shall notify the licensee *or registrant* in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license *or registration,* and shall similarly notify the licensee *or registrant* if the license *or registration* is reinstated following the board's receipt of a withdrawal certificate.

These rules are intended to implement Iowa Code sections 252J.1 to 252J.9 and chapter 598.

ITEM 31. Amend rule **650—34.1(261)**, definition of "certificate of noncompliance," as follows:

"Certificate of noncompliance" means written certification from the college student aid commission to the licensing authority certifying that the licensee *or registrant* has defaulted on an obligation owed to or collected by the commission.

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ITEM 32. Amend rules 650—34.2(261) and 650—34.3(261) as follows:

650—34.2(261) Issuance or renewal of a license *or registration*—denial. The board shall deny the issuance or renewal of a license *or registration* upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to those procedures, this rule shall apply.

34.2(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant, *registrant,* or licensee may accept service personally or through authorized counsel.

34.2(2) The effective date of the denial of the issuance or renewal of a license *or registration*, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant, *registrant,* or licensee.

34.2(3) The board's executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant, *registrant,* or licensee.

34.2(4) Applicants, *registrants,* and licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

34.2(5) All board fees required for application, license *or registration* renewal or license *or registration* reinstatement must be paid by applicants, *registrants,* or licensees, and all continuing education requirements must be met before a license *or registration* will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license *or registration* pursuant to Iowa Code chapter 261.

34.2(6) In the event an applicant, *registrant,* or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license *or registration*, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

34.2(7) The board shall notify the applicant, *registrant,* or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license *or registration*, and shall similarly notify the applicant, *registrant,* or licensee when the license *or registration* is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

650—34.3(261) Suspension or revocation of a license *or registration.* The board shall suspend or revoke a license *or registration* upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to those procedures, the following shall apply:

34.3(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee *or registrant* may accept service personally or through authorized counsel.

34.3(2) The effective date of revocation or suspension of a license *or registration*, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee *or registrant.*

34.3(3) The executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee *or registrant* that the license *or registration* will be suspended, unless the license *or registration* is already suspended on other grounds. In the event a license *or registration* is on suspension, the executive director shall notify the licensee *or registrant* of the board's intention to revoke the license *or registration.*

34.3(4) Licensees *and registrants* shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

34.3(5) All board fees required for license *or registration* renewal or reinstatement must be paid by licensees *and registrants*, and all continuing education requirements must be met before a license *or registration* will be renewed or reinstated after the board has suspended or revoked a license *or registration* pursuant to Iowa Code chapter 261.

34.3(6) In the event a licensee *or registrant* timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license *or registration*, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

34.3(7) The board shall notify the *licensee or* registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license *or registration*, and shall similarly notify the licensee *or registrant* when the license *or registration* is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

ARC 0038B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76 and 2000 Iowa Acts, House File 686, the Board of Dental Examiners hereby gives Notice of Intended Action to rescind Chapter 20, "Auxiliary Personnel," and adopt a new Chapter 20, "Dental Assistants," Iowa Administrative Code.

This amendment implements 2000 Iowa Acts, House File 686, which mandates that beginning July 1, 2001, a person shall not practice as a dental assistant unless the person has registered with the Board and received a certificate of registration. This amendment establishes a scope of practice for dental assistants, categories of dental assistants, registration requirements, procedures for the denial of registration and appeal of a denial, examination requirements, procedures for renewal, and continuing education requirements. The Board is required to adopt rules by January 1, 2001, to implement 2000 Iowa Acts, House File 686.

The rules do not provide for waivers in specific circumstances because the statute requires all dental assistants to be registered with the Board beginning July 1, 2001.

Any interested person may make written comments or suggestions on the proposed amendment on or before August 29, 2000. Such written comments should be directed to Jennifer Hart, Agency Rules Administrator, Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on August 29, 2000, from 1 to 3 p.m. in the Board of Dental Examiners Conference Room, 400 S.W. 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the July 20, 2000, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 17A, 147, 153, and 272C and 2000 Iowa Acts, House File 686.

The following amendment is proposed.

Rescind **650—Chapter 20** and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
DENTAL ASSISTANTS

650—20.1(153,78GA,HF686) Registration required. A person shall not practice on or after July 1, 2001, as a dental assistant unless the person has registered with the board and received a certificate of registration pursuant to this chapter.

650—20.2(153,78GA,HF686) Definitions. As used in this chapter:

"Dental assistant" means any person who, under the supervision of a dentist, performs any extraoral services including infection control, dental radiography, or the use of hazardous materials or performs any intraoral services on patients.

"Direct supervision" means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room while the dental assistant is performing acts assigned by the dentist.

"General supervision" means that a dentist has delegated the services to be provided by a dental assistant. The dentist need not be present in the facility while these services are being provided.

"Personal supervision" means the dentist is physically present in the treatment room to oversee and direct the services of the dental assistant.

650—20.3(153,78GA,HF686) Scope of practice.

20.3(1) In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

20.3(2) A lawfully licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient. The dentist shall exercise supervision and shall be fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following:

a. Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.

b. Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contributes to or results in an irreversible alteration to the oral anatomy.

c. Administration of local anesthesia.

d. Placement of sealants.

e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.

f. Dental radiography, unless the assistant is qualified pursuant to 650—Chapter 22.

g. Those procedures that require the professional judgment and skill of a dentist.

20.3(3) A dental assistant may perform duties consistent with these rules under the supervision of a licensed dentist. The specific duties dental assistants may perform are based upon:

a. The education of the dental assistant.

b. The experience of the dental assistant.

c. An agreement with the supervising dentist whose goal for the team is to promote the efficiency of dental services consistent with the highest possible standards of dental care for the patient.

650—20.4(153,78GA,HF686) Categories of dental assistants. There are three categories of dental assistants. Both the supervising dentist and dental assistant are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

20.4(1) Dental assistant trainee. Dental assistant trainees are all individuals who have received no prior training or experience in dental assisting, but who will learn the necessary skills under the personal supervision of a licensed dentist.

DENTAL EXAMINERS BOARD[650](cont'd)

The dental assistant trainee shall meet the following requirements:

a. Within 60 days of employment, the dental assistant trainee shall successfully complete courses of study and examinations in the areas of infection control, hazardous waste and jurisprudence. The courses of study shall be prior approved by the board and sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association.

b. After satisfactorily completing six consecutive months of work as a dental assistant, the trainee or dentist must apply to the board for the trainee to be reclassified as a registered dental assistant.

20.4(2) Registered dental assistant. A registered dental assistant may perform under general supervision all extraoral duties in the dental office or dental clinic that are assigned by the dentist that are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if certified pursuant to 650—Chapter 22.

20.4(3) Expanded function dental assistant. An expanded function dental assistant may perform, under direct supervision, intraoral procedures for which the dental assistant has successfully completed formal training sponsored by a board-approved program accredited by the Commission on Dental Accreditation of the American Dental Association or other program approved by the board. All expanded function duties must be assigned by the dentist and be consistent with these rules. Examples of expanded function dental assistant duties include, but are not limited to, the monitoring of nitrous oxide inhalation analgesia, temporization of crowns, placement and removal of temporary restorations, placement of periodontal dressings, taking impressions for dental appliances, and bite registrations.

650—20.5(153,78GA,HF686) Registration requirements prior to July 2, 2001.

20.5(1) A person employed as a dental assistant as of July 1, 2001, shall be registered with the board as a registered dental assistant without meeting the application requirements specified in 20.6(153,78GA,HF686), provided the application is postmarked by July 1, 2001.

20.5(2) Applications for registration prior to July 2, 2001, must be filed on official board forms and include the following:

a. The fee as specified in 650—Chapter 15.

b. Evidence of current employment as a dental assistant as demonstrated by a signed statement from the applicant's employer.

c. Evidence of current certification in dental radiography pursuant to 650—Chapter 22 if engaging in dental radiography.

20.5(3) Applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

650—20.6(153,78GA,HF686) Registration requirements after July 1, 2001. Effective July 2, 2001, dental assistants must meet the following requirements for registration:

20.6(1) Dental assistant trainee.

a. The employer of a dental assistant trainee must notify the board in writing of such employment within seven days of the time the dental assistant begins work.

b. Applications for registration as a dental assistant trainee must be filed on official board forms and include the following:

(1) The fee as specified in 650—Chapter 15.

(2) Evidence of high school graduation.

(3) Evidence the applicant is 18 years of age or older.

(4) Any additional information required by the board relating to the character and experience of the applicant as may be necessary to pass upon the applicant's qualifications.

c. Within 60 days of employment, the dental assistant trainee is required to successfully complete board-approved courses of study and an examination in the areas of infection control, hazardous materials and jurisprudence. Evidence of meeting this requirement shall be submitted within 60 days by the employer dentist.

20.6(2) Registered dental assistant.

a. To meet this qualification, a person must:

(1) Work in a dental office for six months as a dental assistant trainee; or

(2) Have had at least six consecutive months of prior dental assisting experience under a licensed dentist within the past two years; or

(3) Be a graduate of a postsecondary dental assisting program.

b. Applications for registration as a registered dental assistant must be filed on official board forms and include the following:

(1) The fee as specified in 650—Chapter 15.

(2) Evidence of meeting one of the requirements specified in 20.6(2)"a."

(3) Evidence of successful completion of courses of study approved by the board and sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association in the areas of infection control, hazardous materials, and jurisprudence.

(4) Evidence of a board-approved examination in the areas of infection control, hazardous materials, and jurisprudence.

(5) Evidence of meeting the qualifications of 650—Chapter 22 if engaging in dental radiography.

(6) Evidence of current certification in cardiopulmonary resuscitation sponsored by a nationally recognized provider.

(7) Any additional information required by the board relating to the character, education and experience of the applicant as may be necessary to pass upon the applicant's qualifications.

20.6(3) Expanded function dental assistant.

a. To meet the qualification of expanded function dental assistant, applicants must:

(1) Have two years of experience as a registered dental assistant; or

(2) Be a certified dental assistant as defined by the Dental Assisting National Board with six months of dental assisting experience; and

(3) Have successfully completed a formal program in one or more expanded functions within the previous two years of application as an expanded function dental assistant or documentation of equivalent out-of-state registration or education.

b. Applicants for registration as a registered expanded function dental assistant must be filed on official board forms along with:

(1) The fee as specified in 650—Chapter 15.

(2) Evidence of meeting the qualifications specified in 20.6(3)"a."

DENTAL EXAMINERS BOARD[650](cont'd)

(3) Evidence of meeting the qualifications of 650—Chapter 22 if engaging in dental radiography.

(4) Evidence of current certification in cardiopulmonary resuscitation sponsored by a nationally recognized provider.

(5) Evidence of successful completion of a formal program in one or more expanded functions sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association or a program approved by the board.

(6) Any additional information required by the board relating to the character, education and experience of the applicant as may be necessary to pass upon the applicant's qualifications.

c. An expanded function dental assistant is limited to performing only those expanded duties for which the assistant has been trained within the limits of these rules.

20.6(4) All applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

650—20.7(153,78GA,HF686) Registration denial. The board may deny an application for registration as a dental assistant for any of the following reasons:

1. Failure to meet the requirements for registration as specified in these rules.

2. Pursuant to Iowa Code section 147.4, upon any of the grounds for which registration may be revoked or suspended as specified in 650—Chapter 30.

650—20.8(147,153,78GA,HF686) Registration denied—appeal procedure. An applicant who has been denied registration by the board may appeal the denial and request a hearing on the issues related to the registration denial by serving a notice of the appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of registration denial to the applicant or not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The hearing and subsequent procedures shall be considered a contested case hearing and shall be governed by the procedures outlined in 650—Chapter 51.

This rule is intended to implement Iowa Code sections 147.3, 147.4 and 147.29.

650—20.9(153,78GA,HF686) Examination requirements. Beginning July 2, 2001, applicants for registration must successfully pass an examination approved by the board on infection control, hazardous waste, and jurisprudence.

20.9(1) Examinations approved by the board are those administered by the board or board's approved testing centers or the Dental Assisting National Board Infection Control Examination, if taken after June 1, 1991, in conjunction with the board-approved jurisprudence examination.

20.9(2) Information on taking the examination may be obtained by contacting the board office at 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

20.9(3) An examinee must meet such other requirements as may be imposed by the board's approved dental assistant testing centers.

20.9(4) A dental assistant trainee must successfully pass the examination within 60 days of the first date of employment. A dental assistant trainee who does not successfully pass the examination within 60 days shall be prohibited from working in a dental office or clinic until the examination has been passed in accordance with these rules.

20.9(5) A score of 75 or better on the board infection control/hazardous material section and a score of 75 or better on the board jurisprudence section shall be considered successful completion of the examination. The board accepts the passing standard established by the Dental Assisting National Board for applicants who take the Dental Assisting National Board Infection Control Examination.

650—20.10(153,78GA,HF686) System of retaking dental assistant examinations.

20.10(1) Second examination.

a. On the second examination attempt, a dental assistant shall be required to obtain a score of 75 percent or better on each section of the examination.

b. A dental assistant examinee who fails the second examination will be required to complete the remedial education requirements set forth in subrule 20.10(2).

20.10(2) Third and subsequent examinations.

a. Prior to the third examination attempt, a dental assistant examinee must submit proof of additional formal education in the area of the examination failure in a program approved by the board or sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association.

b. A dental assistant who fails the examination on the third attempt may not practice as a dental assistant in a dental office or clinic until additional remedial education approved by the board has been obtained.

c. For the purposes of additional study prior to retakes, the fourth or subsequent examination failure shall be considered the same as the third.

650—20.11(153,78GA,HF686) Renewal of registration. A certificate of registration as a registered dental assistant or expanded function dental assistant must be renewed biennially.

20.11(1) The board will notify each registrant by mail of the expiration of the registration.

20.11(2) Application for renewal must be made in writing to the board at least 30 days before the current registration expires.

20.11(3) The appropriate fee as specified in 650—Chapter 15 shall accompany the application for renewal. A penalty shall be assessed by the board for late renewal.

20.11(4) Failure to renew the registration by June 30 shall result in assessment of a late fee of $20 in addition to the renewal fee. Failure to renew by July 30 shall result in assessment of a late fee of $40. Failure to renew by August 30 following expiration shall result in assessment of a late fee of $60. Failure to renew a registration prior to September 30 following expiration shall cause the license to lapse and become invalid. A registrant whose license has lapsed and become invalid is prohibited from practicing as a dental assistant until the registration is reinstated in accordance with 650—14.5(153).

20.11(5) Completion of continuing education is required for renewal of an active registration. Failure to comply will automatically result in an inactive renewal.

20.11(6) In order to renew a registration, the registrant shall be required to furnish evidence of valid certification in a nationally recognized course in cardiopulmonary resuscitation.

20.11(7) The board may refuse to renew a registration in accordance with 650—14.3(153).

650—20.12(153,78GA,HF686) Continuing education. Beginning July 1, 2001, each person registered as a dental assistant shall complete 20 hours of continuing education approved by the board during the biennium period as a condition of registration renewal.

DENTAL EXAMINERS BOARD[650](cont'd)

20.12(1) At least two continuing education hours must be in the subject area of infection control and at least one hour must be in the subject area of jurisprudence.

20.12(2) A maximum of three hours may be in cardiopulmonary resuscitation.

20.12(3) For dental assistants who have a special endorsement in radiography, at least two hours of continuing education must be obtained in the subject area of radiography.

650—20.13(252J,261) Receipt of certificate of noncompliance. The board shall consider the receipt of a certificate of noncompliance from the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127 and 650—Chapter 34 or receipt of a certificate of noncompliance of a support order from the child support recovery unit pursuant to Iowa Code chapter 252J and 650—Chapter 33. Registration denial or denial of renewal of registration shall follow the procedures in the statutes and board rules as set forth in this rule.

This rule is intended to implement Iowa Code chapter 252J and sections 261.121 to 261.127.

650—20.14(153) Unlawful practice. A dental assistant who assists a dentist in practicing dentistry in any capacity other than as a person supervised by a dentist in a dental office, or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such dental assistant to engage directly or indirectly in the practice of dentistry, or who performs dental service directly or indirectly on or for members of the public other than as a person working for a dentist shall be deemed to be practicing dentistry without a license.

650—20.15(153) Advertising and soliciting of dental services prohibited. Dental assistants shall not advertise, solicit, represent or hold themselves out in any manner to the general public that they will furnish, construct, repair or alter prosthetic, orthodontic or other appliances, with or without consideration, to be used as substitutes for or as part of natural teeth or associated structures or for the correction of malocclusions or deformities, or that they will perform any other dental service.

These rules are intended to implement Iowa Code chapter 153 and 2000 Iowa Acts, House File 686.

ARC 0035B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to rescind Chapter 20, "ACE PIAP Program," and adopt a new Chapter 20, "Accelerated Career Education Program," Iowa Administrative Code.

The proposed new rules implement the Accelerated Career Education (ACE) Program authorized by Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453. The rules establish guidelines, application procedures, and evaluation criteria for the capital costs and program job credits components of the ACE program.

Public comments concerning the proposed new chapter will be accepted until 5 p.m. on August 29, 2000. Interested persons may submit written or oral comments by contacting Mike Fastenau, Business Finance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4831.

A public hearing to receive comments about the proposed amendments will be held on August 29, 2000, at 2 p.m. at the above address in the IDED main conference room.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 0034B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453.

ARC 0031B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 42, "Rural Resource Coordination Programs for Fire Services," Iowa Administrative Code.

The proposed new rules establish the purpose and criteria for eligibility and selection for funding under two programs: the Response 2020 Program and the Dry Hydrant Program. Both of these programs are intended to meet the fire and emergency response needs of Iowa communities.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 29, 2000. Interested persons may submit written or oral comments by contacting Sue Lambertz, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4922.

A public hearing to receive comments about the proposed new chapter will be held on August 29, 2000, at 10 a.m. at the above address in the Northwest Conference Room located on the second floor. Individuals interested in providing comments at the hearing should contact Sue Lambertz by 4 p.m. on August 28, 2000, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 15.108(3) and 2000 Iowa Acts, Senate File 2453, section 4, subsection 3, and 2000 Iowa Acts, Senate File 2428, section 1, subsection 3, paragraph "c."

The following **new** chapter is proposed.

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

CHAPTER 42
RURAL RESOURCE COORDINATION PROGRAMS FOR FIRE SERVICES

261—42.1(78GA,SF2428,SF2453) Purpose. This chapter includes provisions for two programs, Response 2020 and dry hydrants grant program. The purpose of Response 2020 is to assist fire and emergency response departments in the planning, assessment and evaluation of local emergency response services and to support systems to improve service delivery though financial and technical assistance. During fiscal year 2001, up to $200,000 of funding is available to support rural dry hydrant demonstration projects across the state.

261—42.2(78GA,SF2428,SF2453) Program eligibility. Cities, counties, and councils of government may apply on behalf of fire and emergency response departments for these funds. Resource conservation and development councils may apply for dry hydrant funds only. Requests for funding under the dry hydrant program must be made by a consortium of fire departments in order to be considered.

261—42.3(78GA,SF2428,SF2453) Award limits.

42.3(1) For Response 2020 projects, the maximum grant award shall not exceed $15,000 over a period not to exceed one year.

42.3(2) For the dry hydrant grant program, the maximum grant award shall be $12,500 per each applicant region. A maximum of $2,500 per dry hydrant may be requested.

a. The award amount for dry hydrant projects shall be used for the following activities including, but not limited to: approved training and education in site selection, hydrant location and water acquisition; and the proper use, installation and maintenance of the hydrants.

b. Fire departments requesting funding must obtain a certification of training in dry hydrants from the State of Iowa Community Fire Service Institute or another approved training entity. The review committee established in rule 42.6(78GA,SF2428,SF2453) must approve any training entity other than the State of Iowa Community Fire Service Institute proposed for use under this program.

42.3(3) All applicants must provide 25 percent match for the project. Match may be cash, in-kind services or a combination of the two.

261—42.4(78GA,SF2428, SF 2453) Eligible uses of funds.

42.4(1) Eligible uses of funds for the Response 2020 program include, but are not limited to:

a. Procurement of consultants to assist in planning and assessment.

b. Payment for the costs associated with technical assistance.

c. Purchase of materials necessary to complete an eligible project.

42.4(2) Dry hydrants grant program. Eligible uses of funds for the dry hydrants grant program include, but are not limited to: purchase of dry hydrant equipment, installation, training and education on the use of dry hydrants.

261—42.5(78GA,SF2428,SF2453) Application procedures. Applications will be requested at least annually on a date to be determined by the department of economic development based on availability of funds. Applications must be submitted on forms prescribed by and available from the department of economic development. Forms may be obtained by contacting the Iowa Department of Economic Development, Division of Community and Rural Development, 200 East Grand, Des Moines, Iowa 50309, or by calling (515) 242-4711.

42.5(1) Application contents shall include, but are not limited to: summary of project, description of geographic area served, information about each service included in the project area, financial information (such as organization budget, tax levies, volunteer staff, and paid personnel).

42.5(2) Application materials must be postmarked by midnight on the established due date. No faxed materials will be accepted.

261—42.6(78GA,SF2428,SF2453) Application review. Applications will be reviewed by a team of no fewer than five members selected from the following organizations: Iowa department of economic development, Iowa Fireman's Association, state fire marshal, Iowa Fire Chiefs Association, Iowa State University Extension, Iowa League of Cities, Iowa Association of Counties, Institute of Public Affairs-University of Iowa, Iowa department of public health.

42.6(1) Scoring criteria for proposals. Applications will be ranked on the following criteria:

a. Demonstrated need in a given area. Identify proposed service area and show that the area is serviceable by the departments in the area - 125 points possible.

b. Evidence of cooperation and collaboration among neighboring departments - 125 points possible.

c. Evidence of local financial and volunteer commitment to the project - 50 points possible.

d. Evidence of capacity of applicant to implement any resulting action plan - 100 points possible.

e. Completeness of application with all necessary attachments included - 50 points possible.

42.6(2) Additional information needed for dry hydrant grant program. Before an application under the dry hydrant grant program will be reviewed and scored using the criteria in subrule 42.6(1), the following threshold requirements shall be met:

a. Identification of proposed service area and evidence that it is serviceable by applicant organizations.

b. Evidence of availability of suitable, accessible water source in proposed project area.

c. Demonstrated cooperation and participation among applicant departments and other affected entities within the project area.

261—42.7(78GA,SF2428,SF2453) Disbursement of funds. Upon the execution of a contract between the award recipient and the department of economic development, recipients may request funds on a reimbursement basis for funds awarded under the Response 2020 program. For funds awarded to dry hydrant projects, 50 percent of the funds may be paid in advance of completed work activities subject to approval by the department of revenue and finance. Remaining funds will be paid by the department of economic development upon receipt of the following: certification of training, proof of installation, and submission of a work plan to maintain the dry hydrants.

These rules are intended to implement Iowa Code section 15.208(3) and 2000 Iowa Acts, Senate File 2453, section 4, subsection 3, and 2000 Iowa Acts, Senate File 2428, section 1, subsection 3, paragraph "c."

ARC 0032B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program (VAAPFAP)," Iowa Administrative Code.

The proposed amendments add a definition of "loan guarantee," adopt a new subrule that determines the percent of loan and forgivable loan or grant funds to be included in an award, and rescind the subrule that established the interest rate to be charged for a loan and the repayment terms of an award.

Public comments concerning the proposed amendments will be accepted until 5 p.m. on August 29, 2000. Interested persons may submit written or oral comments by contacting Paul Stueckradt, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4897.

A public hearing to receive comments about the proposed amendments will be held on August 29, 2000, at 1 p.m. at the above address in the Business Finance Conference Room on the first floor.

These amendments are intended to implement Iowa Code sections 15E.111 and 15E.112.

The following amendments are proposed.

ITEM 1. Amend rule **261—57.2(15E)** by adopting the following **new** definition in alphabetical order:

"Loan guarantee" means a guarantee of all or part of a loan made by a commercial lender. Payment of all or a portion of the loan guarantee will occur if the business defaults on its repayment of the loan, provided that the lender has exhausted customary legal remedies in an attempt to secure repayment from the borrower.

ITEM 2. Rescind subrule 57.6(2) and adopt the following **new** subrule in lieu thereof:

57.6(2) Amount.

a. Grants, forgivable loans, and loans shall generally be awarded on the basis of the following:

Total Amount of Award	Loan %	Grant or Forgivable Loan %
$0 - 20,000	0%	100%
$20,001 - 150,000	50%	50%
$150,001 - 250,000	60%	40%
$250,001 - 350,000	70%	30%
$350,001 - 450,000	80%	20%
$450,001 and above	100%	0%

b. The department reserves the right to provide a higher percentage of loan than indicated above. A higher percentage of grant or forgivable loan may be provided at the discretion of the department director upon a finding that the company being assisted would not be viable without such consideration.

ITEM 3. Rescind subrule **57.6(3)**.

ARC 0052B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.103A, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

This amendment establishes the pilot project authorized by 2000 Iowa Acts, Senate File 2430, section 18. This legislation authorizes the Department to establish a pilot project to refund fees paid to the Department for issuance of authorizations to discharge storm water under general permits if the authorization is not sent to the applicant within a time period customary for such authorizations.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 1, 2000. Written comments should be directed to Storm Water Coordinator, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895.

Also, there will be a public hearing on September 1, 2000, at 1:30 p.m. in the Fifth Floor Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 0051B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code chapter 455B, division I.

ARC 0021B

HUMAN RIGHTS DEPARTMENT[421]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Department of Human Rights gives Notice of Intended Action to amend Chapter 2, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendment of Chapter 2 shall update the Department's rules on public records and fair information practices.

The Department believes these amendments will bring its fair information practices rules into compliance with the requirements of Iowa Code chapter 22, which requires that state agencies have in their rules a list of records that will be maintained as confidential and that agencies identify records containing personally identifiable information. Records that did not previously exist, or have been ruled as confidential by Iowa courts, must be added to the list whenever there is a change in the status of the record or when the record first appears. This procedure serves to keep the Department's list accurate for the public's information.

The proposed amendments serve to update the Department's list of rules which are either confidential or contain personally identifiable information. Consequently, the Department's rules will more accurately reflect the records over which it has custody.

Any interested person may make written suggestions or comments on the amendments through August 29, 2000. Such written suggestions or comments should be directed to the Director, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319.

Persons are also invited to present oral or written suggestions or comments at a public hearing which shall be held on August 29, 2000, at 10 a.m. in the Director's Conference Room, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa. At the hearing, persons shall be asked to confine their remarks to the subjects of the amendments.

These amendments are intended to implement Iowa Code chapters 17A and 22.

The following amendments are proposed.

ITEM 1. Amend rule 421—2.13(22) as follows:

421—2.13(22) Availability of records.

2.13(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) Confidential records. The following records may be withheld from public inspection.

a. Information pertaining to clients receiving advocacy or referral services. (~~1988 Iowa Acts, House File 2255~~ *Iowa Code section 216A.6*);

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72);

c. Records which are exempt from disclosure under Iowa Code section 22.7;

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4));

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy under Iowa Code section 17A.3(1)"d";

f. Those portions of agency staff manuals, instructions or other statements excluded from the definition of "rule." (Iowa Code section 17A.2(7)"f");

g. Records which constitute an attorney work product, attorney-client communications, or which are otherwise privileged. (Iowa Code sections 22.7(4), 622.10, *and* 622.11~~,~~ and chapter 622B);

~~h. Any other records made confidential by law.~~

h. Records received from other agencies pursuant to Iowa Code section 216A.136 that are confidential under state or federal law;

i. Personal information in personnel files including, but not limited to, evaluations, discipline, social security number, home address, gender, birth date, and medical and psychological evaluations.

j. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

ITEM 2. Amend rule 421—2.14(22) by adopting the following **new** subrule:

2.14(5) Criminal and juvenile justice information obtained from other agencies.

a. The agency maintains files containing criminal and juvenile justice information obtained from other agencies to conduct research and evaluations, to provide data and analytical information to federal, state and local governments, and to assist other agencies in the use of criminal and juvenile justice data. These files may contain personally identifiable information.

b. The agency maintains these records pursuant to the authority of Iowa Code sections 216A.136 and 216A.138 and by interagency agreements.

c. The information is maintained on paper, some of which is also in computer files, or in computer files and not on paper, or on a data processing system. Some of these files and systems are capable of matching, collating or permitting the comparison of some personally identifiable information.

d. Certain criminal and juvenile justice information contained within these records and record systems is confidential under state or federal law or rule.

ARC 0008B

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 217.6 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44, the Department of Human Services proposes to amend Chapter 52, "Payment," and Chapter 177, "In-Home Health Related Care," appearing in the Iowa Administrative Code.

These amendments increase the maximum and flat State Supplementary Assistance (SSA) residential care facility (RCF) and in-home health related care (IHHRC) reimbursement rate. The maximum RCF reimbursement rate will be increased from $24.26 to $24.50 per day. The flat RCF reimbursement rate will be increased from $17.36 to $17.50 per day. The monthly IHHRC reimbursement rate will be increased from $466.49 to $471.06.

The Seventy-eighth General Assembly directed that the Department may take actions to meet the federal pass-along requirement mandated by Title XVI of the Social Security Act, Section 1618, if necessary. These rate increases are necessary to meet the federal pass-along requirements for calendar year 2000.

In order to comply with the federal pass-along requirement in calendar year 2000, Iowa's total SSA expenditures must be at least $19,575,651. Based on current projections, the Department projects that calendar year 2000 may be short of this required spending level. Current projections indicate that a 0.98 percent increase in the RCF and IHHRC reimbursement rates is necessary to ensure compliance with the pass-along requirement in calendar year 2000. This spending shortfall is attributable to a decline in in-home health-related care usage.

These amendments do not provide for waiver in specified situations because they confer a benefit and are required to meet the federal pass-along requirement, as mandated by the legislature. Individuals may request a waiver of the monthly IHHRC reimbursement under the Department's general rule on exceptions at rule 441—1.8(217).

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 0009B**. 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 30, 2000.

These amendments are intended to implement Iowa Code sections 249.3(2) and 249.4 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a."

ARC 0040B

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 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, "Hospitals," Iowa Administrative Code.

The proposed amendment removes an unnecessary responsibility from the Iowa Administrative Code. Current administrative rules require hospitals to submit a copy of their medical staff roster annually to the Department of Public Health. After consulting with the Hospital Licensing Board, the Iowa Hospital Association and the Department of Public Health, the Department deems a portion of this subrule to be unnecessary. On March 2, 2000, the Hospital Licensing Board approved the removal of this requirement from the Iowa Administrative Code.

These rules are not subject to waiver because hospital rules establish minimum standards.

Interested persons may make written comments or suggestions on the proposed amendment on or before August 29, 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.

This amendment is intended to implement Iowa Code chapter 135B.

The following amendment is proposed.

Amend subrule 51.5(1) as follows:

51.5(1) A roster of medical staff members shall be kept~~, and a copy of the roster shall be reported annually to the state department of public health~~.

ARC 0016B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Termination

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on February 9, 2000, as **ARC 9657A**, proposing to amend Chapter 57, "Residential Care Facilities," and Chapter 58, "Nursing Facilities," Iowa Administrative Code.

The Notice proposed to correct a numerical reference made to the Iowa Code and update language pertaining to choice of physician and pharmacy in residential care facilities and nursing facilities.

The Department is terminating the rule making commenced in **ARC 9657A** and will renotice the proposed

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

amendments after the Department has further reviewed the implications of the proposed amendments.

ARC 0015B

PHARMACY EXAMINERS BOARD[657]

Notice of Termination

Pursuant to the authority of Iowa Code sections 17A.4 and 147.76, the Board of Pharmacy Examiners hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9541A**, proposing to amend Chapter 1, "Purpose and Organization," Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Examination Scores," Chapter 4, "Pharmacist-Intern Registration and Minimum Standards for Evaluating Practical Experience," Chapter 6, "General Pharmacy Licenses," Chapter 7, "Hospital Pharmacy Licenses," Chapter 15, "Correctional Facility Pharmacy Licenses," Chapter 16, "Nuclear Pharmacy," and Chapter 19, "Nonresident Pharmacy Licenses," Iowa Administrative Code, and to adopt new Chapter 34, "Uniform Rules for Waivers and Variances."

The Notice proposed to rescind the Board's current rule regarding procedures for petitions for waiver or variance from rules, to adopt uniform rules regarding petitions for waiver or variance from provisions of Board rules, and to change references directing persons to the appropriate rules. The proposed amendments were in response to Executive Order Number 11.

The Board is terminating the rule making commenced in **ARC 9541A** due to the provision in Iowa Code section 17A.4(1)"b" requiring that the Board, within 180 days of filing Notice of Intended Action, adopt or terminate proposed rule making. That period expired June 12, 2000. In addition, recent legislative action has prompted the revision of proposed uniform rules for waivers and variances from administrative rules. Such revision is expected to require significant changes to the Board's rules as proposed in **ARC 9541A**. The Board intends, after review of legislation and proposed new uniform rules, to again file Notice of Intended Action regarding this subject.

ARC 0043B

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 147.53, the Professional Licensure Division hereby gives Notice of Intended Action to adopt Chapter 18, "Waivers or Variances from Administrative Rules," Iowa Administrative Code.

This chapter allows for waivers or variances in compliance with 2000 Iowa Acts, House File 2206, and is being proposed by the Division to save duplication in each individual board's administrative rules.

Any interested person may make written comments on the proposed chapter no later than September 6, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on September 6, 2000, from 1 to 3 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

The Division has determined that the rules will have favorable impact on small business within the meaning of Iowa Code Supplement section 17A.4A(2)"b."

This amendment is intended to implement 2000 Iowa Acts, House File 2206, Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 21, 22, 147 and 272C.

The following **new** chapter is proposed:

CHAPTER 18
WAIVERS OR VARIANCES
FROM ADMINISTRATIVE RULES

645—18.1(17A,147,272C) Definition. For purposes of this chapter:

"Board" means a particular professional licensing board in the division of professional licensure.

"Waiver or variance" means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

645—18.2(17A,147,272C) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

645—18.3(17A,147,272C) Applicability of chapter. The board may only grant a waiver from a rule if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

645—18.4(17A,147,272C) Criteria for waiver or variance. In response to a petition completed pursuant to rule 645—18.6(17A,147,272C), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

645—18.5(17A,147,272C) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

18.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question and submitted to the board administrator.

18.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case, and submitted to the board administrator.

18.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's administrator.

645—18.6(17A,147,272C) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is being requested, and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in 645—18.4(17A,147,272C). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

645—18.7(17A,147,272C) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's administrator, a committee of the board, or a quorum of the board.

645—18.8(17A,147,272C) Notice. The board shall acknowledge a petition upon its receipt in the board administrator's office. The board shall ensure that notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the board attesting that notice has been provided.

645—18.9(17A,147,272C) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

645—18.10(17A,147,272C) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

18.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

18.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

18.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

18.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

18.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

18.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

18.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

18.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

18.10(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

645—18.11(17A,147,272C) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

645—18.12(17A,147,272C) Summary reports. Semiannually, each board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

645—18.13(17A,147,272C) Cancellation of a waiver. A waiver issued by a board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

645—18.14(17A,147,272C) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

645—18.15(17A,147,272C) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

645—18.16(17A,147,272C) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A. Any appeal to district court shall be taken within 30 days from the date of issuance of the decision by the board pursuant to Iowa Code section 17A.19.

These rules are intended to implement 2000 Iowa Acts, House File 2206.

ARC 0012B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code 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 135.105A, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 70, "Lead Professional Certification," Iowa Administrative Code.

Iowa Code section 135.105A directs the Department of Public Health to establish a program for the training and certification of lead inspectors and lead abaters and states that a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the Department and has obtained certification. Property owners are required to be certified only if the property in which they will perform lead inspections or lead abatement is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed. A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both shall not provide both inspection and abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site. Iowa's law stipulates that it could take effect only after the Department of Public Health obtained authorization from the U.S. Environmental Protection Agency (EPA) for its program to train and certify lead inspectors and abaters. Iowa's program was authorized by the U.S. EPA on July 13, 1999.

The proposed amendments incorporate EPA's final comments on Iowa's regulations, add definitions and other provisions to clarify the regulations, and add provisions to assist housing rehabilitation agencies and public housing authorities in complying with U.S. Department of Housing and Urban Development (HUD) regulations that become effective on September 15, 2000.

EPA has informed the Department that these regulations must incorporate provisions for the certification of firms that conduct lead-based paint activities in addition to the certification of individuals, so these provisions have been added to these regulations.

To clarify the current regulations, the Department has added definitions for "clearance testing," "composite sampling," and "elevated blood lead (EBL) inspection agency," and modified the definition of "firm." In addition, the Department has added several subjects that are customarily included in training courses to the required content for these courses. The Department has added provisions to clarify that the elevated blood lead (EBL) inspector/risk assessor training course builds on the lead inspector/risk assessor course and that the lead inspector/risk assessor course builds on the visual risk assessor course. Therefore, visual risk assessor training can be upgraded to lead inspector/risk assessor training and lead inspector/risk assessor training can be upgraded to elevated blood lead (EBL) inspector/risk assessor training if a training provider chooses to offer courses consisting of the additional topics needed for the upgraded train-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ing. In addition, the project designer course builds on the lead abatement contractor course, and the lead abatement contractor course builds on the lead abatement worker course. Lead abatement worker training can be upgraded to lead abatement contractor training and lead abatement contractor training can be upgraded to project designer training if a training provider chooses to offer courses consisting of the additional topics needed for the upgraded training. The Department has added provisions to consider applications for certification as a lead professional from individuals who have been certified in other states. The Department has clarified the procedures for lead abatement contractors to notify the Department prior to beginning a lead abatement project. Finally, the Department has added work practice standards for clearance testing.

The Department has added a number of provisions to assist housing rehabilitation agencies and public housing authorities in complying with HUD regulations that become effective on September 15, 2000. The Iowa Department of Economic Development, local housing rehabilitation agencies, and public housing authorities have asked the Department to make these changes to the regulations. The Department has added a definition of "clearance testing" and changed the definition of "lead-contaminated dust" to reflect that activities conducted pursuant to 24 CFR 35.1340 must comply with the dust lead levels contained in this federal regulation. The definition of "lead professional" has been modified to include clearance testing. The Department has added definitions for "ongoing maintenance," "paint stabilization," "rehabilitation," and "standard treatments," and has modified the definition of "visual inspection for clearance testing." The Department has added four hours of training time and several additional topics to the requirements for the visual risk assessor training course and has clarified the procedures for previously certified visual risk assessors to upgrade their certifications to meet the new requirements. By adding all of these provisions, employees of housing rehabilitation agencies and public housing authorities can comply with 24 CFR 35.1340 by completing 20 hours of training and becoming certified as a visual risk assessor. Without these new provisions, employees of housing rehabilitation agencies and public housing authorities would need to complete 40 hours of training and become certified as lead inspector/risk assessors to comply with 24 CFR 35.1340.

The Department has determined that these rules are not subject to waiver or variance because Iowa's program must be as protective as the U.S. EPA regulations which do not allow variances or waivers.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before August 29, 2000. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa, 50319; E-mail rgergely@idph.state.ia.us; fax (515) 281-4529.

Also, there will be a public hearing on August 29, 2000, at 10 a.m. (local Iowa time) over the Iowa Communications Network (ICN) at which time persons may present their views. The sites for the public hearing are as follows:

- A-H-S-T High School ICN Classroom
  768 South Maple
  Avoca, Iowa
- Belmond-Klemme High School ICN Classroom
  411 10th Avenue NE
  Belmond, Iowa
- Iowa Department of Public Health
  ICN Room
  6th Floor, Lucas Building
  Des Moines, Iowa
- Mormon Trail Jr-Sr High School
  ICN Classroom
  Main Street
  Garden Grove, Iowa
- Lone Tree Jr-Sr High School
  ICN Classroom
  303 South Devoes Street
  Lone Tree, Iowa
- Office of Educational Services
  ICN Room
  Archdiocesan Pastoral Center
  1229 Mount Loretta
  Dubuque, Iowa
- Sergeant Bluff-Luton Senior High School
  ICN Classroom
  Port Neal Road
  Sergeant Bluff, Iowa
- Waverly-Shell Rock Community High School
  ICN Classroom
  1405 4th Avenue SW
  Waverly, Iowa

These amendments are intended to implement Iowa Code section 135.105A.

The following amendments are proposed.

Amend **641—Chapter 70** as follows:

CHAPTER 70
LEAD PROFESSIONAL CERTIFICATION

641—70.1(135) Applicability. Prior to March 1, 2000, this chapter applies to all persons who are certified lead professionals in Iowa. Beginning March 1, 2000, this chapter applies to all persons who are lead professionals in Iowa. While this chapter requires lead professionals to be certified and establishes specific requirements for how to perform lead-based paint activities if a property owner, manager, or occupant chooses to undertake them, nothing in this chapter requires a property owner, manager, or occupant to undertake any particular lead-based paint activity.

641—70.2(135) Definitions.

"Adequate quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Approved course" means a course that has been approved by the department for the training of lead professionals.

"Certified elevated blood lead (EBL) inspection agency" means an agency that has met the requirements of 641—70.5(135) and that has been certified by the department.

"Certified elevated blood lead (EBL) inspector/risk assessor" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified firm" means a firm that has met the requirements of 641—70.5(135) for certification and has been certified by the department.

"Certified lead abatement contractor" means a person who has met the requirements of 641—70.5(135) for certifi-

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cation or interim certification and who has been certified by the department.

"Certified lead abatement worker" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Certified lead inspector/risk assessor" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified lead professional" means a person who has been certified by the department as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, lead abatement worker, project designer, or visual risk assessor.

"Certified project designer" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified visual risk assessor" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited by the same child under the age of six years, on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms.

"Clearance levels" means values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. These values are 100 micrograms per square foot on floors, 500 micrograms per square foot on windowsills, and 800 micrograms per square foot on window troughs.

"Clearance testing" means an activity conducted following interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation to determine that the hazard reduction activities are complete and that no lead-contaminated soil or lead-contaminated dust exists in the dwelling unit or worksite. Clearance testing includes a visual assessment, the collection and analysis of environmental samples, the interpretation of sampling results, and the preparation of a report.

"Common area" means a portion of the building that is generally accessible to all occupants. This includes, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Component" or "building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, countertops, and air conditions; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, latticework, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casing, sashes and wells, and air conditioners.

"Composite sample" means the collection of more than one sample of the same medium (e.g., dust, soil, or paint) from the same type of surface (e.g., floor, interior windowsill, or window trough) such that multiple samples can be analyzed as a single sample.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Department" means the Iowa department of public health.

"Deteriorated paint" means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training from approved courses and become certified by the department. For example, "lead inspector/risk assessor" is a discipline.

"Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Elevated blood lead (EBL) child" means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

"Elevated blood lead (EBL) inspection" means an inspection to determine the sources of lead exposure for an elevated blood lead (EBL) child and the provision within ten working days of a written report explaining the results of the investigation to the owner and occupant of the residential dwelling or child-occupied facility being inspected and to the parents of the elevated blood lead (EBL) child.

"Elevated blood lead (EBL) inspection agency" means an agency that employs or contracts with individuals who perform elevated blood lead (EBL) inspections. Elevated blood lead (EBL) inspection agencies may also employ or contract with individuals who perform other lead-based paint activities.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded coating material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"Firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity, *other*

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than an elevated blood lead (EBL) inspection agency, that performs or offers to perform lead-based paint activities.

"Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on work activities, or work practice components of a course.

"Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in 641—70.6(135), as well as any other skill taught in a training course.

"Hazardous waste" means any waste as defined in 40 CFR 261.3.

"Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including repairing deteriorated lead-based paint, specialized cleaning, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards in a residential dwelling or child-occupied facility. Abatement includes, but is not limited to, (1) the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil and (2) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures. Lead abatement specifically includes, but is not limited to, (1) projects for which there is a written contract or other documentation, which provides that an individual will be conducting activities in or to a residential dwelling or child-occupied facility that shall result in or are designed to permanently eliminate lead-based paint hazards, (2) projects resulting in the permanent elimination of lead-based paint hazards, (3) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint abatement, and (4) projects resulting in the permanent elimination of lead-based paint that are conducted in response to an abatement order. Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, lead abatement, ~~and~~ visual risk assessment, *clearance testing conducted after lead abatement, and clearance testing conducted after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.*

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, and impact surfaces that would result in adverse human health effects.

"Lead-contaminated dust" means surface dust in residential dwellings or child-occupied facilities that contains in excess of 100 micrograms per square foot on floors, 500 micrograms per square foot on windowsills, and 800 micrograms per square foot on window troughs. *For lead-based paint activities conducted pursuant to 24 CFR 35.1340, the standards specified by 24 CFR 35.1340 for lead-contaminated dust shall apply.*

"Lead-contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead in excess of 400 parts per million for areas where child contact is likely and in excess of 2,000 parts per million if child contact is not likely.

"Lead hazard screen" means a limited risk assessment activity that involves limited paint and dust sampling.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and a determination of the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the person requesting the lead inspection.

"Lead professional" means a person who conducts lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, ~~or~~ visual risk assessments, *clearance testing after lead abatement, or clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.*

"Living area" means any area of a residential dwelling used by at least one child under the age of six years, including, but not limited to, living rooms, kitchen areas, dens, playrooms, and children's bedrooms.

"Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Occupant protection plan" means a plan developed by a certified lead abatement contractor prior to the commencement of lead abatement in a residential dwelling or child-occupied facility that describes the measures and management procedures that will be taken during lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

"Ongoing lead-based paint maintenance" means the maintenance of housing assisted by the U.S. Department of Housing and Urban Development pursuant to 24 CFR 35.1355.

"Paint stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

"Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

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"Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized laboratory" means an environmental laboratory recognized by the U.S. Environmental Protection Agency pursuant to Section 405(b) of the federal Toxic Substance Control Act as capable of performing an analysis for lead compounds in paint, soil, and dust.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Refresher training course" means a course taken by a certified lead professional to maintain certification in a particular discipline.

"Rehabilitation" means the improvement of an existing structure through alterations, incidental additions, or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

"Residential dwelling" means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures including, but not limited to, garages, farm buildings, and fences, or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or part, as the home or residence of one or more persons.

"Risk assessment" means an investigation to determine the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the person requesting the risk assessment.

"Standard treatments" means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

"State certification examination" means a discipline-specific examination approved by the department to test the knowledge of a person who has completed an approved training course and is applying for certification in a particular discipline. The state certification examination may not be administered by the provider of an approved course.

"Target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing which does not contain a bedroom, unless at least one child under the age of six years resides or is expected to reside in the housing for the elderly or persons with disabilities or housing which does not contain a bedroom.

"Training hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or hands-on experience.

"Training manager" means the individual responsible for administering an approved course and monitoring the performance of principal instructors and guest instructors.

"Training program" means a person or organization sponsoring a lead professional training course.

"Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility following ~~an~~ *lead* abatement *or following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340* to determine whether or not the *lead* abatement, *interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation* has been successfully completed.

"Visual risk assessment" means a visual assessment to determine the presence of deteriorated paint or other potential sources of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the assessment to the person requesting the visual risk assessment.

"X-ray fluorescence analyzer (XRF)" means an instrument that determines lead concentrations in milligrams per square centimeter (mg/cm^2) using the principle of X-ray fluorescence.

641—70.3(135) Certification. Prior to March 1, 2000, lead professionals may be certified by the department. Beginning March 1, 2000, lead professionals *and firms* must be certified by the department in the appropriate discipline before they conduct lead abatement, *clearance testing after lead abatement,* lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with a certified elevated blood lead (EBL) inspection agency. *Beginning September 15, 2000, clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted only by certified visual risk assessors, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspectors.* Lead professionals *and firms* shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department. Prior to March 1, 2000, elevated blood lead (EBL) inspection agencies may be certified by the department. Beginning March 1, 2000, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department.

641—70.4(135) Course approval and standards. Prior to March 1, 1999, lead professional training courses for initial certification and refresher training may be approved by the department. Beginning March 1, 1999, lead professional training courses for initial certification and refresher training must be approved by the department. Training programs shall not state that they have been approved by the state of Iowa unless they have met the requirements of rule 70.4(135) and been issued a letter of approval by the department.

70.4(1) and **70.4(2)** No change.

70.4(3) To be approved for the training of lead inspector/risk assessors prior to March 1, 1999, a course must be at least 24 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on training activities. Lead inspector/risk assessor training courses shall cover at least the following subjects (requirements ending in an asterisk

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(*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an inspector/risk assessor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.*

e. Paint, dust, and soil sampling methodologies.*

f. Clearance standards and testing, including random sampling.*

g. Collection of background information to perform a risk assessment.

h. Sources of environmental lead contamination such as paint, surface dust and soil, and water.

i. Visual inspection to identify lead-based paint hazards.*

j. Lead hazard screen protocol.

k. Visual risk assessment protocol.

l. Sampling for other sources of lead exposure.*

m. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.*

n. Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

o. Approved methods for conducting lead-based paint abatement and interim controls.

p. Prohibited methods for conducting lead-based paint abatement and interim controls.

q. Interior dust abatement and cleanup.

r. Soil and exterior dust abatement and cleanup.

~~o~~ *s.* Preparation of the final inspection report.

~~p~~ *t.* Record keeping.

~~q~~ *u.* The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(4) *To be approved for the training of lead inspector/risk assessors who have already completed an approved visual risk assessor course, a course must be at least 20 training hours with a minimum of 4 hours devoted to hands-on training activities. The training course shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):*

a. Role and responsibilities of a lead inspector/risk assessor.

*b. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.**

c. Collection of background information to perform a risk assessment.

d. Lead hazard screen protocol.

e. Visual risk assessment protocol.

*f. Sampling for other sources of lead exposure.**

*g. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.**

*h. Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.**

i. Preparation of the final inspection report.

j. Record keeping.

k. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

~~70.4(4)~~ ***70.4(5)*** To be approved for the training of elevated blood lead (EBL) inspector/risk assessors prior to March 1, 1999, a course must be at least 32 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 48 training hours with a minimum of 12 hours devoted to hands-on training activities. Elevated blood lead (EBL) inspector/risk assessor training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an elevated blood lead (EBL) inspector/risk assessor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.*

e. Paint, dust, and soil sampling methodologies.*

f. Clearance standards and testing, including random sampling.*

g. Collection of background information to perform a risk assessment.

h. Sources of environmental lead contamination such as paint, surface dust and soil, and water.

i. Visual inspection to identify lead-based paint hazards.*

j. Lead hazard screen protocol.

k. Visual risk assessment protocol.

l. Sampling for other sources of lead exposure.*

m. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.*

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n. Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.*

o. Approved methods for conducting lead-based paint abatement and interim controls.

p. Prohibited methods for conducting lead-based paint abatement and interim controls.

q. Interior dust abatement and cleanup.

r. Soil and exterior dust abatement and cleanup.

~~o~~ *s.* Preparation of the final inspection report.

~~p~~ *t.* Record keeping.

~~q~~ *u.* Environmental *and medical* case management of elevated blood lead (EBL) children.

~~r~~ *v.* The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(6) To be approved for the training of elevated blood lead (EBL) inspector/risk assessors who have already completed an approved lead inspector/risk assessor course, a course must be at least 8 training hours and shall cover at least the following subjects:

a. Role and responsibilities of an elevated blood lead (EBL) inspector/risk assessor.

b. Environmental and medical case management of elevated blood lead (EBL) children.

c. The course shall conclude with a course test. The student must achieve a score of at least 80 percent on the examination to successfully complete the course.

70.4(7) To be approved for the training of elevated blood lead (EBL) inspector/risk assessors who have already completed an approved visual risk assessor course, a course must be at least 28 training hours with a minimum of 4 hours devoted to hands-on training activities. The training course shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an elevated blood lead (EBL) inspector/risk assessor.

*b. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.**

c. Collection of background information to perform a risk assessment.

d. Lead hazard screen protocol.

e. Visual risk assessment protocol.

*f. Sampling for other sources of lead exposure.**

*g. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.**

*h. Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.**

i. Preparation of the final inspection report.

j. Record keeping.

k. Environmental and medical case management of elevated blood lead (EBL) children.

l. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

~~*70.4(5)*~~ *70.4(8)* To be approved for the training of lead abatement contractors, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement contractor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Liability and insurance issues relating to lead-based paint abatement.

e. Identification of lead-based paint and lead-based paint hazards.*

f. Interpretation of lead inspection reports.*

g. Development and implementation of an occupant protection plan and abatement report.

h. Respiratory protection and protective clothing.*

i. Employee information and training.

j. Approved methods for conducting lead-based paint abatement and interim controls.*

k. Prohibited methods for conducting lead-based paint abatement and interim controls.

l. Interior dust abatement and cleanup.*

m. Soil and exterior dust abatement and cleanup.*

n. Clearance standards and testing, including random sampling.

o. Cleanup and waste disposal.

p. Record keeping.

q. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(9) To be approved for the training of lead abatement contractors who have already completed an approved lead abatement worker course, a course must be at least 16 training hours with a minimum of 4 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement contractor.

b. Liability and insurance issues relating to lead-based paint abatement.

*c. Interpretation of lead inspection reports.**

d. Development and implementation of an occupant protection plan and abatement report.

e. Employee information and training.

f. Clearance standards and testing, including random sampling.

g. Record keeping.

h. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

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~~70.4(6)~~ *70.4(10)* To be approved for the training of lead abatement workers, a course must be at least 24 training hours with a minimum of 8 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement worker.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Identification of lead-based paint and lead-based paint hazards.*

e. Approved methods for conducting lead-based paint abatement and interim controls.*

f. Prohibited methods for conducting lead-based paint abatement and interim controls.

g. Interior dust abatement and cleanup.*

h. Soil and exterior dust abatement and cleanup.*

i. Cleanup and waste disposal.

j. Respiratory protection and protective clothing.*

k. Personal hygiene.

l. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

~~70.4(7)~~ *70.4(11)* To be approved for the training of visual risk assessors *prior to September 15, 2000*, a course must be at least 16 training hours with a minimum of 4 hours devoted to hands-on activities. *Beginning September 15, 2000, a course must be at least 20 training hours with a minimum of 6 hours devoted to hands-on training activities.* ~~and~~ *The training course* shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a visual risk assessor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Methods of conducting visual risk assessments.*

e. Paint, dust, and soil sampling methodologies.*

f. Clearance standards and testing, including random sampling.*

g. Identification of lead-based paint hazards.*

h. Sources of environmental lead contamination such as paint, surface dust and soil, and water.

*i. Visual inspection to identify lead-based paint hazards.**

j. Approved methods for conducting lead-based paint abatement and interim controls.

k. Prohibited methods for conducting lead-based paint abatement and interim controls.

l. Methods of interim controls and abatement for interior dust and cleanup.

m. Methods of interim controls and abatement for exterior dust and soil and cleanup.

~~h~~ *n.* Preparation of the final assessment report.

o. Preparation of clearance testing reports for interim controls.

~~i~~ *p.* Record keeping.

~~j~~ *q.* The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

~~70.4(8)~~ *70.4(12)* To be approved for the training of project designers, a course must be at least 48 instructional training hours with a minimum of 12 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement contractor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Liability and insurance issues relating to lead-based paint abatement.

e. Identification of lead-based paint and lead-based paint hazards.*

f. Interpretation of lead inspection reports.*

g. Development and implementation of an occupant protection plan and abatement report.

h. Respiratory protection and protective clothing.*

i. Employee information and training.

j. Approved methods for conducting lead-based paint abatement and interim controls.*

k. Prohibited methods for conducting lead-based paint abatement and interim controls.

l. Interior dust abatement and cleanup.*

m. Soil and exterior dust abatement and cleanup.*

n. Clearance standards and testing, including random sampling.

o. Cleanup and waste disposal.

p. Record keeping.

q. Role and responsibilities of a project designer.

r. Development and implementation of an occupant protection plan for large-scale abatement projects.

s. Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

t. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

u. Clearance standards and testing for large-scale abatement projects.

v. Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.

w. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(13) To be approved for the training of project designers who have already completed an approved lead abatement contractor course, a course must be at least 8 instructional training hours and shall cover at least the following subjects:

a. Role and responsibilities of a project designer.

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b. Development and implementation of an occupant protection plan for large-scale abatement projects.

c. Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

d. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

e. Clearance standards and testing for large-scale abatement projects.

f. Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.

g. The course shall conclude with a course test. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(14) *To be approved for the training of project designers who have already completed an approved lead abatement worker course, a course must be at least 24 instructional training hours with a minimum of 4 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):*

a. Role and responsibilities of a lead abatement contractor.

b. Liability and insurance issues relating to lead-based paint abatement.

*c. Interpretation of lead inspection reports.**

d. Development and implementation of an occupant protection plan and abatement report.

e. Employee information and training.

f. Clearance standards and testing, including random sampling.

g. Record keeping.

h. Role and responsibilities of a project designer.

i. Development and implementation of an occupant protection plan for large-scale abatement projects.

j. Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

k. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

l. Clearance standards and testing for large-scale abatement projects.

m. Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.

n. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

~~**70.4(9)**~~ ***70.4(15)*** To be approved for refresher training of visual risk assessors, lead abatement contractors, lead abatement workers, and project designers, a course must be at least 8 training hours. To be approved for refresher training of lead inspector/risk assessors who completed an approved 24-hour training course or elevated blood lead (EBL) inspector/risk assessors who completed an approved 32-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors to meet the recertification requirements of subrule ~~70.5(5)~~ *70.5(6)*, a course must be at least 16 training hours. All refresher courses shall cover at least the following topics:

a. A review of the curriculum topics of the initial certification course for the appropriate discipline as listed in subrules 70.4(3) to ~~70.4(8)~~ *70.4(14)*.

b. An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

c. Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

d. Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

e. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

~~**70.4(10)**~~ ***70.4(16)*** Approvals of training courses shall expire three years after the date of issuance. The training manager shall submit the following at least 90 days prior to the expiration date for a course to be reapproved:

a. Sponsoring organization name, contact person, address, and telephone number.

b. A list of the courses for which reapproval is sought.

c. A description of any changes to the training staff, facility, equipment, or course materials since the approval of the training program.

d. A statement signed by the training manager stating that the training program complies at all times with rule 70.4(135).

e. A nonrefundable fee of $200.

~~**70.4(11)**~~ ***70.4(17)*** The department shall consider a request for approval of a training course that has been approved by a state or tribe authorized by the U.S. Environmental Protection Agency.

a. The course shall be approved if it meets the requirements of rule 70.4(135).

b. If the course does not meet all of the requirements of rule 70.4(135), the department shall inform the training provider of additional topics and training hours that are needed to meet the requirements of rule 70.4(135).

641—70.5(135) Certification, interim certification, and recertification.

70.5(1) to **70.5(3)** No change.

70.5(4) *By September 15, 2000, visual risk assessors certified prior to July 1, 2000, must be recertified by submitting a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(11) and the completion of an 8-hour refresher course.*

~~**70.5(4)**~~ ***70.5(5)*** *All agencies that perform or offer to perform elevated blood lead (EBL) inspections after September 15, 2000, must be certified by the department.* An agency wishing to become a certified elevated blood lead (EBL) inspection agency shall apply on forms supplied by the department. The agency must submit:

a. A completed application form.

b. Documentation that the agency has the authority to require the repair of lead hazards identified through an elevated blood lead (EBL) inspection.

c. Documentation that the agency employs or has contracted with a certified elevated blood lead (EBL) inspector/risk assessor to provide environmental case management of

all elevated blood lead (EBL) children in the agency's service area, including follow-up to ensure that lead-based paint hazards identified as a result of elevated blood lead (EBL) inspections are corrected, *and that lead-based paint activities will be conducted only by appropriately certified lead professionals. In addition, the agency must document that the agency and its employees or contractors will follow the work practice standards in rule 70.6(135) for conducting lead-based paint activities.*

d. The certified elevated blood lead (EBL) inspection agency must maintain all records required by rule 70.6(135).

~~70.5(5)~~ *70.5(6)* Beginning March 1, 2000, individuals certified as lead professionals must be recertified each year. To be recertified, lead professionals must submit the following:

a. A completed application form.

b. A $50 nonrefundable fee.

c. Every three years, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. If the applicant completed an approved training program prior to March 1, 2000, the initial refresher training course must be completed no more than three years after the date on which the applicant completed an approved training program.

~~70.5(6)~~ *70.5(7)* The department shall approve the state certification examinations for the disciplines of lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, and project designer. The state certification examination may not be administered by the provider of an approved course.

a. An individual may take the state certification examination no more than three times within six months of receiving a certificate of completion from an approved course.

b. If an individual does not pass the state certification examination within six months of receiving a certificate of completion from an approved course, the individual must retake the appropriate approved course before reapplying for certification.

70.5(8) Reciprocity. Each applicant for certification who is certified in any of the disciplines specified in this rule in another state may request reciprocal certification. The department shall evaluate the requirements for certification to determine that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa. If the department determines that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa, the applicant may be certified after passing a proctored test covering Iowa-specific lead information with a score of at least 80 percent. Each applicant for certification pursuant to this subrule shall submit the appropriate application accompanied by the fee for each discipline as specified in rule 70.5(135).

641—70.6(135) Work practice standards for conducting lead-based paint activities in target housing and child-occupied facilities.

70.6(1) to **70.6(5)** No change.

70.6(6) A certified lead abatement contractor or certified lead abatement worker must conduct lead abatement according to the following standards. Beginning March 1, 2000, lead abatement shall be conducted only by a certified lead abatement contractor or a certified lead abatement worker.

a. A certified lead abatement contractor must be on site during all work site preparation and during the postabatement cleanup of work areas. At all other times when lead abatement is being conducted, the certified lead abatement contractor shall be on site or available by telephone, pager, or answering service, and be able to be present at the work site in no more than two hours.

b. A certified lead abatement contractor shall ensure that lead abatement is conducted according to all federal, state, and local requirements.

c. A certified lead abatement contractor shall notify the department *in writing* at least seven days prior to the commencement of lead abatement in a residential dwelling or child-occupied facility. *The notification shall include the following information:*

(1) The address, including apartment numbers, where abatement will be conducted.

(2) The dates when abatement will be conducted.

(3) The name, address, telephone number, and Iowa certification number of the certified firm that will conduct the work.

(4) The name, address, telephone number, and Iowa certification number for the certified abatement contractor who will serve as the contact person for the project.

(5) The name, address, and telephone number of the property owner.

(6) Whether the dwelling is owner-occupied or a rental dwelling.

(7) If the dwelling is an occupied rental, the names of the occupants.

(8) The approximate year that the dwelling was built.

(9) A brief description of the abatement work to be done.

d. A certified lead abatement contractor or a certified project designer shall develop an occupant protection plan for all lead abatement projects prior to starting lead abatement and shall implement the occupant protection plan during the lead abatement project. The occupant protection plan shall be unique to each residential dwelling or child-occupied facility. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

e. Approved methods must be used to conduct lead abatement and prohibited work practices must not be used to conduct lead abatement. The following are prohibited work practices:

(1) to (5) No change.

f. Soil abatement shall be conducted using one of the following methods:

(1) and (2) No change.

g. Postabatement clearance procedures shall be conducted by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor using the following procedures:

(1) Following an abatement, a visual inspection shall be performed to determine if deteriorated paint surfaces or visible amounts of dust, debris, or residue are still present. If deteriorated paint surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(2) Following the visual inspection and any required postabatement cleanup, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling.

(3) Dust samples shall be collected a minimum of one hour after the completion of final postabatement cleanup activities.

(4) Dust samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation

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and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

(5) The following postabatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in the residential dwelling or child-occupied facility:

1. After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

2. After conducting an abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

3. Following an exterior abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the drip line or next to the foundation below any exterior surface abated. If visible dust, debris, or paint chips are present, they must be removed from the site and properly disposed of according to all applicable federal, state, and local standards.

(6) The rooms, hallways, and stairwells selected for sampling shall be selected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

(7) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall compare the residual lead level as determined by the laboratory analysis from each dust sample with applicable clearance levels for lead in dust on floors and window troughs. If the residual lead levels in a dust sample exceed the clearance levels, then all the components represented by the failed dust sample shall be recleaned and retested until clearance levels are met.

h. In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purpose of clearance may be conducted if the following conditions are met:

(1) The certified lead abatement contractors and certified lead abatement workers who abate or clean the dwellings do not know which residential dwellings will be selected for the random sampling.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph 70.6(6)"g."

i. The certified lead abatement contractor or a certified project designer shall prepare an abatement report containing the following information:

(1) to (8) No change.

70.6(7) No change.

70.6(8) *A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified visual risk assessor must conduct clearance testing according to the following standards. Beginning March 1, 2000, clearance testing following lead abatement shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor. Beginning September 15, 2000, clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted only by certified visual risk assessors, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspectors.*

a. Clearance testing following abatement shall be conducted according to paragraph 70.6(6)"g."

b. Clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted according to the following standards:

(1) A certified visual risk assessor shall perform clearance testing only for a single-family property or for individual dwelling units and associated common areas in a multiunit property. A certified visual risk assessor shall not perform clearance testing using random sampling of dwelling units or common areas in multifamily properties unless the clearance testing is approved by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor and the report is signed by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

(2) A visual inspection shall be performed to determine if deteriorated paint surfaces or visible amounts of dust, debris, or residue are still present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance testing. However, elimination of deteriorated paint is not required if it has been determined through a lead-based paint inspection that the deteriorated paint is not lead-based paint. If exterior painted surfaces have been disturbed by the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, the visual inspection shall include an assessment of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visual dust or debris in living areas shall be cleaned up and visible paint chips on the ground shall be removed and properly disposed of according to all applicable federal, state, and local standards.

(3) Following the visual inspection and any required cleanup, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling.

(4) Dust samples shall be collected a minimum of one hour after the completion of final cleanup activities.

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(5) Dust samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

(6) The following clearance activities shall be conducted as appropriate based upon the extent or manner of interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted in the residential dwelling or child-occupied facility:

1. After conducting interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, with containment between treated and untreated areas, one dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

2. After conducting interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, with no containment, two dust samples shall be taken from no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

(7) The rooms, hallways, and stairwells selected for sampling shall be selected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

(8) The certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified visual risk assessor shall compare the residual lead level as determined by the laboratory analysis from each dust sample with applicable clearance levels for lead in dust on floors and window troughs. If the residual lead levels in a dust sample exceed the clearance levels, then all the components represented by the failed dust sample shall be recleaned and retested until clearance levels are met.

c. In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purpose of clearance may be conducted if the following conditions are met:

(1) The contractors and the workers who conducted the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation do not know which residential dwellings will be selected for the random sampling.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph 70.6(6)"g."

d. A clearance report must be prepared that provides documentation of the lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation as well as the clearance testing. When lead abatement is performed, the report shall be an abatement report in accordance with paragraph 70.6(6)"h." When interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation are performed, the clearance report shall include the following information:

(1) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected.

(2) The following information regarding the clearance testing:

1. The date(s) of the clearance testing.

2. The name, address, and signature of each certified lead professional performing the clearance examination, including the certification number.

3. The results of the visual inspection for the presence of deteriorated paint and visible dust, debris, residue, or paint chips.

4. The results of the analysis of dust samples, in micrograms per square foot, by location of sample.

5. The name and address of each recognized laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(3) The following information on the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation for which clearance testing was performed:

1. The start and completion dates of the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation.

2. The name and address of each firm or organization conducting the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation and the name of each supervisor assigned.

3. A detailed written description of the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, including the methods used, locations of exterior surfaces, interior rooms, common areas, and components where the hazard reduction activity occurred, and any suggested monitoring or encapsulants or enclosures.

4. If interim control of soil hazards was conducted, a detailed description of the location(s) of the interim controls and the method(s) used.

e. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of the clearance testing information included in the abatement report specified in paragraph 70.6(6)"h" for no fewer than three years. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of the clearance testing report specified in paragraph 70.6(8)"d" for no fewer than three years.

f. The clearance standards in 24 CFR 35.1320(b)(2) shall apply. If the results of clearance testing equal or exceed the standards, the dwelling unit, work site, or common area represented by the sample fails the clearance testing.

g. All surfaces represented by a failed clearance sample shall be recleaned or treated by interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, and retested until the applicable clearance level in 24 CFR 35.1320(b)(2) is met.

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h. Clearance testing shall be performed by persons or entities independent of those performing interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, unless the designated party uses qualified in-house employees to conduct clearance testing. An in-house employee shall not conduct both interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation and the clearance examination for this work.

~~70.6(8)~~ *70.6(9)* A certified elevated blood lead (EBL) inspection agency shall maintain the written records for all elevated blood lead (EBL) inspections conducted by persons that the agency employs or contracts with to provide elevated blood lead (EBL) inspections in the agency's service area.

~~70.6(9)~~ *70.6(10)* A person may be certified as a lead inspector/risk assessor, visual risk assessor, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement worker. ~~However,~~ *Except as specified by paragraph 70.6(8)"h,"* a person who is certified both as a lead inspector/risk assessor, visual risk assessor, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement worker shall not provide both lead inspection or visual risk assessment and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

~~70.6(10)~~ *70.6(11)* Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in ~~this rule~~ *subrules 70.6(2) to 70.6(6)* shall be collected by persons certified as a lead inspector/risk assessor or an elevated blood lead (EBL) inspector/risk assessor. *Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in subrule 70.6(8) for clearance testing following lead abatement shall be collected by persons certified as a lead inspector/risk assessor or an elevated blood lead (EBL) inspector/risk assessor. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in subrule 70.6(8) for clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted only by certified visual risk assessors, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspectors.* ~~These~~ *Any paint chip, dust, or soil* samples *collected pursuant to the work practice standards contained in rule 70.6(135)* shall be analyzed by a recognized laboratory.

~~70.6(11)~~ *70.6(12)* Composite dust sampling shall be conducted only in the situations specified in subrules 70.6(4) to 70.6(6) *and 70.6(8)*. If composite sampling is conducted, it shall meet the following requirements:

a. Composite dust samples shall consist of at least two subsamples.

b. Every component that is being tested shall be included in the sampling.

c. Composite dust samples shall not consist of subsamples from more than one type of component.

641—70.7(135) Firms. ~~Firms~~ *All firms* that perform or offer to perform lead-based paint activities *other than elevated blood lead (EBL) inspections after September 15, 2000, must be certified by the department. Firms* shall employ only appropriately certified employees to conduct lead-based paint activities, and the firm and its employees shall follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

70.7(1) A firm wishing to be certified shall apply on forms supplied by the department. The firm must submit:

a. A completed application form.

b. Documentation that the firm will employ only appropriately certified lead professionals to perform lead-based paint activities. In addition, the firm must document that the agency and its employees or contractors will follow the work practice standards in rule 70.6(135) for conducting lead-based paint activities.

c. The certified firm must maintain all records required by rule 70.6(135).

70.7(2) Reserved.

641—70.8(135) Enforcement. No change.

641—70.9(135) Denial, suspension or revocation of certification and denial, suspension, revocation, or modification of course approval.

70.9(1) The department may deny an application for certification, or may suspend or revoke a certification, when it finds that the applicant, ~~or~~ certified lead professional, *certified elevated blood lead (EBL) inspection agency, or certified firm* has committed any of the following acts:

a. Obtained documentation of training through fraudulent means.

b. Gained admission to and completed an accredited training program through misrepresentation of admission requirements.

c. Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.

d. Performed work requiring certification at a job site without having proof of certification.

e. Permitted the duplication or use of the individual's own certificate by another.

f. Performed work for which certification is required, but for which appropriate certification has not been received.

g. Failed to follow the standards of conduct required by rule 70.6(135).

h. Failed to comply with federal, state, or local lead-based paint statutes and regulations.

i. For certified elevated blood lead (EBL) inspection agencies and certified firms, performed work for which certification is required with individuals who are not appropriately certified.

70.9(2) No change.

70.9(3) Complaints. Complaints regarding a certified lead professional, *a certified elevated blood lead (EBL) inspection agency, a certified firm,* or an approved course shall be submitted in writing to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. The name of the certified lead professional, *certified elevated blood lead (EBL) inspection agency, or certified firm* and the specific details of the action(s) by the certified lead professional, *certified elevated blood lead (EBL) inspection agency, or certified firm* that did not comply with the rules, or

b. The name of the sponsoring person or organization of an approved course and the specific way(s) that an approved course did not comply with the rules.

70.9(4) and **70.9(5)** No change.

641—70.10(135) Waivers. Rules in this chapter are not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules are intended to implement Iowa Code section 135.105A.

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RACING AND GAMING COMMISSION[491]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 99D.7, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 8, "Mutuel Department," and to rescind Chapter 10, "Thoroughbred Racing," and adopt a new Chapter 10, "Thoroughbred and Quarter Horse Racing," Iowa Administrative Code.

Item 1 removes a duplicate provision from Chapter 8.

Item 2 puts in place a new thoroughbred and quarter horse racing chapter. Many of the rules in the current Chapter 10 are reorganized within the new chapter. Redundant rules have been removed and some rules have been rewritten to reflect current practice.

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

This rule filing was sent out to all the horsemen groups and horse racing licensees prior to going before the Commission. No comments were received.

Any person may make written suggestions or comments on the proposed amendments on or before August 30, 2000. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on August 30, 2000, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapter 99D.

The following amendments are proposed.

ITEM 1. Rescind subrule **8.3(12)**, paragraph **"h."**

ITEM 2. Rescind 491—Chapter 10 and adopt in lieu thereof the following **new** chapter:

CHAPTER 10
THOROUGHBRED AND QUARTER HORSE RACING

491—10.1(99D) Terms defined. As used in the rules, unless the context otherwise requires, the following definitions apply:

"Age" means the age of a horse reckoned from the first day of January of the year of foaling.

"Allowance race" means an overnight race for which eligibility and weight to be carried are determined according to specified conditions that include age, sex, earnings, and number of wins.

"Also eligible" means:

1. A number of eligible horses, properly entered, which were not drawn for inclusion in a race but which become eligible according to preference or lot, when an entry is scratched prior to the scratch time deadline; or

2. The next preferred nonqualifier for the finals or consolation from a set of elimination trials that will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

"Appeal" means a request for the commission or its designee to investigate, consider, and review any decisions or rulings of stewards.

"Arrears" means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

"Authorized agent" means a person licensed by the commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner on whose behalf the agent will act.

"Bleeder" means a horse that hemorrhages from within the respiratory tract during a race, within one and one-half hours postrace, during exercise or within one and one-half hours of exercise.

"Bleeder list" means a tabulation of all bleeders to be maintained by the commission.

"Chemist" means any official racing chemist designated by the commission.

"Claiming race" means a race which includes a condition that any horse starting the race may be claimed and purchased by any licensed owner, or person(s) approved by the commission for an owner's license, for an amount specified in the conditions for that race by the racing secretary.

"Commission" means the racing and gaming commission.

"Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

"Contest" means a competitive racing event on which pari-mutuel wagering is conducted.

"Coupled entry" means two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes. (See also "Entry")

"Day" means a 24-hour period ending at midnight.

"Dead heat" means when the noses of two or more horses reach the finish line of a race at the same time.

"Declaration" means the act of withdrawing an entered horse from a race prior to the closing of entries.

"Detention barn" means the barn designated for the collection from horses of test samples under the supervision of the commission veterinarian; also the barn assigned by the commission to a horse on the bleeder list, for occupancy as a prerequisite for receiving bleeder medication.

"Entry" means a horse made eligible to run in a race; or two or more horses, entered in the same race, which have common ties of ownership, lease, or training. (See also "Coupled entry")

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

"Facility grounds" means all real property utilized by the facility in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities, parking lots, and any other areas under the jurisdiction of the commission.

"Field or mutuel field" means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track totalizator. The highest numbered horse within the totalizator capacity and all the

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higher-numbered horses following are then grouped together in the mutuel field.

"Foreign substances" means all substances except those that exist naturally in the untreated horse at normal physiological concentration.

"Forfeit" means money due from a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by the stewards or the commission.

"Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

"Horse" means any equine (including equine designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing; specifically, an entire male 5 years of age and older.

"Hypodermic injection" means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.

"Inquiry" means an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official.

"Jockey" means a professional rider licensed to ride in races.

"Licensee" means any person or entity licensed by the commission to engage in racing or related regulated activity.

"Maiden race" means a contest restricted to nonwinners.

"Meet/meeting" means the specified period and dates each year during which a facility is authorized by the commission to conduct pari-mutuel wagering on horse racing.

"Month" means a calendar month.

"Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Nominator" means the person or entity in whose name a horse is nominated for a race or series of races.

"Objection" means:

1. A written complaint made to the stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or

2. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owner's authorized agent before the race is declared official.

"Official starter" means the official responsible for dispatching the horses for a race.

"Official time" means the elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

"Overnight race" means a race for which entries close 96 hours, or less, before the time set for the first race of the day on which the race is to be run.

"Owner" means a person or entity that holds any title, right or interest, whole or partial, in a horse, including the lessee and lessor of a horse.

"Paddock" means an enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

"Performance" means a schedule of 9 to 11 races per day unless otherwise authorized by the commission.

"Post position" means the preassigned position from which a horse will leave the starting gate.

"Post time" means the scheduled starting time for a contest.

"Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

"Purse" means the total cash amount for which a race is contested.

"Purse race" means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse and for which entries close less than 96 hours prior to its running.

"Race" means a running contest between horses ridden by jockeys for a purse, prize, or other reward run at a facility in the presence of the stewards of the meeting. This includes purse races, overnight races and stakes races.

"Recognized meeting" means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and the commission for the mutual enforcement of rulings relating to horse racing.

"Rules" means the rules promulgated by the commission to regulate the conduct of horse racing.

"Scratch" means the act of withdrawing an entered horse from a contest after the closing of entries.

"Scratch time" means the deadline set by the facility for withdrawal of entries from a scheduled performance.

"Smoke" means the procedure of reviewing entries for correctness, eligibility, weight allowances, and medications.

"Stakes race" means a contest in which nomination, entry, and starting fees contribute to the purse.

"Starter" means a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

"Steward" means a duly appointed racing official with powers and duties specified by rules.

"Subscription" means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.

"Test level" means the concentration of a foreign substance found in the test sample.

"Test sample" means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian and as prescribed by the commission for the purpose of analysis.

"Totalizator" means the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds, and payoff prices to patrons at a pari-mutuel wagering facility.

"Veterinarian" means a veterinarian holding a current unrestricted license issued by the state of Iowa veterinary regulatory authority and licensed by the commission.

"Winner" means the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

"Year" means a calendar year.

491—10.2(99D) Facilities' responsibilities.

10.2(1) Stalls. The facility shall ensure that racing animals are stabled in individual box stalls; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse are kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

10.2(2) Paddocks and equipment. The facility shall ensure that paddocks, starting gates, and other equipment subject to contact by different animals are kept in a clean condition and free of dangerous surfaces.

10.2(3) Receiving barn and stalls. Each facility shall provide a conveniently located receiving barn or stalls for the use of horses arriving during the meeting. The barn shall

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have adequate stable room and facilities, hot and cold water, and stall bedding. The facility shall employ attendants to operate and maintain the receiving barn or stalls in a clean and healthy condition.

10.2(4) Fire protection. The facility shall develop and implement a program for fire prevention on facility grounds in accordance with applicable state fire codes. The facility shall instruct employees working on facility grounds of procedures for fire prevention and evacuation. The facility shall, in accordance with state fire codes, prohibit the following:

a. Smoking in horse stalls, feed and tack rooms, and in the alleyways.

b. Sleeping in feed rooms or stalls.

c. Open fires and oil- or gasoline-burning lanterns or lamps in the stable area.

d. Leaving any electrical appliance unattended or in unsafe proximity to walls, beds, or furnishings.

e. Keeping flammable materials, including cleaning fluids or solvents, in the stable area.

f. Locking a stall which is occupied by a horse.

The facility shall post a notice in the stable area which lists the prohibitions outlined in 10.2(4)"a" to "f" above.

10.2(5) Starting gate.

a. During racing hours a facility shall provide at least two operable padded starting gates that have been approved by the commission.

b. During designated training hours a facility shall make at least one starting gate and qualified starting gate employee available for schooling.

c. If a race is started at a place other than in a chute, the facility shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

10.2(6) Distance markers.

a. A facility shall provide and maintain starting point markers and distance poles in a size and position that can be clearly seen from the steward's stand.

b. The starting point markers and distance poles must be marked as follows:

1/4 poles	red and white horizontal stripes
1/8 poles	green and white horizontal stripes
1/16 poles	black and white horizontal stripes
220 yards	green and white
250 yards	blue
300 yards	yellow
330 yards	black and white
350 yards	red
400 yards	black
440 yards	red and white
550 yards	black and white horizontal stripes
660 yards	green and white horizontal stripes
770 yards	black and white horizontal stripes
870 yards	blue and white horizontal stripes

10.2(7) Detention enclosure. Each facility shall maintain a detention enclosure for use by the commission for securing samples of urine, saliva, blood, or other bodily substances or tissues for chemical analysis from horses who have run in a race. The enclosure shall include a wash rack, commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water, and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative licensed by the commission shall be with a horse in the detention barn at all times.

10.2(8) Ambulance. A facility shall maintain, on the grounds during every day that its track is open for racing or exercising, an ambulance for humans and an ambulance for horses, equipped according to prevailing standards and staffed by medical doctors, paramedics, or other personnel trained to operate them. When an ambulance is used for transfer of a horse or patient to medical facilities, a replacement ambulance must be furnished by the facility to comply with this rule.

10.2(9) Helmets and vests. A facility shall not allow any person to exercise any horse on facility grounds unless that person is wearing a protective helmet and safety vest of a type approved by the commission.

10.2(10) Racetrack.

a. The surface of a racetrack, including cushion, subsurface, and base, must be designed, constructed, and maintained to provide for the safety of the jockeys and racing animals.

b. Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

c. A facility shall provide an adequate drainage system for the racetrack.

d. A facility shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The facility shall provide backup equipment for maintaining the track surface. A facility that conducts races on a turf track shall:

(1) Maintain an adequate stockpile of growing medium; and

(2) Provide a system capable of adequately watering the entire turf course evenly.

e. Rails.

(1) Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed, and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 44 inches above the top of the cushion. The inside rail shall have no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

10.2(11) Patrol films or videotapes. Each facility shall provide:

a. A videotaping system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

b. One camera, designated by the commission, to videotape the prerace loading of all horses into the starting gate and to continue to videotape them until the field is dispatched by the starter.

c. One camera, designated by the commission, to videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

d. At the discretion of the stewards, video camera operators to videotape the activities of any horses or persons handling horses prior to, during, or following a race.

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e. That races run on an oval track be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

f. Upon request to the commission, without cost, a copy of a videotape of a race.

g. Videotapes recorded prior to, during, and following each race maintained by the facility for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, jockey, or other interested individual may view a videotape recording of a race.

i. Following any race in which there is an inquiry or objection, the videotaped replays of the incident in question which were utilized by the stewards in making their decision. The licensee shall display to the public these videotaped replays on designated monitors.

10.2(12) Communications.

a. Each facility shall provide and maintain in good working order a communication system between the:

(1) Stewards' stand;
(2) Racing office;
(3) Tote room;
(4) Jockeys' room;
(5) Paddock;
(6) Test barn;
(7) Starting gate;
(8) Weigh-in scale;
(9) Video camera locations;
(10) Clocker's stand;
(11) Racing veterinarian;
(12) Track announcer;
(13) Location of the ambulances (equine and human); and
(14) Other locations and persons designated by the commission.

b. A facility shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

491—10.3(99D) Facility policies. It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the facility policies as published in literature distributed by the facility or posted in a conspicuous location.

491—10.4(99D) Racing officials.

10.4(1) General description. Every facility conducting a race meeting shall appoint at least the following officials:

a. One of the members of a three-member board of stewards;
b. Racing secretary;
c. Assistant racing secretary;
d. Paddock judge;
e. Horse identifier;
f. Clerk of the course;
g. Starter;
h. Clocker/timer;
i. Three placing judges;
j. Jockey room custodian;
k. Mutuel manager;
l. Clerk of scales;
m. Minimum of two outriders;
n. Horsemen's bookkeeper;
o. Any other person designated by the commission.

10.4(2) Officials' prohibited activities. No racing official or racing official's assistant(s) listed in 10.4(1) while serving in that capacity during any meeting may engage in any of the following:

a. Enter into a business or employment that would be a conflict of interest, interfere with, or conflict with the proper discharge of duties including a business that does business with a facility or a business issued a concession operator's license;

b. Participate in the sale, purchase, or ownership of any horse racing at the meeting;

c. Be involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;

d. Sell or solicit horse insurance on any horse racing at the meeting, or any other business sales or solicitation not a part of the official's duties;

e. Wager on the outcome of any race under the jurisdiction of the commission;

f. Accept or receive money or anything of value for the official's assistance in connection with the official's duties;

g. Consume or be under the influence of alcohol or any prohibited substance while performing official duties.

10.4(3) Single official appointment. No official appointed to any meeting, except placing judges, may hold more than one official position listed in 10.4(1) unless, in the determination of the stewards or commission, the holding of more than one appointment would not subject the official to a conflict of interest or duties in the two appointments.

10.4(4) Stewards. (For practice and procedure before the stewards and the commission, see 491—Chapter 4.)

a. General authority.

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the racing meet in accordance with the laws of this state and the rules adopted by the commission. The stewards shall have authority to regulate and to resolve conflicts or disputes between all other racing officials, licensees, and those persons addressed by 491—paragraph 4.6(5)"e" which are reasonably related to the conduct of a race or races and to discipline violators of these rules in accordance with the provisions of these rules.

(2) Period of authority. The stewards' authority as set forth in this subrule shall commence 30 days prior to the beginning of each racing meet and shall terminate 30 days after the end of each racing meet or with the completion of their business pertaining to the meeting.

(3) Attendance. All three stewards shall be present in the stand during the running of each race.

(4) Appointment of substitute. Should any steward be absent at race time, the state steward(s) shall appoint a deputy for the absent steward. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(5) Initiate action. The stewards shall take notice of questionable conduct or rule violations, with or without complaint, and shall initiate investigations promptly and render a decision on every objection and every complaint made to them.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final for purposes of distribution of the pari-mutuel pool.

b. Other powers and authority.

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(1) The stewards shall have the power to interpret the rules and to decide all questions not specifically covered by them.

(2) All questions within their authority shall be determined by a majority of the stewards.

(3) The stewards shall have control over and access to all areas of the facility grounds.

(4) The stewards shall have the authority to determine all questions arising with reference to entries and racing. Persons entering horses to run at licensed facilities agree in so doing to accept the decision of the stewards on any questions relating to a race or racing. The stewards, in their sole discretion, are authorized to determine whether two or more individuals or entities are operating as a single financial interest or as separate financial interests. In making this determination, the stewards shall consider all relevant information including, but not limited to, the following:

1. Whether the parties pay bills from and deposit receipts in the same accounts.

2. Whether the parties share resources such as employees, feed, supplies, veterinary and farrier services, exercise and pony riders, tack, and equipment.

3. Whether the parties switch horses or owner/trainer for no apparent reason, other than to avoid restrictions of being treated as a single interest.

4. Whether the parties engage in separate racing operations in other jurisdictions.

5. Whether the parties have claimed horses, or transferred claimed horses after the fact, for the other's benefit.

6. If owners, whether one owner is paying the expenses for horses not in the owner's name as owner.

7. If trainers, whether the relationship between the parties is more consistent with that of a trainer and assistant trainer.

(5) The stewards shall have the authority to discipline, for violation of the rules, any person subject to their control and, in their discretion, to impose fines or suspensions or both for infractions.

(6) The stewards shall have the authority to order the exclusion or ejection from all premises and enclosures of the facility any person who is disqualified for corrupt practices on any race course in any country.

(7) The stewards shall have the authority to call for proof that a horse is neither itself disqualified in any respect, nor nominated by, nor, wholly or in part, the property of a disqualified person. In default of proof being given to their satisfaction, the stewards may declare the horse disqualified.

(8) The stewards shall have the authority at any time to order an examination of any horse entered for a race or which has run in a race.

(9) In order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, the stewards have the authority to authorize a person(s) on their behalf to enter into or upon the buildings, barns, motor vehicles, trailers, or other places within the grounds of a licensed facility, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(10) The stewards shall maintain a log of all infractions of the rules and of all rulings of the stewards upon matters coming before them during the race meet.

(11) The state stewards must give prior approval for any person other than the commissioners or commission representative to be allowed in the stewards' stand.

c. Emergency authority.

(1) Substitute officials. When in an emergency, any official is unable to discharge the official's duties, the stewards may approve the appointment of a substitute and shall report it immediately to the commission.

(2) Substitute jockeys. The stewards have the authority, in an emergency, to place a substitute jockey on any horse in the event the trainer does not do so. Before using that authority, the stewards shall in good faith attempt to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and inform the stewards of the substitution by 30 minutes prior to post time, then the stewards may appoint under this rule.

(3) Substitute trainer. The stewards have the authority in an emergency to designate a substitute trainer for any horse.

(4) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

(5) Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

(6) Nonstarter. At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

d. Investigations and decisions.

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers, and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses. The stewards shall submit a written report to the commission of every such inquiry made by them.

(2) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(3) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race. The stewards at their discretion may determine if there was sufficient interference or intimidation to affect the outcome of the race and take the appropriate actions thereafter.

2. Coupled entry. When a horse is disqualified under 10.4(4)"d"(3)"1" and that horse was a part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may disqualify the other part of the entry.

3. Jockey guilty of foul. The stewards may discipline any jockey whose horse has been disqualified as a result of a foul committed during the running of a race.

(4) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all pro-

tests and complaints and any rulings made by the stewards and shall file reports daily with the commission.

1. Involving fraud. Protests involving fraud may be made by any person at any time. The protest must be made to the stewards.

2. Not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse, authorized agent, trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of scales, the stewards, or a person designated by the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made, unless entered prior to the start of the race.

3. Protest to clerk of scales. A jockey who intends to enter a protest following the running of any race, and before the race is declared official, shall notify the clerk of scales, or a person designated by the stewards, of this intention immediately upon the arrival of the jockey at the scales.

4. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's bookkeeper until the protest is decided.

5. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards not later than one hour before post time of the race out of which the protest arises.

6. Frivolous protests. No person shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

10.4(5) Racing secretary.

a. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and recording of race results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, and smoked. Exceptions to this rule must be approved by the stewards.

b. Conditions. The racing secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers, and the commission. Corrections to the conditions must be made within 24 hours of publication.

c. Posting of entries. Upon the closing of entries each day, the racing secretary shall post a list of entries in a conspicuous location in the office of the racing secretary and shall furnish that list to local newspaper, radio, and television stations.

d. Stakes and entrance money records. The secretary shall be caretaker of the permanent records of all stakes, entrance moneys, and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

e. Record of racing. The racing secretary shall, no later than the day following each race, attach or endorse on the registration certificate of each horse winning in any race the fact of that winning performance and the distance, date of the race, and the type or conditions of the race.

f. Naming/engaging of riders. Riders must be named at the time of entry or no later than scratch time. Before naming any rider, the trainer, owner, or other person authorized must first engage the services of the rider and state on the entry or to the clerk of scales whether it is a first or second call. Riders properly engaged must fulfill their engagements as required in 10.5(2)"l."

g. Handicapping. The racing secretary, or a handicapper assigned by the racing secretary, shall assign the weight to be carried by each horse in a handicap when weights are not stated in the condition of the race:

(1) Scale of weights for age. The scale of weights for age hereinafter listed shall be carried when conditions of races do not otherwise specify:

Distance	Age	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	Two Years	X	X	X	X	X	X	X	105	108	111	114	114
HALF	Three Years	117	117	119	119	121	123	125	126	127	128	129	129
MILE	Four Years	130	130	130	130	130	130	130	130	130	130	130	130
	Five Years & Up	130	130	130	130	130	130	130	130	130	130	130	130

	Two Years	X	X	X	X	X	X	X	102	105	108	111	111
SIX	Three Years	114	114	117	117	119	121	123	125	126	127	128	128
FURLONGS	Four Years	129	129	130	130	130	130	130	130	130	130	130	130
	Five Years & Up	130	130	130	130	130	130	130	130	130	130	130	130

	Two Years	X	X	X	X	X	X	X	X	96	99	102	102
ONE	Three Years	107	107	111	111	113	115	117	119	121	122	123	123
MILE	Four Years	127	127	128	128	127	126	126	126	126	126	126	126
	Five Years & Up	128	128	128	128	127	126	126	126	126	126	126	126

	Two Years	X	X	X	X	X	X	X	X	X	X	X	X
MILE AND	Three Years	101	101	107	107	111	113	116	118	120	121	122	122
A QUARTER	Four Years	125	125	127	127	127	126	126	126	126	126	126	126
	Five Years & Up	127	127	127	127	127	126	126	126	126	126	126	126

	Two Years	X	X	X	X	X	X	X	X	X	X	X	X
MILE AND	Three Years	98	98	104	104	108	111	114	117	119	121	122	122
A HALF	Four Years	124	124	126	126	126	126	126	126	126	126	126	126
	Five Years & Up	126	126	126	126	126	126	126	126	126	126	126	126

	Two Years	X	X	X	X	X	X	X	X	X	X	X	X
TWO MILES	Three Years	96	96	102	102	106	109	112	114	117	119	120	120
	Four Years	124	124	126	126	126	126	126	125	125	124	124	124
	Five Years & Up	126	126	126	126	126	126	126	125	125	124	124	124

(2) Weights listed.

1. In races of intermediate lengths, the weights for the shorter distance shall be carried.

2. In a race exclusively for two-year-olds, the weight shall be 122 pounds.

3. In a race exclusively for three-year-olds or four-year-olds, the weight shall be 126 pounds.

(3) Minimum weight.

1. Thoroughbreds. In all overnight races for two-year-olds, three-year-olds, or four-year-olds and older, the minimum weight shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicaps or to races written for three-year-olds and older.

2. Quarter horse and mixed races. In all overnight races for two-year-olds, the weight shall be 120 pounds; for three-year-olds, the weight shall be 122 pounds; and for four-year-olds and older, the weight shall be 124 pounds.

3. Quarter horse and mixed races. In qualifying for a speed index, standard weight shall be 120 pounds. Should any horse carry less than this amount in a race, one-tenth of a second will be added to the official time for each four pounds or fraction thereof less than 120 pounds.

(4) Sex allowances. For thoroughbred racing only, sex allowances are obligatory. In all races except stakes, handicaps, and races where the conditions expressly state to the contrary, two-year-old fillies are allowed three pounds; mares three years old and older are allowed five pounds before September 1 and three pounds thereafter. Sex allowances are not applicable for quarter horse or mixed races.

h. Penalties not cumulative. Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the racing secretary.

i. Winnings.

(1) All inclusive. For the purpose of the setting of conditions by the racing secretary, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings shall be determined on the basis of the normal rate of exchange prevailing on the day of the win.

(2) Winnings considered from January 1. Winnings during the year shall be reckoned by the racing secretary from the preceding January 1.

(3) Winner of a certain sum. Winner of a certain sum means the winner of a single race of that sum, unless otherwise expressed in the condition book by the racing secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator shall be deducted from the amount won. In all stakes races, the winnings shall be computed on the value of the gross earnings.

(4) Winner's award. Unless the conditions of a race provide otherwise, the entrance money, starting and subscription fees, and other contributions shall go to the winner of the race. If for any reason a race is not run, those entrance, starting, and subscription fees shall be returned to the nominators.

j. Cancellation of a race. The racing secretary has the authority to withdraw, cancel, or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race shall be refunded.

k. Coggins test. The racing secretary shall ensure that all horses have a current negative Coggins test. The racing secretary shall report all expired certificates to the stewards.

l. Registrations and supporting documents. The racing secretary shall be responsible for receiving, inspecting, and safeguarding all registrations and supporting documents submitted by the trainer while the horses are located on facility grounds. Upon notification from a trainer of an alteration of the sex of a horse, the racing secretary shall note such alteration on the certificate of registration. Disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

10.4(6) Paddock judge.

a. General authority. The paddock judge shall:

(1) Supervise the assembly of horses in the paddock no later than 15 minutes before the scheduled post time for each race;

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(2) Maintain a written record of all equipment, inspect all equipment of each horse saddled, and report any change thereof to the stewards;

(3) Prohibit any change of equipment without the approval of the stewards;

(4) Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time and leave the paddock for the post in proper sequence;

(5) Supervise paddock schooling of all horses approved for such by the stewards;

(6) Report to the stewards any observed cruelty to a horse; and

(7) Ensure that only properly authorized persons are permitted in the paddock.

b. Paddock judge's list.

(1) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.

(2) At the end of each day, the paddock judge shall provide a copy of the list to the stewards.

(3) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.

10.4(7) Horse identifier. The horse identifier shall:

a. When required, ensure the safekeeping of registration certificates and racing permits for horses stabled or racing on facility grounds;

b. Inspect documents of ownership, eligibility, registration, or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;

c. Examine every starter in the paddock for sex, color, markings, and lip tattoo for comparison with its registration certificate to verify the horse's identity;

d. Supervise the tattooing or branding for identification of any horse located on facility grounds; and

e. Report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

10.4(8) Starter.

a. General authority. The starter shall:

(1) Have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start;

(2) Appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;

(3) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions more than ten minutes before post time for the race;

(4) Assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and shall make said assessment known to the stewards; and

(5) Load horses into the gate in any order deemed necessary to ensure a safe and fair start.

b. Assistant starters. With respect to an official race, the assistant starters shall not:

(1) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(2) Impede the start of a race;

(3) Apply a whip or other device, with the exception of steward-approved twitches, to assist in loading a horse into the starting gate;

(4) Slap, boot, or otherwise dispatch a horse from the starting gate;

(5) Strike or use abusive language to a jockey; or

(6) Accept or solicit any gratuity or payment other than their regular salary, directly or indirectly, for services in starting a race.

c. Starter's list. No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the direct supervision of the starter.

10.4(9) Timer/clocker.

a. General authority—timer.

(1) The timer shall accurately record the official time.

(2) At the end of a race, the timer shall post the official running time on the infield totalizator board on instruction by the stewards.

(3) At a facility equipped with an appropriate infield totalizator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(4) For backup purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least two stopwatches are used by the stewards or their representatives.

(5) The timer shall maintain, and make available for inspection by the stewards or the commission on request, a written record of fractional and finish times of each race.

b. General authority—clocker.

(1) The clocker shall be present during training hours at each track on facility grounds which is open for training to identify each horse working out and to accurately record the distances and times of each horse's workout.

(2) Each day, the clocker shall prepare a list of workouts that includes the name of each horse which worked along with the distance and time of each horse's workout.

(3) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.

10.4(10) Placing judges.

a. General authority. The placing judges shall determine the order of finish in a race as the horses pass the finish line and, with the approval of the stewards, may display the results on the totalizator board.

b. Photo finish.

(1) In the event the placing judges or the stewards request a photo of the finish, the photo finish sign shall be posted on the totalizator board.

(2) Following their review of the photo finish film strip, the placing judges shall, with the approval of the stewards, determine the exact order of finish for all horses participating in the race, and shall immediately post the numbers of the first four finishers on the totalizator board.

(3) In the event a photo was requested, the placing judges shall cause a photographic print of said finish to be produced. The finish photograph shall, when needed, be used by the

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placing judges as an aid in determining the correct order of finish.

(4) Upon determination of the correct order of finish of a race in which the placing judges have utilized a photographic print to determine the first four finishers, the placing judges shall cause prints of said photograph to be displayed publicly in the grandstand and clubhouse areas of the facility.

c. Dead heats.

(1) In the event the placing judges determine that two or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall, with the approval of the stewards, be declared.

(2) In the event one or more of the first four finishers of a race are involved in a dead heat, the placing judges shall post the dead heat sign on the totalizator board and cause the numbers of the horse or horses involved to blink on the totalizator board.

10.4(11) Jockey room custodian. The jockey room custodian shall:

a. Supervise the conduct of the jockeys and their attendants while they are in the jockey room;

b. Keep the jockey room clean and safe for all jockeys;

c. Ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their horses;

d. Keep a daily film list as dictated by the stewards and have it displayed in plain view for all jockeys;

e. Keep a daily program displayed in plain view for the jockeys;

f. Keep unauthorized persons out of the jockey room;

g. Report to the stewards any unusual occurrences in the jockey room;

h. Assist the clerk of scales as required;

i. Supervise the care and storage of racing colors; and

j. Assign to each jockey a locker, capable of being locked, for the use of storing the jockey's clothing, equipment, and personal effects.

10.4(12) Mutuel manager. The mutuel manager is responsible for the operation of the mutuel department. The mutuel manager shall ensure that any delays in the running of official races caused by totalizator malfunctions are reported to the stewards. The mutuel manager shall submit a written report on any delay when requested by the state steward.

10.4(13) Clerk of scales. The clerk of scales shall:

a. Verify the presence of all jockeys in the jockey room at the appointed time;

b. Verify that all such jockeys have a current jockey's license issued by the commission;

c. Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;

d. Oversee the security of the jockey room including the conduct of the jockeys and their attendants;

e. Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;

f. Maintain the record of applicable winning races on all apprentice certificates at the meeting;

g. Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; and

h. Assume the duties of the jockey room custodian in the absence of such employee.

10.4(14) Outrider.

a. The facility shall appoint a minimum of two outriders on the main track for each race of a performance and during workouts. The facility shall appoint one outrider on the training track during all workouts. The outriders must be neat in appearance, wear approved helmets with the chin straps securely fastened, and wear approved safety vests while on the main track or training track.

b. The outriders shall:

(1) Accompany the field of horses from the paddock to the post;

(2) Ensure the post parade is conducted in an orderly manner, with all jockeys and pony riders conducting themselves in a manner in conformity with the best interests of racing as determined by the board of stewards;

(3) Assist jockeys with unruly horses;

(4) Render assistance when requested by a jockey;

(5) Be present during morning workouts to assist exercise riders as required by regulations;

(6) Promptly report to the stewards any unusual conduct which occurs while performing the duties of an outrider;

(7) Ensure individuals using the track(s) are appropriately licensed; and

(8) Promptly report jockey(s) objections to the stewards after the finish of each race.

10.4(15) Horsemen's bookkeeper.

a. General authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the facility and commission may prescribe.

b. Records.

(1) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements, and registrations of authorized agents.

(3) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the facility.

(4) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time.

c. Moneys and funds on account.

(1) All moneys and funds on account with the horsemen's bookkeeper shall be maintained:

1. Separate and apart from moneys and funds of the facility;

2. In a trust account designated as "horsemen's trust account"; and

3. In an account insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) The horsemen's bookkeeper shall be bonded.

d. Payment of purses.

(1) The horsemen's bookkeeper shall receive, maintain, and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, all applicable taxes, and other moneys that properly come into their possession in accordance with the provisions of commission rules.

(2) The horsemen's bookkeeper may accept moneys due, belonging to other organizations or recognized meetings,

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provided prompt return is made to the organization to which the money is due.

(3) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, and all applicable taxes, upon request, within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(4) Absent a prior request, the horsemen's bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(5) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse within 48 hours of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

e. No portion of purse money other than jockey fees shall be deducted by the facility for itself or for another, unless so requested in writing by the person to whom purse moneys are payable or the person's duly authorized representative. The horsemen's bookkeeper shall mail to each owner a duplicate of each record of all deposits, withdrawals, or transfers of funds affecting the owner's racing account at the close of each race meeting.

10.4(16) Patrol judges.

a. General authority. A facility may employ patrol judges who shall observe the running of the race and report information concerning the running of the race to the stewards.

b. Duty stations. Each patrol judge shall have a duty station assigned by the stewards.

10.4(17) Commission veterinarians.

a. The veterinarians shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarians shall have supervision and control of the detention barn for the collection of test samples for the testing of horses for prohibited medication as provided in Iowa Code sections 99D.23(2) and 99D.25(9). The commission may employ persons to assist the commission veterinarians in maintaining the detention barn area and collecting test samples.

c. The commission veterinarians shall not buy or sell any horse under their supervision; wager on a race under their supervision; or be licensed to participate in racing in any other capacity.

d. The stewards or commission veterinarians may request any horse entered in a race to undergo an examination on the day of the race to determine the general fitness of the horse for racing. During the examination, all bandages shall be removed by the groom upon request and the horse may be exercised outside the stall to permit the examiner to determine the condition of the horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards.

e. A commission veterinarian shall inspect all of the horses in a race at the starting gate and after the finish of a race shall observe the horses upon their leaving the track.

f. The commission veterinarian shall place any horse determined to be sick or too unsafe, unsound, or unfit to race on a veterinarian's list that shall be posted in a conspicuous place available to all owners, trainers, and officials.

g. A horse placed on the veterinarian's list, bleeders exempt, may be allowed to enter only after it has been removed from the list by the commission veterinarian. Requests for the removal of any horse from the veterinarian's list will be accepted only after three calendar days from the placing of the horse on the veterinarian's list have elapsed. Removal from the list will be at the discretion of the commission veterinarian who may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified.

h. The commission veterinarians shall supervise and ensure that the administration of lasix and phenylbutazone is in compliance with Iowa Code section 99D.25A.

i. The commission veterinarians shall, in accordance with Iowa Code section 99D.25A, be present at all postmortem examinations on all horses which have expired or been euthanized on facility grounds.

j. The commission veterinarian or commission representative shall take receipt of veterinary reports as required by Iowa Code section 99D.25(10).

491—10.5(99D) Trainer, jockey, and jockey agent responsibilities.

10.5(1) Trainer.

a. Responsibility. The trainer is responsible for:

(1) The condition of horses entered in an official workout or race and, in the absence of substantial evidence to the contrary, for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses, regardless of the acts of third parties. A positive test for a prohibited drug, medication, or substance, including permitted medication in excess of the maximum allowable level, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D.

(2) Preventing the administration of any drug, medication, or other prohibited substance that may cause a violation of these rules.

(3) Any violation of rules regarding a claimed horse's participation in the race in which the trainer's horse is claimed.

(4) The condition and contents of stalls, tack rooms, feed rooms, sleeping rooms, and other areas which have been assigned to the trainer by the facility and maintaining the assigned stable area in a clean, neat, and sanitary condition at all times.

(5) Ensuring that fire prevention rules are strictly observed in the assigned stable area.

(6) Providing a list to the commission of the trainer's employees in any area under the jurisdiction of the commission. The list shall include each employee's name, occupation, social security number, and occupational license number. The commission shall be notified by the trainer, in writing, within 24 hours of any change.

(7) The proper identity, custody, care, health, condition, and safety of horses in the trainer's charge.

(8) Disclosure to the racing secretary of the true and entire ownership of each horse in the trainer's care, custody, or control. Any change in ownership shall be reported immediately to, and approved by, the stewards and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall

be attached to the registration certificate for the horse and filed with the racing secretary.

(9) Training all horses owned wholly or in part by the trainer which are participating at the race meeting.

(10) Registering with the racing secretary each horse in the trainer's charge within 24 hours of the horse's arrival on facility grounds.

(11) Ensuring that, at the time of arrival at the facility, each horse in the trainer's care is accompanied by a valid health certificate which shall be filed with the racing secretary.

(12) Having each horse in the trainer's care that is racing or stabled on facility grounds tested for equine infectious anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary. The test must have been conducted within the previous 12 months and must be repeated upon expiration. The certificate must be attached to foal certificate.

(13) Using the services of those veterinarians licensed by the commission to attend horses that are on facility grounds.

(14) Immediately reporting the alteration of the sex of a horse in the trainer's care to the horse identifier and the racing secretary.

(15) Promptly reporting to the racing secretary and the commission veterinarian any horse on which a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration. See Iowa Code subsections 99D.25(1) to 99D.25(3).

(16) Promptly reporting to the stewards and the commission veterinarian the serious illness of any horse in the trainer's charge.

(17) Promptly reporting the death of any horse in the trainer's care on facility grounds to the stewards, owner, and the commission veterinarian and complying with Iowa Code subsection 99D.25(5) governing postmortem examination.

(18) Maintaining a knowledge of the medication record and status of all horses in the trainer's care.

(19) Immediately reporting to the stewards and the commission veterinarian if the trainer knows, or has cause to believe, that a horse in the trainer's custody, care, or control has received any prohibited drugs or medication.

(20) Representing an owner in making entries and scratches and in all other matters pertaining to racing.

(21) Eligibility of horses entered and weight or other allowance claimed.

(22) Ensuring the fitness of a horse to perform creditably at the distance entered.

(23) Ensuring that the trainer's horses are properly shod, bandaged, and equipped.

(24) Presenting the trainer's horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered.

(25) Personally attending to the trainer's horses in the paddock and supervising the saddling thereof, unless excused by the stewards.

(26) Instructing the jockey to give the jockey's best effort during a race and instructing the jockey that each horse shall be ridden to win.

(27) Attending the collection of a urine or blood sample from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so.

(28) Notifying horse owners upon the revocation or suspension of their trainer's license. Upon application by the owner, the stewards may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

b. Restrictions on wagering. A trainer with a horse(s) entered in a race shall be allowed to wager only on that horse(s) or that horse(s) in combination with other horses.

c. Assistant trainers.

(1) Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards. The assistant trainer shall be licensed prior to acting in such capacity on behalf of the trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission and may include requirements set forth in 491—Chapter 6.

(3) An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as are imposed on the licensed trainer. In which case, the trainer shall be jointly responsible for the assistant trainer's compliance with the rules.

d. Substitute trainers.

(1) A trainer absent for more than five days from responsibility as a licensed trainer, or on a day in which the trainer has a horse in a race, shall obtain another licensed trainer to substitute.

(2) A substitute trainer shall accept responsibility for the horses in writing and shall be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race.

10.5(2) Jockey.

a. Responsibility.

(1) A jockey shall give a best effort during a race, and each horse shall be ridden to win.

(2) A jockey shall not have a valet attendant except one provided and compensated by the facility.

(3) No person other than the licensed contract employer or a licensed jockey agent may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make the jockey's own riding engagements.

(4) A jockey shall have no more than one jockey agent.

(5) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

(6) A jockey shall promptly report objections to the outrider(s) following the finish of the race.

b. Jockey betting. A jockey shall be allowed to wager only on a race in which the jockey is riding. A jockey shall only be allowed to wager if:

(1) The owner or trainer of the horse that the jockey is riding makes the wager for the jockey;

(2) The jockey only wagers on the jockey's own mount to win or finish first in combination with other horses in multiple-type wagers; and

(3) Records of such wagers are kept and available for presentation upon request by the stewards.

c. Jockey's spouse. A jockey shall not compete in any race against a horse that is trained or owned by the jockey's spouse.

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d. Jockey mount fees. In the absence of a specific contract or special agreement, the following jockey mount fees apply:

Purse	Winning Mount	2nd Place	3rd Place	Unplaced
$599 and under	$33	$33	$33	$33
$600 to $699	36	33	33	33
$700 to $1,499	10% Win Purse	33	33	33
$1,500 to $1,999	10% Win Purse	35	33	33
$2,000 to $3,499	10% Win Purse	45	40	38
$3,500 to $4,999	10% Win Purse	55	45	40
$5,000 to $9,999	10% Win Purse	65	50	45
$10,000 to $14,999	10% Win Purse	5% Place Purse	5% Show Purse	50
$15,000 to $24,999	10% Win Purse	5% Place Purse	5% Show Purse	55
$25,000 to $49,999	10% Win Purse	5% Place Purse	5% Show Purse	65
$50,000 to $99,999	10% Win Purse	5% Place Purse	5% Show Purse	80
$100,000 and up	10% Win Purse	5% Place Purse	5% Show Purse	105

e. Entitlement. Any apprentice or contract rider shall be entitled to the regular jockey fees, except when riding a horse owned in part or solely by the contract holder. An interest in the winnings only (such as trainer's percent) shall not constitute ownership.

f. Fee earned. A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned when injury to the horse or rider is not involved and jockeys, of their own free will, take themselves off their mounts. Any conditions or considerations not covered by the above shall be at the discretion of the stewards.

g. Multiple engagements. If any owner or trainer engages two or more jockeys for the same race, the owner or trainer shall be required to pay each of the jockeys whether the jockey rides in the race or not.

h. Dead heats. Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.

i. Apprentices subject to jockey rules. Unless excepted under these rules, apprentices are subject to all rules governing jockeys and racing.

j. Conduct.

(1) Clothing and appearance. A jockey shall wear the colors furnished by the owner or facility with the number on the saddlecloth corresponding to the number given in the racing program. A jockey shall maintain a neat and clean appearance while engaged in duties on facility grounds and shall wear a clean jockey costume, cap, helmet (approved by commission), a jacket of silk or waterproof fabric, breeches, and top boots.

(2) Competing against contractor. No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.

(3) Confined to jockey room. Jockeys engaged to ride a race shall report to the jockey room on the day of the race at the time designated by facility officials. The jockeys shall then report their engagements and any overweight to the clerk of scales. Thereafter, they shall not leave the jockey room, except by permission of the stewards, until all of their riding engagements of the day have been fulfilled. Once riders have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be readmitted to the jockeys' quarters until after the entire racing program for that day has been completed, except upon permission of the stewards. Jockeys are not allowed to communicate with anyone but the trainer or agent while in the room during the performance except with approval of stewards. On these occasions, they should be accompanied by a security guard.

(4) Whip prohibited. Jockeys may not use a whip on a two-year-old horse before April 1 of each year, nor shall a jockey or other person engage in excessive or indiscriminate whipping of any horse at any time.

(5) Spurs prohibited. Jockeys shall not use spurs.

(6) Possessing drugs or devices. Jockeys shall not have in their care, control, or custody any drugs, prohibited substances, or electrical or mechanical device that could affect a horse's racing performance.

k. Jockey effort. A jockey shall exert every effort to ride the horse to the finish in the best and fastest run of which the horse is capable. No jockey shall ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.

l. Duty to fulfill engagements. Jockeys shall fulfill their duly scheduled riding engagements, unless excused by the stewards. Jockeys shall not be forced to ride a horse they believe to be unsound nor over a racing strip they believe to be unsafe. If the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, the jockey may be subject to disciplinary action. Jockeys shall be responsible to their agent for any engagements previously secured by the agent.

m. Riding interference.

(1) When the way is clear in a race, a horse may be ridden to any part of the course; but if any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, it is a foul.

(2) The offending horse may be disqualified if, in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful, or the result of careless riding.

(3) If the stewards determine the foul was intentional, or due to careless riding, the jockey shall be held responsible.

(4) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it started. If a horse is ridden, drifts, or swerves out of its lane in such a manner that it interferes with, impedes, or intimidates anoth-

er horse, it is a foul and may result in the disqualification of the offending horse.

n. Jostling. Jockeys shall not jostle another horse or jockey. Jockeys shall not strike another horse or jockey or ride so carelessly as to cause injury or possible injury to another horse in the race.

o. Partial fault/third-party interference. If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or the infraction was wholly caused by the fault of some other horse or jockey.

p. Careless riding. A jockey shall not ride carelessly or willfully permit the mount to interfere with, intimidate, or impede any other horse in the race. A jockey shall not strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified; or the jockey may be fined, suspended, or otherwise disciplined; or other penalties may apply.

q. Jockey weighed out.

(1) Jockeys must be weighed for their assigned horse not more than 30 minutes before the time fixed for the race.

(2) A jockey's weight shall include the jockey's clothing, boots, saddle and its attachments. A safety vest shall be mandatory, shall weigh no more than two pounds, and shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five as defined by the British Equestrian Trade Association.

(3) All other equipment shall be excluded from the weight.

r. Overweight limited. No jockey may weigh more than two pounds or, in the case of inclement weather, four pounds over the weight the horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of the scales at least 45 minutes before the time of the race. However, a horse shall not carry more than seven pounds overweight, except in inclement weather when nine pounds shall be allowed. The overweight shall be publicly announced and posted in a conspicuous place both prior to the first race of the day and before the running of the race.

(1) Weigh in. Upon completion of a race, jockeys shall ride promptly to the winner's circle and dismount. Jockeys riding the first four finishers, or at the discretion of the stewards a greater number, shall present themselves to the clerk of scales to be weighed in. If a jockey is prevented from riding the mount to the winner's circle because of accident or illness either to the jockey or the horse, the jockey may walk or be carried to the scales unless excused by the stewards.

(2) Unsaddling. Jockeys, upon completion of a race, must return to the winner's circle and unsaddle their own horse, unless excused by the stewards.

(3) Removing horse's equipment. No person except the valet attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit otherwise. To weigh in, jockeys shall carry to the scales all pieces of equipment with which they weighed out. Thereafter they may hand the equipment to the valet attendant.

(4) Underweight. When any horse places first, second, or third in a race, or is coupled in any form of multiple exotic wagering, and thereafter the horse's jockey is weighed in short by more than two pounds of the weight of which the jockey was weighed out, the mount may be disqualified and all purse moneys forfeited.

(5) Overweight. If the jockey is overweight, the mount may be disqualified and all purse moneys forfeited.

s. Contracts.

(1) Jockey contracts. A jockey may contract with an owner or trainer to furnish jockey services whenever the owner shall require; and, in that event, a jockey shall not ride or agree to ride in any race for any other person without the consent of the owner or trainer to whom the jockey is under contract.

(2) Apprentice contracts and transfers.

1. Owners or trainers and apprentices who are parties to contracts for apprentice jockey services shall file a copy of the contract with the commission, upon forms approved by the commission, and shall, upon any transfer, assignment, or amendment of the contract, immediately furnish a copy to the commission.

2. An apprentice jockey may not ride for a licensed owner or agent unless with the consent of the apprentice's contract employer.

(3) Contract condition. No person other than an owner, trainer, jockey agent, or authorized agent of an owner in good standing shall make engagements for an apprentice jockey or jockey. Jockeys not represented by an agent may make their own engagements.

t. Jockey fines and forfeitures. Jockeys shall pay any fine or forfeiture from their own funds within 48 hours of the imposition of the fine or at a time deemed proper by the stewards. No other person shall pay jockey fines or forfeitures for the jockey.

u. Competing claims. Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute shall be resolved by the stewards.

v. Jockey suspension.

(1) Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.

(2) Offenses not involving fraud. Suspension for an offense not involving fraud or deception in racing shall begin on the third day after the ruling or at the stewards' discretion.

(3) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission, whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission, shall be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why the withdrawal should not be deemed frivolous.

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete, notwithstanding the fact that such jockey is technically under suspension for ten days or less for a riding infraction at the time the designated race is to be run.

1. Official rulings for riding suspensions of ten days or less shall state: "The term of this suspension shall not prohibit participation in designated races."

2. A listing of the designated races shall be posted in the jockey room and any other such location deemed appropriate by the stewards.

3. A suspended jockey must be named at time of entry to participate in any designated race.

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4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. Designated trials for a futurity shall be considered as one race.

10.5(3) Jockey agent.

a. Responsibilities.

(1) A jockey agent shall not make or assist in making engagements for a jockey other than those the agent is licensed to represent.

(2) A jockey agent shall file written proof of all agencies and changes of agencies with the stewards.

(3) A jockey agent shall notify the stewards, in writing, prior to withdrawing from representation of a jockey and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

(4) All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made. Such records shall be subject to examination by the stewards at any time.

b. Prohibited areas. A jockey agent is prohibited from entering the jockey room, winner's circle, racing strip, paddock, or saddling enclosure during the hours of racing, unless permitted by the stewards.

c. A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

491—10.6(99D) Conduct of races.

10.6(1) Horses ineligible. Any horse ineligible to be entered for a race, or ineligible to start in any race, which competes in that race may be disqualified and the stewards may discipline the persons responsible for the horse competing in that race.

a. A horse is ineligible to enter a race when:

(1) The nominator has failed to identify the horse which is being entered for the first time, by name, color, sex, age, and the names of sire and dam as registered.

(2) A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate, or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any facility or regulatory agency.

(3) A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry or racing of some other horse under the name of the horse in question.

(4) A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person.

(5) A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person. In such cases, a presumption which may be rebutted is that the disqualified person and spouse constitute a single financial entity with respect to the horse.

(6) A horse is owned in whole or in part by an undisclosed person or interest.

(7) A horse has been nerved by surgical neurectomy.

(8) A horse has been trachea-tubed to artificially assist breathing.

(9) A horse has impaired eyesight in both eyes.

(10) A horse appears on the starter's list, stewards' list, paddock list, or veterinarian's list, notwithstanding a horse appearing on the veterinarian's list as a "bleeder."

(11) A horse is barred from racing in any racing jurisdiction.

b. A horse is ineligible to start a race when:

(1) The horse is not stabled on the grounds of the facility by the time designated by the stewards.

(2) The horse's breed registration certificate is not on file with the racing secretary, or horse identifier, except in the case of a quarter horse where the racing secretary has submitted the certificate to the breed registry for correction. The stewards may, in their discretion, waive the requirement in nonclaiming races provided the horse is otherwise properly identified.

(3) The horse is not fully identified by an official tattoo on the inside of the upper lip.

(4) A horse is brought to the paddock and is not in the care of and saddled by a currently licensed trainer or assistant trainer.

(5) No current negative Coggins test or current negative equine infectious anemia test certificate is attached to the horse's registration certificate.

(6) The stakes or entrance money for the horse has not been paid.

(7) The horse appears on the starter's list, stewards' list, paddock list, or veterinarian's list.

(8) The horse is a first-time starter not approved by the starter and does not have a minimum of two published workouts.

(9) Within the past calendar year the horse has started in a race that has not been reported in a nationally published monthly chartbook, unless at least 48 hours prior to entry, the owner of the horse provides to the racing secretary performance records which show the place and date of the race, distance, weight carried, amount carried, and the horse's finishing position and time.

(10) In a stakes race, a horse has been transferred with its engagements, unless prior to the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary.

(11) A horse is subject to a lien which has not been approved by the stewards and filed with the horsemen's bookkeeper.

(12) A horse is subject to a lease not filed with the stewards.

(13) A horse is not in sound racing condition.

(14) A horse has been blocked with alcohol or injected with any other foreign substance or drug to desensitize the nerves of the leg.

(15) A horse appears on the veterinarian's list as a "bleeder."

10.6(2) Entries.

a. The facility shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or fax subsequently confirmed in writing by the owner, trainer, or authorized agent. When any entrant or nominator claims failure or error in the receipt by a facility of any entry or declaration, the entrant or nominator may be required to submit evidence within a reasonable time of the filing of the entry or the declaration.

b. Upon the closing of entries the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.

c. Coupling.

(1) Entry coupling. When one owner or lessee enters more than one horse in the same race, the horses shall be coupled as an entry. Horses shall be regarded as having a common owner when an owner of one horse, either as an individual, a licensed member of a partnership, or a licensed shareholder of a corporation has an aggregate commonality

of ownership of 10 percent interest in another horse, either as an individual, a licensed member of a partnership, or a licensed shareholder of a corporation.

(2) Coupled entry limitations on owner. No more than two horses coupled by a common ownership or trainer shall be entered in an overnight race.

(3) Coupling of entries by stewards. The stewards may couple as a single entry any horses which, in the determination of the stewards, are connected by common ownership, common lessee, the same trainer, or when the stewards determine that coupling is necessary in the interest of the regulation of the pari-mutuel wagering industry or is necessary to ensure the public's confidence in racing.

(4) Exclusion of single interest. Horses having the same owner, lessee, or trainer shall not be permitted to enter or start if the effect would deprive a single interest from starting in overnight races.

d. Splitting of a race. If a race is canceled and declared off for insufficient entries, the facility may split the list of entries for any other overnight race to provide an additional race to replace the one canceled. The racing secretary shall by lot divide the entries of the race so split into two different races.

e. Entry weight. Owners, trainers, or any other duly authorized person who enters a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available and claimed for the horse under the conditions set for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight shall not be changed except in the case of error.

f. Horses run once daily. No horse shall be entered for more than one race on the same day on which pari-mutuel wagering is conducted.

g. Foreign entries. For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall take into account the "Pattern Race Book" published jointly by the Irish Turf Club, The Jockey Club of Great Britain, and the Société d'Encouragement.

h. Weight conversions. For the purpose of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by reference to the following scale:

1 sixteenth	=	100 meters
1 furlong	=	200 meters
1 mile	=	1600 meters

i. Name. The "name" of a horse means the name reflected on the certificate of registration, racing permit, or temporary racing permit issued by The Jockey Club. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. This suffix is derived from the international code of suffixes and constitutes part of the horse's registered name. The registered names and suffixes, where applicable, shall be printed in the official program.

j. Bona fide entry. No person shall enter or attempt to enter a horse for a race unless that entry is a bona fide entry, made with the intention that the horse is to compete in the race for which the horse was entered.

k. Registration certificate to reflect correct ownership. Every Jockey Club foal certificate or American Quarter Horse Association registration certificate filed with the facility and its racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of the horse. The name of the owner that is printed on the official program for the horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate unless a stable name has been registered with the commission for the owner or ownership.

10.6(3) Sweepstakes entries.

a. Entry and withdrawal. The entry of a horse in a sweepstakes is a subscription to the sweepstakes. Before the time of closing, any entry or subscription may be altered or withdrawn.

b. Entrance money. Entrance money shall be paid by the nominator to a race. In the event of the death of the horse or a mistake made in the entry of an otherwise eligible horse, the nominator subscriber shall continue to be obligated for any stakes, and the entrance money shall not be returned.

c. Quarter horse scratches and qualifiers unable to participate in finals. If a horse should be scratched from the time trial finals, the horse's owner will not be eligible for a refund of the fees paid. If a horse that qualified for the final should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, the horse shall be deemed to have earned and the owner will receive last place money. If more than one horse should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, then those purse moneys shall be added together and divided equally among the horse owners.

10.6(4) Closing of entries.

a. Overnight entries. Entries for overnight racing shall be closed at 10 a.m. by the racing secretary, unless a later closing is established by the racing secretary or unless approved by the stewards.

b. Sweepstakes entries. If an hour for closing is designated, entries and declarations for sweepstakes cannot be received thereafter. However, if a time for closing is not designated, entries and declarations may be mailed or faxed until midnight of the day of closing, if they are received in time to comply with all other conditions of the race. In the absence of notice to the contrary, entries and declarations for sweepstakes that close during or on the day preceding a race meeting shall close at the office of the racing secretary in accordance with any requirements the secretary shall make. Closing for sweepstakes not during race meetings shall be at the office of the facility.

c. Exception. Nominations for stakes races shall not close nor shall any eligibility payment be due on a day in which the United States Postal Service is not operating.

10.6(5) Prohibited entries.

a. Entry by disqualified person. An entry made by a disqualified person or the entry of a disqualified horse shall be void. Any money paid for the entry shall be returned, if the disqualification is disclosed at least 45 minutes before post time for the race. Otherwise, the entry money shall be paid to the winner.

b. Limited partner entry prohibited. No person other than a managing partner of a limited partnership or a person authorized by the managing partner may enter a horse owned by that partnership.

c. Altering entries prohibited. No alteration shall be made in any entry after the closing of entries, but the stewards may permit the correction of an error in an entry.

d. Limitation on overnight entries. If the number of entries to any purse or overnight race is in excess of the number of horses that may be accommodated due to the size of the track, the starters for the race and their post positions shall be

determined by lot conducted in public by the racing secretary.

e. Stake race entry limit. In a stake race, the number of horses which may compete shall be limited only by the number of horses nominated and entered. In any case, the facility's lawful race conditions shall govern.

f. Stewards' denial of entry. The stewards may, after notice to the entrant, subscriber, or nominator, deny entry of any horse to a race if the stewards determine the entry to be in violation of these rules or the laws of this state or to be contrary to the interests of the commission in the regulation of pari-mutuel wagering or to public confidence in racing.

10.6(6) Preferences and eligibles.

a. Also eligible. A list of not more than eight names may be drawn from entries filed in excess of positions available in the race. These names shall be listed as "also eligible" to be used as entries if originally entered horses are withdrawn. Any owner, trainer, or authorized agent who has entered a horse listed as an "also eligible" and who does not wish to start shall file a scratch card with the secretary not later than the scratch time designated for that race.

b. Preference system. A system using dates or stars shall be used to determine preference for horses being entered in races. The system being used will be at the option of the racing secretary and approved by the stewards. A preference list will be kept current by the racing secretary and posted in a place readily available to horsemen.

c. Disputed decision. When the decision of a race is in dispute, all horses involved in the dispute, with respect to the winner's credit or earnings, shall be liable to all weights or conditions attached to the winning of that race until a winner has been finally adjudged.

10.6(7) Post positions. Post positions shall be determined by the racing secretary publicly and by lot. Post positions shall be drawn from "also eligible" entries at scratch time. In all races horses drawn into the race from the "also eligible" list shall take the outside post positions.

10.6(8) Scratch; declaring out.

a. Notification to the secretary. No horse shall be considered scratched, declared out, or withdrawn from a race until the owner, agent, or other authorized person has given notice in writing to the racing secretary before the time set by the facility as scratch time. All scratches must be approved by the stewards.

b. Declaration irrevocable. Scratching or the declaration of a horse out of an engagement for a race is irrevocable.

c. Limitation on scratches. No horse shall be permitted to be scratched from a race if the horses remaining in the race number fewer than ten, unless the stewards permit a lesser number. When the number of requests to scratch would, if granted, leave a field of fewer than ten, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race.

d. Scratch time. Unless otherwise set by the stewards, scratch time shall be:

(1) Stakes races. Scratch time shall be at least 45 minutes before post time.

(2) Other races. Scratch time shall be no later than 10 a.m. of the day of the race.

10.6(9) Workouts.

a. When required. No horse shall be allowed to start unless the horse has raced in an official race or has an approved official timed workout satisfactory to the stewards. A horse that has not started for a period of 60 days or more shall be ineligible to race until it has completed a published workout satisfactory to the stewards prior to the day of the race in which entered. The workout must have occurred within the previous 30 days. First-time starters must have at least two published workouts and be approved from the gate by the starter.

b. Identification. The timer or the stewards may require licensees to identify a horse in their care being worked. The owner, trainer, or jockey may be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

c. Information dissemination. If the stewards approve the timed workout so as to permit the horse to run in a race, they shall make it mandatory that this information be furnished to the public in advance of the race including, but not limited to, the following means:

(1) Announcement over the facility's public address system;

(2) Transmission on the facility's message board;

(3) Posting in designated conspicuous places in the racing enclosure; and

(4) Exhibit on track TV monitors at certain intervals if the track has closed circuit TV. If the workout is published prior to the race in either the Daily Racing Form or the track program, then it shall not be necessary to make the announcements set forth above.

d. Restrictions. No horse shall be taken onto the track for training or a workout except during hours designated by the facility.

10.6(10) Equipment.

a. Whip and bridle limitations. Unless permitted by the stewards, no whip or substitute for a whip shall exceed one pound or 30 inches and no bridle shall exceed two pounds.

b. Equipment change. No licensee may change the equipment used on a horse from that used in the horse's last race, unless with permission of the stewards. No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter and the stewards. In the paddock prior to a race, a horse's tongue may be tied down with clean bandages, clean gauze, or with a tongue strap.

10.6(11) Racing numbers.

a. Number display. Each horse in a race shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

b. Coupled entries. In the case of a coupled or other entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall be entered as 1 and 1-A.

c. Field horses. In a combined field of horses, each horse in the field shall carry a separate number.

10.6(12) Valuation of purse money. The amount of purse money earned is credited in United States currency and there shall be no appeal for any loss on the exchange rate at the time of transfer from the United States currency to that of another country.

10.6(13) Dead heats.

a. When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

b. In the event of a dead-heat finish for second place and thereafter, when an objection to the winner of the race is sus-

tained, the horses in the dead heat shall be considered to have run a dead heat for first place.

c. If a prize includes a cup, plate, or other indivisible prize, owners shall draw lots for the prize in the presence of at least two stewards.

10.6(14) The facility shall not make distribution of any purses until given clearance of chemical tests by the state steward.

10.6(15) Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

10.6(16) Equine infectious anemia (EIA) test.

a. Certificate required. No horse shall be allowed to start or be stabled on the grounds of the facility unless a valid negative Coggins test or other laboratory-approved negative EIA test certificate is on file with the racing secretary.

b. Trainer responsibility. In the event of claims, sales, or transfers, it shall be the responsibility of the new trainer to ascertain the validity of the certificate for the horse within 24 hours. If the certificate is either unavailable or invalid, the previous trainer shall be responsible for any reasonable cost associated with obtaining a negative EIA laboratory certificate.

c. Positive test reports. Whenever any owner or trainer is furnished a positive Coggins test or positive EIA test result, the horse shall be removed by the owner or trainer from facility grounds or approved farms within 24 hours of actual notice to the owner or trainer of the infection.

10.6(17) Race procedures.

a. Full weight. Each horse shall carry the full weight assigned for that race from the paddock to the starting point, and shall parade past the stewards' stand, unless excused by the stewards.

b. Touching and dismounting prohibited. After the horses enter the track, jockeys may not dismount or entrust their horse to the care of an attendant unless due to an accident occurring to the jockey, the horse, or the equipment, and then only with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the hands of the jockey, the starter, the assistant starter, the commission veterinarian, an outrider on a lead pony, or persons approved by the stewards may touch the horse before the start of the race.

c. Jockey injury. If a jockey is seriously injured on the way to the post, the horse shall be returned to the paddock, a replacement jockey obtained, and both the injured jockey and the replacement jockey will be paid by the owner.

d. Twelve-minute parade limit. After entering the track, all horses shall proceed to the starting post in not more than 12 minutes unless approved by the stewards. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner. Once at the post, the horses shall be started without unnecessary delay. All horses must participate in the parade carrying their weight and equipment from the paddock to the starting post, and any horse failing to do so may be disqualified by the stewards. No lead pony leading a horse in the parade shall obstruct the public's view of the horse being led except with permission of the stewards.

e. Striking a horse prohibited. In assisting the start of a race, no person other than the jockey, starter, assistant starter, or veterinarian shall strike a horse or use any other means to assist the start.

f. Loading of horses. Horses will be loaded into the starting gate in numerical order or in any other fair and consistent manner determined by the starter and approved by the stewards.

g. Delays prohibited. No person shall obstruct or delay the movement of a horse to the starting post.

10.6(18) Claiming races.

a. Eligibility.

(1) Registered to race or open claim. No person may file a claim for any horse unless the person:

1. Is a licensed owner at the meeting who either has foal paper(s) registered with the racing secretary's office or has started a horse at the meeting; or

2. Is a licensed authorized agent, authorized to claim for an owner eligible to claim; or

3. Has a valid open claim certificate. Any person not licensed as an owner, or a licensed authorized agent for the account of the same, or a licensed owner not having foal paper(s) registered with the racing secretary's office or who has not started a horse at the meeting may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed by the commission who will be responsible for the claim tours. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission; and when the open claim certificate is exercised, an owner's license will be issued.

(2) One stable claim. No stable that consists of horses owned by more than one person and which has a single trainer may submit more than one claim in any race. An authorized agent may submit only one claim in any race regardless of the number of owners represented.

b. Procedure for claiming. To make a claim for a horse, an eligible person shall:

(1) Deposit to the person's account with the horsemen's bookkeeper the full claiming price and applicable taxes as established by the racing secretary's conditions.

(2) File in a locked claim box maintained for that purpose by the stewards the claim filled out completely in writing and with sufficient accuracy to identify the claim on forms provided by the facility at least ten minutes before the time of the race.

c. Claim box.

(1) The claim box shall be approved by the commission and kept locked until ten minutes prior to the start of the race, when it shall be presented to the stewards or their representative for opening and publication of the claims.

(2) The claim box shall also include a time clock which automatically stamps the time on the claim envelope prior to its being dropped in the box.

(3) No official of a facility shall give any information as to the filing of claims therein until after the race has been run.

d. Claim irrevocable. After a claim has been filed in the claim box, it shall not be withdrawn.

e. Multiple claims on single horses. If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

f. Successful claims; later races.

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(1) Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of 30 days from the date of claim.

(2) Eligibility price. A horse that is declared the official winner in the race in which it is claimed may not start in a race in which the claiming price is less than the amount for which it was claimed. After the first start back or 30 days, whichever occurs first, a horse may start for any claiming price. A horse which is not the official winner in the race in which it is claimed may start for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper. No right, title, or interest for any claimed horse shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count, but the following calendar day shall be the first day.

(3) Racing elsewhere. A horse that was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation shall not apply to stakes races.

(4) Same management. A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(5) When a horse is claimed out of a claiming race, the horse's engagements are included.

g. Transfer after claim.

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the racing secretary. No claimed horse shall be delivered by the original owner to the successful claimant until authorized by the stewards. Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse becomes a starter. The successful claimant shall become the owner of the horse at the time of starting, regardless of whether it is alive or dead, sound or unsound, or injured during the race or after it. The original trainer of the claimed horse shall be responsible for the postrace test results.

(2) Other jurisdiction rules. The commission will recognize and be governed by the rules of any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(3) Determination of sex and age. The claimant shall be responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. In the event of a spayed mare, the (s) for spayed should appear next to the mare's name on the program. If it does not and the claimant finds that the mare is in fact spayed, claimant may then return the mare for full refund of the claiming price.

(4) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(5) Delivery required. No person shall refuse to deliver a properly claimed horse to the successful claimant. The claimed horse shall be disqualified from entering any race until delivery is made to the claimant.

(6) Obstructing rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse or enter into any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.

h. Elimination of stable. An owner whose stable has been eliminated by claiming may claim for the remainder of the meeting at which eliminated or for 30 racing days, whichever is longer. With the permission of the stewards, stables eliminated by fire or other casualty may claim under this rule.

i. Deceptive claim. The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim moneys.

j. Protest of claim. A protest to any claim must be filed with the stewards before noon of the day following the date of the race in which the horse was claimed. Nonracing days are excluded from this rule.

491—10.7(99D) Medication and administration, sample collection, chemists, and practicing veterinarian.

10.7(1) Medication and administration.

a. No horse, while participating in a race, shall carry in its body any medication, drug, foreign substance, or metabolic derivative thereof, which is a narcotic or which could serve as a local anesthetic or tranquilizer or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby affecting its speed.

b. Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs, or prevent or delay testing procedures.

c. Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph "a" or "b" in a saliva, urine, or blood sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race shall be prima facie evidence that the horse was administered with the intent that it would carry or that it did carry prohibited medication, drug, or foreign substance, in its body while running in a race in violation of this rule.

d. Administration or possession of drugs.

(1) No person shall administer, cause to be administered, participate or attempt to participate in any way in the administration to a horse registered for racing of any medication, drug, foreign substance, or treatment by any route, on the day of the race for which the horse is entered prior to the race.

(2) No person except a veterinarian shall have in the person's possession any prescription drug. However, a person may possess a noninjectable prescription drug for animal use if:

1. The person actually possesses, within the racetrack enclosure, documentary evidence that a prescription has been issued to said person for such a prescription drug.

2. The prescription contains a specific dosage for the particular horse or horses to be treated by the prescription drug.

3. The horse or horses named in the prescription are then in said person's care within the racetrack enclosure.

(3) No veterinarian or any other person shall have in their possession or administer to any horse within any racetrack enclosure any chemical substance which:

1. Has not been approved for use on equines by the Food and Drug Administration pursuant to the Federal Food,

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Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq., and implementing regulations, without the prior written approval from a commission veterinarian, after consulting with the board of stewards.

2. Is on any of the schedules of controlled substances as prepared by the Attorney General of the United States pursuant to 21 U.S.C. Sections 811 and 812, without the prior written approval from a commission veterinarian after consultation with the board of stewards. The commission veterinarian shall not give such approval unless the person seeking the approval can produce evidence in recognized veterinary journals or by recognized equine experts that such chemical substance has a beneficial therapeutic use in horses.

(4) No veterinarian or any other person shall dispense, sell, or furnish any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route, to any person within the grounds of the facility unless there is a label specifying the name of the substance dispensed, the name of the dispensing person, the name of the horse or horses for which the substance is dispensed, the purpose for which said substance is dispensed, the dispensing veterinarian's recommendations for withdrawal before racing (if applicable), and the name of the person to which dispensed, or is otherwise labeled as required by law.

(5) No person shall have in the person's possession or in areas under said person's responsibility on facility grounds, any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route unless it complies with the labeling requirements in 10.7(1)"d"(4).

e. Any person found to have administered a medication, drug, or foreign substance that caused or could have caused a violation of this rule, or caused, participated, or attempted to participate in any way in the administration, shall be subject to disciplinary action.

f. The owner, trainer, groom, or any other person having charge, custody, or care of the horse is obligated to protect the horse properly and guard it against the administration or attempted administration of a substance in violation of this rule. If the stewards find that any person has failed to show proper protection and guarding of the horse, or if the stewards find that any owner, lessee, or trainer is guilty of negligence, they shall impose punishment and take other action they deem proper under any of the rules including reference to the commission.

g. In order for a horse to be placed on the bleeder list in Iowa through reciprocity, that horse must be certified as a bleeder in another state or jurisdiction. A certified bleeder is a horse that has raced with lasix in another state or jurisdiction in compliance with the laws governing lasix in that state or jurisdiction.

10.7(2) Sample collection.

a. Urine, blood, and other specimens shall be taken and tested from any horse that the stewards, commission veterinarian, or the commission's representatives may designate. Tests are to be under the supervision of the commission. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owners or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

b. A facility shall have a detention barn under the supervision of the commission veterinarian for the purpose of collecting body fluid samples for any tests required by the commission. The building, location, arrangement, furnishings, and facilities including refrigeration and hot and cold running water must be approved by the commission. A security guard, approved by the commission, must be in attendance at each access to the detention barn during the hours designated by the commission.

c. No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of horses pending the obtaining of body fluid samples.

d. During the taking of samples from a horse, the owner, responsible trainer, or a representative designated by the owner or trainer, may be present and witness the taking of the sample and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the owner, trainer, or representative of any objections to the source and documentation of the sample.

e. The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or commission representative may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could affect the racing condition of a horse in a race, which may be found in barns or elsewhere on facility grounds or in the possession of any person connected with racing, and the same shall be delivered to the official chemist for analysis.

f. Nothing in these rules shall be construed to prevent:

(1) Any horse in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission or commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

g. Before leaving the racing surface, the trainer shall ascertain the testing status of the horse under the trainer's care from the commission veterinarian or designated test barn representative.

10.7(3) Chemists.

a. The commission shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing and analysis of body fluid samples whether a foreign substance, medication, drug or metabolic derivative thereof is present.

b. All body fluid samples taken by or under direction of the commission veterinarian or commission representative shall be delivered to the laboratory of the official chemist for analysis.

c. The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

d. The commission chemist shall conduct individual tests on each sample, screening them for prohibited substances, and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the commission.

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be dis-

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carded. Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portion, if available, of the sample preserved and protected for two years following close of meet.

f. The commission chemist shall submit to the commission a written report as to each sample tested, indicating by sample tag identification number, whether the sample was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the administrator or commission representative, with the exception of notifying the state stewards of all positive tests.

g. In the event the commission chemist should find a sample suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

h. In reporting to the state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

i. No action shall be taken by the state steward until an official report signed by the chemist properly identifying the medication, drug, or other substance as well as the horse from which the sample was taken has been received.

j. The cost of the testing and analysis shall be paid by the commission to the official chemist. The commission shall then be reimbursed by each facility on a per-sample basis so that each facility shall bear only its proportion of the total cost of testing and analysis. The commission may first receive payment from funds provided in Iowa Code chapter 99D, if available.

10.7(4) Practicing veterinarian.

a. Prohibited acts.

(1) Ownership. A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any racing animal racing during the meeting.

(2) Wagering. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) Prohibition of furnishing injectable materials. No veterinarian shall within the facility grounds furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic, or prohibited substance to any other person unless with written permission of the stewards.

b. The use of other than single-use disposable syringes and infusion tubes on facility grounds is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe the veterinarian shall destroy the needle and syringe and remove it from the facility grounds.

c. Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all medications and other substances which the veterinarian prescribed, administered, or dispensed for racing animals registered at the current race meeting as provided in Iowa Code section 99D.25(10). Reports shall be submitted in a manner and at a time determined by the commission veterinarian not later than the day following the treatments being reported. Reports shall include the racing animal, trainer, medication or other substance, dosage or quantity, route of administration, date and time administered, dispensed, or prescribed.

d. Within 20 minutes following the administration of lasix, the veterinarian must deliver to the commission veterinarian or commission representative a signed affidavit certifying information regarding the treatment of the horse. The statement must at least include the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the lasix was administered. Lasix shall only be administered in a dose level of 250 milligrams.

e. Each veterinarian shall report immediately to the commission veterinarian any illness presenting unusual or unknown symptoms in a racing animal entrusted into the veterinarian's care.

f. Practicing veterinarians may have employees working under their direct supervision licensed as "veterinary assistants" or "veterinary technicians." Activities of these employees shall not include direct treatment or diagnosis of any racing animal. A practicing veterinarian must be present if an employee is to have access to injection devices or injectables.

g. Equine dentistry is considered a function of veterinary practice by the Iowa veterinary practice Act. Any dental procedures performed at the facility must be performed by a licensed veterinarian or a licensed veterinary assistant.

These rules are intended to implement Iowa Code chapter 99D.

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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 421.5 and 421.17, the Department of Revenue and Finance hereby gives Notice of Intended Action to adopt Chapter 3, "Voluntary Disclosure Program," Iowa Administrative Code.

New Chapter 3 sets forth rules to govern the Department's voluntary disclosure program for the reporting, settlement and collection of certain unreported taxes by those persons which may be subject to Iowa tax.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment 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 September 11, 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 Re-

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view Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before September 8, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 1, 2000.

This amendment is intended to implement the voluntary disclosure program pursuant to Iowa Code sections 421.5 and 421.17.

The following amendment is proposed.

Adopt **new 701—Chapter 3** as follows:

CHAPTER 3
VOLUNTARY DISCLOSURE PROGRAM

701—3.1(421,422,423) Scope of the voluntary disclosure program. Any person located outside of Iowa who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income or has representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income, as defined in 701—subrule 3.1(1), not previously reported. In addition, activities may also result in tax liabilities that are past due and owing.

The purpose of the voluntary disclosure program is to encourage unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income. The person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department.

The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

3.1(1) Type of taxes eligible. Only taxes, penalties and interest related to Iowa source income are eligible for settlement under the voluntary disclosure program. For purposes of this rule, "Iowa source income" means the tax base and the tax collection responsibility for the following enumerated taxes: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, local option school district income surtax, state sales tax, state use tax, motor fuel taxes, cigarette and tobacco taxes, and local option taxes.

3.1(2) Eligibility of the taxpayer. The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

a. The location of the person must be outside of Iowa;

b. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;

c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;

d. The person must not have had any prior contact with the department or a representative of the department which could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;

e. The type and extent of activities resulting in Iowa source income;

f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and

g. Any other factors which are relevant to the particular situation.

3.1(3) Application to participate in the voluntary disclosure program. To apply for the voluntary disclosure program, the person or the person's representative must submit a written application to the Nonfiler Unit, Compliance Division, Iowa Department of Revenue and Finance, P.O. Box 10456, Des Moines, Iowa 50306-0456. To be valid, an application must include the following:

a. The types of taxes involved;

b. Separate statements evidencing compliance with each of the eligibility requirements set forth in 701—subrule 3.1(2);

c. A complete and accurate description of the person's activities resulting in Iowa source income, the source of the Iowa source income or Iowa tax collection responsibilities, the type and dates, if available, of the activities in Iowa, a description of the product or service sold in Iowa, and the number of activity occurrences in Iowa per year or whether the activities in Iowa per year were continuous;

d. The reason for noncompliance with Iowa tax law;

e. An estimation of the amount of unpaid Iowa tax by the tax type and applicable tax period(s); and

f. Any other matters which are relevant to the particular situation.

The department reserves the right to request additional information that the department determines is necessary to determine or approximate the liability due, and to determine the applicant's eligibility, the accuracy of information presented and statements asserted by the applicant, and the terms of the voluntary disclosure agreement.

3.1(4) Acceptance or rejection of an application for the voluntary disclosure program. The department has the discretion to determine if an applicant meets all of the requirements for the voluntary disclosure program. The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

Rejection of an application prior to the execution of an agreement may be based on the applicant's ineligibility; the applicant's noncompliance in submitting information, documents, evidence, or returns within the time period as requested by the department; misrepresentation of a material fact by the applicant or the applicant's representative; or the department's determination that the matter may be best handled by using other means of administration.

3.1(5) Terms of the voluntary disclosure agreement. The department has the discretion to settle all outstanding Iowa source income tax, penalty and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. The existence of the voluntary disclosure agreement and the terms of the agreement are to be held confidential by all parties to the agreement. Items considered by the department in

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determining the settlement terms include: the type of tax; the tax periods at issue; the reason for noncompliance; whether the tax is a trust fund tax; the types of activities resulting in the Iowa source income; the frequency of the activities that resulted in the Iowa source income; and any other matters which are relevant to the particular situation.

If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases which dictate a different result.

The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

3.1(6) Commencement of the voluntary disclosure agreement. The voluntary agreement commences on the date of the execution of the voluntary disclosure agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer and the department's authorized personnel. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. However, if a voluntary disclosure agreement is not reached, the department may assess tax, penalty and interest as provided by law at the time the identity of the applicant becomes known to the department.

3.1(7) Voiding a voluntary disclosure agreement. The department also has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

a. The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;

b. The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;

c. The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;

d. The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;

e. The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;

f. The person, based on a determination by the department, materially understates the person's tax liability; or

g. The person has made a material breach of the terms of the voluntary disclosure agreement.

Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty and interest for that person's Iowa source income or tax collection responsibilities, for all periods within the statute of limitations. The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party and to make an assessment for all tax, penalty and interest owed, if the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void.

If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may protest the assessment pursuant to 701—Chapter 7 and raise the issue of the propriety of voiding the voluntary disclosure agreement or rejecting the application. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7, but is considered to be "other agency action" as set forth in Iowa Code section 17A.19(3). See Purethane Inc. v. Iowa State Board of Tax Review, 498 N.W.2d 706 (Iowa 1993).

3.1(8) Partnerships, partners, "S" corporations, shareholders in "S" corporations, trusts, and trust beneficiaries. Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, "S" corporations, a shareholder in an "S" corporation, a trust, or trust beneficiaries, the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility under subrule 3.1(2) for participation in the voluntary disclosure program.

3.1(9) Transfer or assignment. The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

3.1(10) Confidentiality. The terms of each voluntary disclosure contract are determined on a case-by-case basis. Except as may be specifically required by law or preexisting written agreement, the existence of a voluntary disclosure agreement and the terms of the voluntary disclosure agreement are to be held confidential by the parties to the voluntary disclosure agreement, their representatives, transferees, and assignees. Disclosure of the existence of a voluntary disclosure agreement or the terms of such an agreement in a manner contrary to this rule may result in the agreement being declared null and void at the discretion of the nondisclosing party.

These rules are intended to implement Iowa Code section 421.17.

ARC 0047B

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 421.5 and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to adopt Chapter 4, "Multilevel Marketer Agreements," Iowa Administrative Code.

This amendment creates a new Chapter 4 which sets forth rules governing the collection and remittance of sales taxes by multilevel marketers on retail sales to consumers of the multilevel marketer's product made via a network of independent distributors.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this rule would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment 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 September 11, 2000, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this amendment on or before September 8, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 1, 2000.

This rule is intended to implement Iowa Code section 421.5 and section 421.17 as amended by 2000 Iowa Acts, House File 2562, section 1.

The following amendment is proposed.

Adopt **new 701—Chapter 4** as follows:

CHAPTER 4
MULTILEVEL MARKETER AGREEMENTS

701—4.1(421) Multilevel marketers—in general. Multilevel marketer companies may enter into a written contract with the department to collect and remit state and local option sales taxes on sales of tangible personal property to independent distributors for resale and remit the taxes directly to the department. To be eligible for the multilevel marketer's program, the company must meet certain eligibility requirements and agree to certain terms in the multilevel marketer agreement as set forth in subrules 4.1(3)and 4.1(4). All written contacts with the department should be sent to Nonfiler Unit, Compliance Division, Iowa Department of Revenue and Finance, P.O. Box 10456, Des Moines, Iowa 50306-0456.

4.1(1) Definitions. The following definitions of terms are applicable to this chapter:

"Independent distributor" means a seller who purchases products for resale to an Iowa consumer based on a price suggested by a multilevel marketer.

"Multilevel marketer" means a wholesaler that sells tangible personal property for resale via a network of independent distributors who then sell the property to the ultimate consumers located in Iowa at a retail price suggested by the multilevel marketer.

"Sales tax" or "sales taxes" for the purpose of this rule means Iowa state sales tax, including local option sales and service taxes, and state use tax. To determine if local option sales and service taxes are due, see 701—107.2(422B), 701—107.3(422B), and 701—108.3(422E).

4.1(2) Collection of tax. Iowa state sales tax is to be collected on the wholesale or retail selling price if delivery of the multilevel marketer's tangible personal property occurs in Iowa or the property is used in Iowa (see subparagraph 4.1(4)"a"(1) for further details). In addition, local option sales tax is due on the sale if delivery of the tangible personal property to the consumer occurs within a local option tax jurisdiction. See information and examples illustrating delivery and taxation in 701—107.2(422B), 701—107.3(422B), and 701—108.3(422E).

4.1(3) Eligibility requirements. To be eligible for a multilevel marketer agreement as a multilevel marketer, the following criteria must be met:

a. Tangible personal property is sold by the multilevel marketer to an independent distributor for resale to an Iowa end user or for a distributor's personal use.

b. Unless authorized by the department, the multilevel marketer must not have been previously required to be registered to remit sales tax.

c. The multilevel marketer must have contacted the department with a request to collect and remit sales taxes directly to the department on sales made by an independent distributor.

d. The multilevel marketer must not be under audit or examination by the department on the effective date of the agreement.

The department has full discretion to determine if a multilevel marketer meets the eligibility requirements for a multilevel marketer agreement. The department can request any and all information and documentation necessary to determine whether eligibility requirements are met. Failure to timely submit information and documents requested by the department will result in the department's refusal to enter into an agreement with the multilevel marketer.

4.1(4) Terms of the multilevel marketer agreement. The multilevel marketer agreement will become effective on the

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

date an authorized representative of the multilevel marketer executes the agreement. Unless terminated in accordance with subrule 4.1(5), the multilevel marketer agreement remains in effect as long as the multilevel marketer has an independent distributor making sales in Iowa. Terms of agreements are based on results of negotiations between the multilevel marketer and the department. However, the following general terms must be in each multilevel marketer agreement:

a. The multilevel marketer agrees to the following terms:

(1) The multilevel marketer agrees to collect tax on the following three types of sales, excluding sales properly exempt from tax and evidenced by a valid exemption certificate:

1. The multilevel marketer agrees to collect sales tax from the independent distributors based on the suggested retail price of its product;

2. If the multilevel marketer allows independent distributors to purchase its product at a wholesale price for the distributor's personal use, then the multilevel marketer agrees to collect sales tax on sales which are based on the wholesale price to the independent Iowa distributor, unless the department waives this requirement; and

3. The multilevel marketer agrees to collect sales tax on all retail sales by the multilevel marketer to consumers that are subject to sales tax;

(2) The multilevel marketer will timely remit sales tax on transactions in subparagraph 4.1(4)"a"(1);

(3) The multilevel marketer will maintain records to establish the accuracy of the sales tax returns within the applicable statutes of limitation;

(4) The multilevel marketer agrees that the sales tax shall be added to the retail price charged to the consumer, as required by Iowa Code section 422.48;

(5) The multilevel marketer agrees to be subject to audit and to pay any tax, penalty, and interest that are ultimately found to be legally due and that were required to be collected by the multilevel marketer under Iowa law, these rules and the multilevel marketer agreement;

(6) The multilevel marketer agrees to abide by the rules in 701—Chapter 4; and

(7) The multilevel marketer agrees to register for an Iowa retailer's use tax permit.

b. The department agrees to the following terms:

(1) The department will not audit, assess or demand payment of sales tax, penalty or interest from the multilevel marketer for any tax periods ending before the effective date of the multilevel marketer agreement.

(2) Unless required for transactions outside the multilevel marketer agreement, the department will not require the multilevel marketer to retroactively register for an Iowa sales tax permit or file Iowa sales tax returns for periods ending on or before the effective date of this agreement.

(3) The department agrees to allow a deduction from taxable sales reported by the multilevel marketer for merchandise returned by an independent distributor for which tax has already been paid to the department and for which the multilevel marketer, via the distributor, has allowed a credit or refund of the tax to the consumer.

c. Other general agreement terms:

(1) The multilevel marketer agreement is binding upon all parties, including their successors and assignees; and

(2) The terms, provisions, interpretations and enforcement of the multilevel marketer agreement are to be governed by the laws of the state of Iowa.

d. Refunds. Refunds for any overpayment of taxes paid by a consumer as a result of a multilevel marketer agreement should be claimed on the proper Iowa refund claim form as designated by the director.

Under this agreement, if the retail sale is made by an Iowa retailer to an out-of-state consumer, the multilevel marketer agrees to forgo any claim for refund of tax which was paid on such sale.

4.1(5) Termination of a multilevel marketer agreement. If any of the following events occur, an executed multilevel marketer agreement may be declared null and void:

a. Termination of a multilevel marketer agreement at the department's discretion.

(1) The multilevel marketer has misrepresented any material fact regarding its activities, operations, tax liabilities, or eligibility under the agreement.

(2) It is determined by the department that the multilevel marketer had been notified that it was to be or was under audit by the department prior to the time the multilevel marketer executed the multilevel marketer agreement.

b. Termination of a multilevel marketer agreement by mutual agreement of the parties.

(1) Change occurs in law that impacts the tax liability subject to the multilevel marketer agreement.

(2) Collection and remittance of sales tax as required under the agreement are more feasible by other means.

Written notice of termination will be promptly given by the department in the event of termination under paragraph 4.1(5)"a."

4.1(6) Liability of independent distributors. After execution of a multilevel marketer agreement, an independent distributor must collect, report, and remit to the department, unless remitted to the multilevel marketer, any and all sales taxes that the independent distributor is required to collect, report, and remit that exceed the amount of tax that the independent distributor has previously remitted to the multilevel marketer company. If such excess tax is remitted to the multilevel marketer, the multilevel marketer shall report and remit the tax to the department.

EXAMPLE 1. An independent distributor purchased products from the multilevel marketer at the wholesale price because the distributor thought that the product would be for the personal use of the distributor. The distributor paid Iowa tax based on the wholesale price to the multilevel marketer and the multilevel marketer remitted the tax to the state of Iowa. Subsequently, the distributor resold the product to an Iowa customer at a retail price, which is greater than the wholesale price. The distributor is required to charge Iowa tax on the retail price. The distributor is also required to report and remit directly to the department or the multilevel marketer the difference between the tax previously paid on the wholesale price and the tax collected on the retail price from the Iowa customer.

EXAMPLE 2. An independent distributor purchased products from a multilevel marketer for resale at the retail price suggested by the multilevel marketer. Tax was collected by the multilevel marketer from the independent distributor on the suggested retail price of the products and remitted to the department by the multilevel marketer. The independent distributor subsequently sold the product to an Iowa customer for a price greater than the suggested retail price. The independent distributor is required to charge Iowa tax on the full sale price. The independent distributor is also required to report and remit directly to the department or to the multilevel marketer the difference between the tax previously paid on

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

the suggested retail price and the tax collected on the price charged the Iowa customer.

If an independent distributor makes sales that are exempt from sales taxes, then the independent distributor must obtain a valid exemption certificate from the purchaser to evidence the transaction and provide a copy of the completed exemption certificate to the multilevel marketer who has the multilevel marketer agreement with the department.

4.1(7) Legislative changes. All multilevel marketer agreements are subject to all applicable legislative enactments which are made subsequent to the agreement and which impact the agreement.

This rule is intended to implement Iowa Code section 421.5 and section 421.17 as amended by 2000 Iowa Acts, House File 2562, section 1.

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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 section 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 15, "Determination of a Sale and Sale Price," Iowa Administrative Code.

It was recently brought to the Department's attention that its rule explaining the exemption from sales tax applicable to transportation charges is in need of revision. The rule was earlier amended to explain that the exemption is not applicable to the transportation of gas and electricity. This earlier amendment related the transportation exemption exclusion to the sale of gas and electricity as tangible personal property; however, the transportation exemption exclusion should relate to the service of transporting gas and electricity. The rule is amended to correct the earlier error of relating the exclusion from the transportation exemption to sales of property rather than performance of services.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that 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 September 11, 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 September 8, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 1, 2000.

These amendments are intended to implement Iowa Code section 422.45, subsection 2, as amended by 1999 Iowa Acts, chapter 151, sections 15 and 16.

The following amendments are proposed.

Amend rule 701—15.13(422,423) as follows:

701—15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the gross receipts derived from the freight or transportation charges shall not be subject to tax. As of May 20, 1999, this exemption does not apply to the service of transporting electrical energy. As of April 1, 2000, this exemption does not apply to the service of transporting natural gas.

When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the gross receipts from the freight or transportation charges become a part of the gross receipts from the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice. Clarion Ready Mixed Concrete Company v. Iowa State Tax Commission, 252 Iowa 500, 107 N.W.2d 553(1961); Schemmer v. Iowa State Tax Commission, 254 Iowa 315, 117 N.W.2d 420(1962); City of Ames v. Iowa State Tax Commission, 246 Iowa 1016, 71 N.W.2d 15(1959); Dain Mfg. Company v. Iowa State Tax Commission, 237 Iowa 531, 22 N.W.2d 786(1946).

The exclusions from this exemption relating to the transportation of natural gas and electricity are ~~not~~ applicable to all contracts for the ~~delivery of these products~~ *performance of these transportation services*. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is ~~or is not~~ a service subject to tax.

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

EXAMPLE 1. Consumer ABC, located in Des Moines, ~~purchases energy (electricity or gas) from~~ *contracts with* supplier DEF, located in Waterloo, *for DEF to sell gas and electricity to ABC.* ~~Ownership of the energy passes from DEF to ABC in Waterloo.~~ ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is ~~not~~ a taxable service. ~~Gross receipts earned from transporting goods owned by another party for hire (e.g., cartage or freight hauling) have never been taxable under Iowa law (see Dain Manufacturing, above, at 22 N.W.2d p. 792), and this principle is as applicable to the transport or movement of energy as it is to the transport of any other product. Thus, the exemption and exclusion from exemption are not applicable to GHI's transport of ABC's energy because no tax is imposed, initially, on the performance of the service.~~ *The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption set out in this rule.*

EXAMPLE 2. Consumer ABC contracts with utility DEF for ~~the delivery of~~ *DEF to provide* electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for ~~delivery~~ *transport* of electricity as well *and constitutes separate sales of electricity and transportation services.* ~~Under the contract, ownership of the electricity passes to ABC in Cedar Rapids.~~ In these circumstances, amounts which ABC pays DEF for ~~delivery~~ *transport* of the electricity are taxable gross receipts. ~~The amounts are taxable, initially, as part of DEF's sales of electricity to ABC. They~~ *This transportation service* would ordinarily then be excluded from tax under the exemption set out in this rule; however, *separate* transportation charges for *transportation of* electricity are excluded from the exemption (as of ~~April 1, 2000,~~ *May 20, 1999,* and are thereafter taxable).

EXAMPLE 3. As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and ~~delivery~~ *transportation* of varying amounts of electricity *and constitutes separate sales of electricity and transportation services.* Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. ~~This is not necessary. The service which GHI provides to DEF is not taxable in the initial instance since DEF is the owner of the electricity which GHI is transporting. See Example 1. Since no tax is imposed initially, there is no need to claim an exemption. However, because of the nature of the contract between ABC and DEF, DEF's transport of the electricity is taxable to ABC. See Example 2.~~ *GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF which DEF will in turn furnish to ABC. DEF must collect tax from ABC.*

EXAMPLE 4. In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity which it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the ~~delivery~~ *transport* of this electricity as well *and constitutes separate sales of electricity and transportation services.* JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, ~~because JKL's transport of the electricity on behalf of DEF is taxable in the initial instance (see Example 2),~~ JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5. Again, ABC and DEF have contracted, as they did in Example 2, for DEF to ~~deliver~~ *sell and transport* electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable ~~because there is no separate contract for the transport of the electricity~~ *as the entire amount paid is for the sale of tangible personal property.* See Clarion Ready Mix and Schemmer, generally, above.

EXAMPLE 6. Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the goods manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing.

This rule is intended to implement Iowa Code sections 422.43 and 423.2 and Iowa Code section 422.45(2) as amended by 1999 Iowa Acts, chapter 151.

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REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 71, "Assessment Practices and Equalization," Chapter 74, "Mobile, Modular, and Manufactured Home Tax," and Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

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

Items 1 and 2 provide that condominiums are to be classified as residential real estate if used for human habitation and as commercial real estate if used for business purposes. The lease of a condominium for human habitation is not considered a business use. Each unit is to be classified separately and existing structures cannot be converted to real estate unless building codes requirements have been met.

Item 3 requires the mobile home park manager to report to the county treasurer homes sited in the park.

Item 4 amends an implementation clause.

Item 5 allows a property tax exemption for barns and one-room schoolhouses.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code Supplement section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code Supplement section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than September 11, 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 September 8, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 1, 2000.

These amendments are intended to implement Iowa Code chapters 427 as amended by 2000 Iowa Acts, House File 2560, 435 as amended by 2000 Iowa Acts, Senate File 2253, and 499B as amended by 2000 Iowa Acts, Senate File 2426.

The following amendments are proposed.

ITEM 1. Amend subrule 71.1(4) as follows:

71.1(4) Residential real estate. Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, ~~condominiums,~~ multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate. ~~Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.~~

An apartment in a horizontal property regime referred to in Iowa Code chapter 499B which is used or intended for use for human habitation shall be classified as residential real estate regardless of who occupies the apartment. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

ITEM 2. Amend subrule 71.1(5) as follows:

71.1(5) Commercial real estate. Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)"j," except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, ~~condominiums,~~ multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate. ~~Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.~~

An apartment in a horizontal property regime referred to in Iowa Code chapter 499B which is used or intended for use as a commercial venture, other than leased for human habitation, shall be classified as commercial real estate. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

ITEM 3. Amend rule **701—71.1(405,427A,428,441,499B)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 405.1, 427A.1, 428.4, 441.21, 441.22 and ~~499B.11~~ *chapter 499B* as amended by ~~1999~~ *2000* Iowa Acts, ~~chapter 187~~ *Senate File 2426.*

ITEM 4. Amend rule **701—74.6(435)** by adopting the following **new** first unnumbered paragraph:

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

The mobile home park owner or manager shall make an annual report with the county treasurer by June 1 listing the owner and address of each home sited in the park. An additional report shall be filed by December 1 if any homes move in or out of the park or there are any changes in home ownership.

ITEM 5. Amend rule **701—74.6(435)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 435.22 *and section 435.24(3)* as amended by ~~1998~~ *2000* Iowa Acts, Senate File ~~2400~~ *2253*.

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

701—80.15(427) Barn and one-room schoolhouse preservation. The increase in value added to a farm structure constructed prior to 1937 or one-room schoolhouse as a result of improvements made is exempt from tax. An application must be filed with the assessor by February 1 of the first assessment year only and the exemption is to continue as long as the structure continues to be used as a barn or in the case of a one-room schoolhouse is not used for dwelling purposes. A "barn" is an agricultural structure that is used for the storage of farm products or feed or the housing of farm animals, poultry, or farm equipment.

This rule is intended to implement Iowa Code sections 427.1(31) and 427.1(32) as amended by 2000 Iowa Acts, House File 2560.

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REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 81, "Administration," and Chapter 82, "Cigarette Tax," Iowa Administrative Code.

Item 1 provides that the suspension or revocation of a retail permit applies only to the location where the violation occurred.

Items 2 and 4 require that the Department of Public Health be notified of retail permit suspensions or revocations and be provided with copies of applications for permits and permits issued.

Items 3 and 5 amend implementation clauses.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code Supplement section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code Supplement section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than September 11, 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 September 8, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 1, 2000.

These amendments are intended to implement Iowa Code chapter 453A as amended by 2000 Iowa Acts, Senate File 2366.

The following amendments are proposed.

ITEM 1. Amend subrule **81.12(1)**, last unnumbered paragraph, as follows:

If a permit is revoked under this subrule, except for the receipt of a certificate of noncompliance from the child support recovery unit, the permit holder cannot obtain a new cigarette permit of any kind nor may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority. *If a retail permit is suspended or revoked, the suspension or revocation applies only to the place of business where the violation occurred and not to any other place of business covered by the permit.*

The department or local authority must report the suspension or revocation of a retail permit to the department of public health within 30 days of the suspension or revocation.

ITEM 2. Amend rule **701—81.12(453A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections *453A.13 and* 453A.22 *as amended by 2000 Iowa Acts, Senate File 2366, and sections* 453A.44(11) and 453A.48(2) ~~and Iowa Code chapter 252J~~.

ITEM 3. Amend paragraph **82.1(7)"a,"** last unnumbered paragraph, as follows:

The power to grant the retail permit is discretionary with the city council or board of supervisors, and uniform, nondiscriminatory limits may be placed on ~~their~~ *its* issuance. Bernstein v. City of Marshalltown, 215 Iowa 1168, 248 N.W. 26 (1933); Ford Hopkins Co. v. City of Iowa City, 216 Iowa 1286, 248 N.W. 668 (1933); 1938 O.A.G. 708. *The city or county must submit a copy of any retail permit issued and the application for the permit to the department of public health within 30 days of issuance.*

ITEM 4. Amend rule **701—82.1(7)**, implementation clause, as follows:

This rule is intended to implement Iowa Code ~~sections~~ *section* 453A.13 *as amended by 2000 Iowa Acts, Senate File*

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

2366, and sections 453A.16, 453A.17, and 453A.23 ~~and Iowa Code section 453A.16 as amended by 1999 Iowa Acts, chapter 151~~.

ARC 0022B

SECRETARY OF STATE[721]

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 47.1, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

2000 Iowa Acts, House File 2330, requires county commissioners of elections to post a sign stating "vote here" at the entrance to each driveway leading to the building where a polling place is located. The sign must be visible from the street or highway fronting the driveway, but shall not encroach upon the right-of-way of such street or highway. This new rule provides minimum dimensions for these signs (16 inches by 24 inches). It also provides guidance about the placement of "vote here" signs when buildings housing polling places have driveways that lead away from the entrance to the voting area or when placement of the sign would not be helpful in locating the voting area.

Any interested person may make written suggestions or comments on the proposed amendment on or before Tuesday, August 29, 2000. Written comments should be sent to the Elections Division, Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319-0138; fax (515)242-5953. Anyone who wishes to comment orally may telephone the Elections Division at (515)281-5823 or visit the office on the second floor of the Hoover Building.

There will be a public hearing on Tuesday, August 29, 2000, at 1:30 p.m. at the office of the Secretary of State, Second Floor, Hoover State Office Building. People may comment orally or in writing. Persons who speak at the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule. Persons planning to attend the hearing shall notify the Director of Elections by telephone at (515)281-5823 or by fax (515) 242-5953 no later than 4:30 p.m. on Monday, August 28, 2000.

This rule is intended to implement 2000 Iowa Acts, House File 2330.

The following **new** rule is proposed.

721—21.8(78GA,HF2330) "Vote here" signs.

1. Size. The signs shall be no smaller than 16 inches by 24 inches.

2. Exceptions. If a driveway leads away from the entrance to the voting area, or if the driveway is located in such a way that posting a "vote here" sign at the driveway entrance would not help potential voters find the voting area, no "vote here" sign shall be posted at the entrance to that driveway.

ARC 0026B

SUBSTANCE ABUSE COMMISSION[643]

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 125.7(4), the Commission on Substance Abuse gives Notice of Intended Action to amend Chapter 3, "Licensure Standards for Substance Abuse Treatment Programs," Iowa Administrative Code.

This proposed rule making rescinds unnecessary rules, includes editorial changes, amends existing definitions and adopts new definitions for treatment services, and reorganizes the rules for a more easily read chapter. The amendments reflect the current needs of treatment programs and client/patients in the general areas of licensing, application procedures, inspection of licensees, license renewals, complaints, variances, deemed status, focused reviews, placement screening, levels of care criteria, clinical services, quality improvement, administration, programming and facilities. In addition, these amendments include new clinical terminology regarding levels of care and criteria for continued care based on the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition. Service providers have contributed to the development of these amendments and have been utilizing the outlined levels of care. These criteria are consistent with contract requirements.

In compliance with Executive Order Number Eight, the amendments are based on input and review by providers in the field over the past year and do not create any additional regulatory burden on programs. Rather, these amendments clarify and better outline the most current activities and practices.

The Commission on Substance Abuse shall hold a public hearing on August 29, 2000, from 10 a.m. to 12 noon. The public hearing will be held over the Iowa Communications Network (ICN), accessing several sites around the state simultaneously. Individuals wishing to participate should contact Robyn Fisher at (515)242-6161 to receive confirmation of the following ICN locations:

- Sioux City - Western Iowa Tech Community College, Building B, Room 127B
- Ottumwa - Indian Hills Community College, Advanced Technology Center, Room 108
- Des Moines - Department of Human Services, Hoover State Office Building
- Council Bluffs - Department of Human Services, 417 E. Kanesville Blvd.
- Cedar Rapids - Cedar Rapids Public Library, 5001 First St., S.E.

Any interested persons or agency may submit written comments on or before August 29, 2000, to Janet Zwick, Deputy Director, Division of Health Promotion, Prevention, and Addictive Behaviors, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These amendments are intended to implement Iowa Code section 125.13.

SUBSTANCE ABUSE COMMISSION[643](cont'd)

The following amendments are proposed.

ITEM 1. Amend rule **643—3.1(125)** as follows:

Amend the following definitions:

"Acute intoxication or withdrawal potential" is a category to be considered in *the ASAM-PPC-2* client/patient placement, continued stay, and discharge criteria. This category evaluates patient/client's current status of intoxication and potential for withdrawal complications as it impacts on level of care decision making. Historical information about client/patient's withdrawal patterns may also be considered.

"Administration" means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a *client*/patient or research subject by one of the following:

1. A practitioner or the practitioner's authorized agent.
2. The *client*/patient or research subject at the direction of a practitioner.

"Admission criteria" means specific *ASAM-PPC-2* criteria ~~developed by the department~~ to be considered in determining appropriate client/patient placement and resultant referral to a level of care. Criteria vary in intensity and are organized into six categories: acute intoxication or withdrawal potential, biomedical conditions or complications, emotional/behavioral conditions or complications, treatment resistance/acceptance, relapse potential, and recovery environment.

"Assessment" means the ongoing process of identifying a diagnosis, ruling out other diagnoses, and determining the level of care needed by the client/*patient*.

"Biomedical condition or complication" means one category to be considered in *the ASAM-PPC-2* client/patient placement, continued stay, and discharge criteria. This category evaluates client/patient's current physical condition as it impacts on level of care decision making. Historical information on client/patient's medical/physical functioning may also be considered. *This includes biological and physical aspects of the medical assessment and treatment of a patient. In addiction treatment, the physical problems may be the direct result of the substance use disorder, or be independent of and interactive with them, thus affecting the total treatment plan and prognosis.*

"Case management" means the process of using predefined criteria to evaluate the necessity and appropriateness of client/*patient* care.

"Chemical dependency" means alcohol or drug dependence or psychoactive substance use disorder as defined by *the* current Diagnostic *and* Statistical ~~measurement~~ *Manual of Mental Disorders, Fourth Edition* ~~(DSM) IV~~ *(DSM IV)*, criteria or by other standardized and widely accepted criteria.

"Client/*patient*" means an individual who has a substance abuse problem or is chemically dependent, has been assessed as appropriate for services, and for whom screening procedures have been completed.

"Concerned family member or concerned person" means an individual who is seeking treatment services due to problems arising from the person's involvement or association with a substance abuser or chemically dependent individual or client/*patient*, and is negatively affected by the behavior of the substance abuser, chemically dependent individual, or client/*patient*.

"Continued stay criteria" means specific *ASAM-PPC-2* criteria *that describe the clinical criteria* to be considered in determining appropriate client/patient placement for continued ~~stay~~ *service* at a level of care or referral to a more appropriate level of care. Criteria vary in intensity and are organized into six *assessment* categories: acute intoxication or withdrawal potential; biomedical conditions or complications; emotional/behavioral conditions or complications; treatment resistance/acceptance; relapse potential; and recovery environment.

"Continuing care" means Level I *service* of *the ASAM-PPC-2* client/patient placement criteria, which provides a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary care to ongoing recovery.

"Detoxification" means the process of ~~eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or management and are intended to avoid withdrawal complications.~~ *withdrawing a person from a specific psychoactive substance in a safe and effective manner. ASAM-PPC-2 detoxification levels of care include Levels I-D, II-D, III.2-D, III.7-D; and IV-D.*

"Discharge criteria" means specific *ASAM-PPC-2* criteria to be considered ~~in~~ *when* determining ~~appropriate client/patient placement for~~ *appropriateness of* discharge or referral to a different level of care. Criteria vary in intensity and are organized into six categories: acute intoxication or withdrawal potential; biomedical conditions or complications; emotional/behavioral conditions or complications; treatment resistance/acceptance; relapse potential; and recovery environment.

"Emotional/behavioral conditions or complications" is a category to be considered in *the ASAM-PPC-2* client/patient placement ~~criteria~~, *continued stay and discharge criteria*. This category evaluates client/patient's current emotional/behavioral status as it impacts on level of care decision making. Emotional/behavioral status may include, but is not limited to, anxiety, depression, impulsivity, and guilt and the behavior that accompanies or follows these emotional states. Historical information on client/patient emotional/behavioral functioning may also be considered.

"Evaluation" means the process to evaluate the ~~client's~~ *client/patient's* strengths, weaknesses, problems, and needs for the purpose of defining a course of treatment. This includes use of the standardized placement screening and any additional ~~patient/client~~ *client/patient* profile information and development of a comprehensive treatment plan.

"Extended outpatient treatment" means Level ~~III~~ *I* of *the ASAM-PPC-2* client/patient placement criteria, which is an organized, nonresidential service. Services usually are provided in regularly scheduled sessions which do not exceed ~~ten~~ *nine* treatment hours a week.

"Intensive outpatient treatment *(Level II.I)*" ~~means Level IV of client/patient placement criteria, which is an organized, outpatient treatment service with scheduled sessions that provide a range of 11 or more treatment hours per week.~~ *means intensive outpatient programs (IOP) that provide a minimum of nine hours of structured programming per week, consisting primarily of counseling and education focused on alcohol and other drug problems. IOP differs from partial hospitalization (Level II.5) in the intensity of clinical services that are directly available. Specifically, an IOP has less capacity to effectively treat individuals who have substantial medical and psychiatric problems.*

"Levels of care" is a general term that encompasses the different options for treatment that vary according to the intensity of the services offered. Each treatment option in the *ASAM-PPC-2* ~~client/patient placement criteria~~ is a level of care.

SUBSTANCE ABUSE COMMISSION[643](cont'd)

"Licensure weighting report" means the report that is used to determine the type of license a program qualifies for based on point values assigned to areas reviewed and total number of points attained. In addition, a minimum percent value in each of three categories shall be attained to qualify a program for a license as follows: 90 percent or better rating in clinical, administrative and programming for a two-year license; less than 90 percent but no less than 70 percent rating in clinical, administrative and programming for a one-year license. ~~Also, in order to receive a two-year license, a program must receive a rating of 80 percent or better in each of the two categories of quality assurance and building construction and safety. In order to receive a one-year license, a program must receive a rating of 60 percent or better in each of those two categories.~~

"Medically managed *intensive* inpatient treatment *(Level IV)*" ~~is Level VII of client/patient placement criteria, which is addiction and chemical dependency treatment provided to a patient/client whose medical condition is such that a physical examination by a physician is required within 24 hours of admission. The program provides 24-hour medical management of treatment and detoxification services.~~ *is an organized ASAM-PPC-2 service staffed by designated addiction physicians or addiction credentialed clinicians. Level IV care involves a planned regimen of 24-hour medically directed evaluation, care and treatment of substance-related disorders in an acute-care inpatient setting. Such a service functions under a defined set of policies and procedures and has permanent facilities that include inpatient beds. Services involve daily medical care in which diagnostic and treatment services are directly provided by a licensed physician.*

"Medically monitored ~~residential~~ *intensive inpatient* treatment *(Level III.7)*" ~~is Level VI of client/patient placement criteria, which is addiction and chemical dependency treatment. Client/patient's medical condition is such that a physical examination by a physician is required within 24 hours of admission. The program provides 24-hour medical monitoring of treatment and detoxification services; and 50 or more hours of chemical dependency rehabilitation services per week are provided. Programs providing this level of care may provide detoxification services or residential chemical dependency treatment services, or both.~~ *is an organized ASAM-PPC-2 service delivered by an interdisciplinary staff to client/patients whose subacute biomedical and emotional/behavioral problems are sufficiently severe to require inpatient care. Twenty-four-hour observation, monitoring and treatment are available. However, the full resources of an acute care general hospital or a medically managed inpatient treatment service system are not necessary. Services are provided by an interdisciplinary staff of nurses, counselors, social workers, addiction specialists and other health care professionals and technical personnel, under the direction of licensed physicians. Medical monitoring is provided through an appropriate mix of direct patient contact, review of records, team meetings, 24-hour coverage by a physician, and quality assurance programs.*

"Outreach" means public speaking engagements and other similar activities and functions that inform the public of available programs and services offered by a substance abuse treatment program. In addition, outreach is a process or series of activities that identifies individuals in need of services, engages them and links the individual in need of services with the most appropriate resource or service provider. Such activities may include, but are not limited to, the following: Individual client/*patient* recruitment through street outreach and organized informational sessions at churches, community centers, recreational facilities, and community service agencies.

"Primary care modality" means *a* substance abuse treatment component or modality including continuing care, halfway house, extended outpatient treatment, intensive outpatient treatment, primary extended residential treatment, medically monitored ~~residential~~ *intensive inpatient* treatment, and medically managed *intensive* inpatient treatment services.

"Quality improvement" means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of client/*patient* care to improve client/*patient* care and resolve identified problems.

"Recovery environment" ~~means one~~ *is a* category to be considered in *the ASAM-PPC-2* client/patient placement, continued stay and discharge criteria. This category evaluates client/patient's current recovery environment as it impacts on level of care decision making. Recovery environment may include, but is not limited to, current relationships and degree of support for recovery, current housing, employment situation, and availability of alternatives. Historical information on client/patient's recovery environment may also be considered.

"Rehabilitation" means the restoration of a client/*patient* to the fullest physical, mental, social, vocational, and economic usefulness of which the client/*patient* is capable. Rehabilitation may include, but is not limited to, medical treatment, psychological therapy, occupational training, job counseling, social and domestic rehabilitation and education.

"Relapse potential" ~~means~~ *is* a category to be considered in *the ASAM-PPC-2* client/patient placement, continued stay, and discharge criteria. This category evaluates client/patient's current relapse potential as it impacts on level of care decision making. Relapse potential may include, but is not limited to, current statements by client/patient about relapse potential, reports from others on potential for ~~patient/client~~ *client/patient* relapse, and assessment by clinical staff. Historical information on client/patient's relapse potential may also be considered.

"Residential program" means a 24-hour live-in, seven-day-a-week substance abuse treatment program facility offering intensive rehabilitation services to individuals who are considered unable to live or work in the community due to social, emotional, or physical disabilities resulting from substance abuse. *The ASAM-PPC-2 levels of care may include III.1, III.3, III.5 or III.7.*

"Substance abuser" means a person who ~~habitually~~ lacks self-control as to the use of chemical substances or uses chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted.

"Treatment acceptance/resistance" is a category to be considered in *the ASAM-PPC-2* client/patient placement, continued stay, and discharge criteria. This category evaluates client/patient's current treatment acceptance/resistance as it impacts on level of care decision making. Treatment acceptance/resistance may include, but is not limited to, current statement by client/patient about treatment acceptance/resistance, reports from others on client/patient treatment acceptance/resistance, and assessment by clinical staff on client/patient motivation. Historical information on client/patient may also be considered.

"Treatment supervisor" means an individual who, by virtue of education, training or experience, is capable of assessing the psychosocial history of a substance abuser to deter-

SUBSTANCE ABUSE COMMISSION[643](cont'd)

mine the treatment plan most appropriate for the client/*patient*. This person shall be designated by the applicant.

Rescind the definitions of "clinical privileges," "day treatment," "extended residential program," "halfway house," "inpatient treatment," "medically managed detoxification," "medically monitored detoxification," "outpatient treatment," "primary residential program," "residential detoxification," and "residential treatment."

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

"ASAM-PPC-2" means the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition.

"Clinically managed high-intensity residential services (Level III.5)" means high-intensity residential services designed to address significant problems with living skills. The prime example of Level III.5 care is the therapeutic community, which provides a highly structured recovery environment in combination with moderate- to high-intensity professional clinical services to support and promote recovery. Client/patients must participate in at least 50 hours of structured chemical dependency rehabilitation services per week.

"Clinically managed low-intensity residential services (halfway house) (Level III.I)" means low-intensity professional addiction treatment services offered at least five hours per week. Treatment is directed toward applying recovery skills, preventing relapse, promoting personal responsibility and reintegrating the resident into the worlds of work, education and family life. The services may include individual, group and family therapy. Mutual/self-help meetings are available on site.

"Clinically managed medium-intensity residential services (Level III.3)" are frequently referred to as extended or long-term care. Level III.3 programs provide a structured recovery environment in combination with medium-intensity professional clinical services to support and promote recovery. Client/patients must participate in at least 30 hours of structured chemical dependency rehabilitation services per week.

"Clinically managed services" means clinically managed services in which treatment is directed by addiction specialists rather than by medical professionals. They serve residents whose problems in the area of emotional/behavioral concerns, treatment acceptance, relapse potential, or recovery environment are the primary focus of treatment and problems in the areas of intoxication/withdrawal (Dimension 1) and biomedical concerns (Dimension 2), if any, are minimal.

"Clinical oversight" means oversight provided by an individual who, by virtue of education, training and experience, is capable of assessing the pyschosocial history of a substance abuser to determine the treatment plan most appropriate for the client/patient. The person providing oversight shall be designated by the applicant.

"Continuum of care" means a structure of interlinked treatment modalities and services designed so that an individual's changing needs will be met as that individual moves through the treatment and recovery process.

"Deemed status" means acceptance by the commission of accreditation or licensure of a program or service by another recognized national or state not-for-profit licensing or accrediting body in lieu of licensure based on review and evaluation by the division as outlined in licensure procedures.

"Focused reviews" means a survey conducted during the licensing process to assess the degree to which a program has improved its level of compliance relating to specific recommendations. The subject matter of the review is typically in area(s) of identified deficiency in compliance; however, other performance areas may also be assessed by a surveyor(s), including areas not covered in deemed status.

"Management of care" means the process to ensure the appropriate level of care is utilized by implementing ASAM-PPC-2 during the placement screening, continued stay and discharge process. This includes discharge planning that begins at admission to meet the immediate, ongoing and post-treatment needs of the client/patient.

"Partial hospitalization (day treatment) (Level II.5)" means a program which provides 20 or more hours of clinically intensive programming per week based on individual treatment plans. Programs have ready access to psychiatric, medical and laboratory services and thus are better able than Level II.I programs to meet client/patient needs. Partial hospitalization/day treatment is a generic term encompassing day, night, evening and weekend treatment programs that employ an integrated, comprehensive and complementary schedule of recognized treatments.

"Physician" means any individual licensed under Iowa Code chapter 148, 150, or 150A.

"Sole practitioner" means an individual incorporated under the laws of the state of Iowa, or an individual in private practice who is providing substance abuse treatment services independent from a program that is required to be licensed in accordance with Iowa Code section 125.13(1).

"Time frames" means the period of time the assessment and treatment plan must be completed after admission, frequency of review of the treatment plan by the client and counselor, and frequency of reviews for continued stay and discharge. The time frames for Levels I and III.I shall be every 30 days; for Levels II.I, II.5, III.3 and III.5, every 7 days; and for Levels III.7 and IV, daily.

ITEM 2. Amend rule 643—3.2(125) as follows:

643—3.2(125) Licensing. A single license will be issued to each qualifying substance abuse treatment program. The license will delineate one or more categories of services the program is authorized to provide. Although a program may have more than one facility, only one license will be issued to the program.

The categories of services for which licenses will be issued are:

1. ~~Inpatient~~ *Narcotic detoxification/chemical substitute, antagonist maintenance chemotherapy;*
2. ~~Residential;~~ *Assessment and evaluation;*
3. ~~Halfway house;~~ *OWI correctional residential;*
4. ~~Outpatient;~~ *OWI correctional outpatient;*
5. ~~Chemical substitute, antagonist and detoxification; and~~ *Correctional residential treatment;*
6. ~~Intake and assessment.~~ *Correctional outpatient treatment;*
7. *Medically managed intensive inpatient services: Level IV;*
8. *Residential/inpatient services: Levels III.I, III.3, III.5 and III.7;*
9. *Intensive outpatient/partial hospitalization services: Levels II.I and II.5; and*
10. *Outpatient extended and continuing care services: Level I.*

ITEM 3. Amend 643—3.5(125), introductory paragraph, and subrule 3.5(1) as follows:

643—3.5(125) Application procedures. The department ~~will~~ *shall* mail an application ~~form~~ to all applicants for licen-

SUBSTANCE ABUSE COMMISSION[643](cont'd)

sure. *An on-site visit for licensure of an initial applicant shall occur before the program opens and admits client/patients for services. For initial applicants, if technical assistance has been provided, the on-site visit may be waived at the discretion of the department. The division shall prepare a report with a recommendation for licensure to be presented at a commission meeting within 60 days from the site visit. Public notice for commission meetings will be made in accordance with Iowa Code section 21.4. The division shall send notice to the program by certified mail, return receipt requested, ten days prior to the commission meeting notifying the program director and board chairperson of the time, place, and date the commission will review and act upon the application for the program along with the results of the inspection. The division shall mail to all commission members reports of the on-site program licensure inspection and a final recommendation for each application to be acted upon at the next commission meeting.*

3.5(1) Application information *for comprehensive programs.* An applicant for licensure shall submit the following information on forms available at the Iowa Department of Public Health, Division of Substance Abuse, Lucas State Office Building, Des Moines, Iowa 50319:

a. to m. No change.

ITEM 4. Adopt the following **new** subrule 3.5(2) and renumber subrules **3.5(2)** and **3.5(3)** as **3.5(3)** and **3.5(4)**:

3.5(2) Application information for assessment and evaluation programs. An applicant for licensure shall submit the following information on forms available at the Iowa Department of Public Health, Division of Substance Abuse, Lucas State Office Building, Des Moines, Iowa 50319:

a. The name and address of the applicant substance abuse assessment and evaluation program.

b. The name and address of the executive director or sole practitioner of such substance abuse program.

c. The names, titles, dates of employment, education, and years of current job-related experience of staff and a copy of the table of organization (if applicable). If multiple components and facilities exist, the relationship between components and facilities must be shown, as well as a description of services.

d. The names and addresses of members of the governing body, sponsors, or advisory boards of such substance abuse assessment and evaluation program and current articles of incorporation and bylaws. (This requirement does not apply to a sole practitioner.)

e. The name(s) and address(es) of person(s) entered into the affiliation agreement for clinical oversight.

f. A description of the assessment and evaluation services.

g. Copies of reports substantiating compliance with federal, state and local rules and laws for each facility, to include appropriate state fire marshal's rules and fire ordinances, occupancy code, and safety regulations.

h. Information required under Iowa Code section 125.14A.

i. Insurance coverage related to professional and general liability; building; workers' compensation; and fidelity bond.

j. The address and facility code of each office, facility, or program location.

k. The program's current written policies and procedures manual which shall include the staff development and training program, and personnel policies. Applications for licensure will not be considered complete until a complete policies and procedures manual has been submitted to the division.

The application information for an initial application for licensure shall be complete and shall be reviewed by the department prior to a scheduled on-site inspection.

ITEM 5. Amend renumbered subrule 3.5(3) as follows:

3.5(3) Renewal. An application for renewal shall be submitted on forms provided by the department at least ~~90~~ *60* calendar days before expiration of the current license.

Applications for licensure renewal will not be considered complete until a current policies and procedures manual has been submitted to the department by the applicant substance abuse treatment program.

ITEM 6. Amend subrule 3.7(1), introductory paragraph, as follows:

3.7(1) Technical assistance. All treatment programs applying for an initial license to operate a substance abuse treatment program in the state of Iowa will be visited by the department for the purpose of providing needed technical assistance regarding the licensure criteria and procedures. *The program may waive technical assistance in order to expedite the licensing process. Requests shall be submitted in writing to the division.*

ITEM 7. Adopt **new** subrule 3.7(3) as follows:

3.7(3) Effective date of license. The effective date of a license shall begin on the date the commission reviews the program's written report/application and acts to issue a license.

ITEM 8. Amend subrule 3.8(1), introductory paragraph and paragraph **"a,"** as follows:

3.8(1) Commission hearing preparation. The division ~~will~~ *shall* prepare ~~all documents~~ *a report* with a final recommendation for licensing ~~determination~~ to be presented at a commission meeting within ~~120~~ *60* days from the site visit. ~~The division shall send public notice of the date, time, place and name of applicants to be reviewed and processed.~~ *Public notice of commission meetings shall be made in accordance with Iowa Code section 21.4.*

a. The division shall send notice to the program by certified mail, return receipt requested, ~~30~~ *ten* days prior to the commission meeting notifying the program director and board chairperson of the time, place, and date the commission will review and act upon the application for the program along with the results of the inspection.

ITEM 9. Amend rule 643—3.16(125), introductory paragraph, as follows:

643—3.16(125) Complaints. Any person may request an inspection of a program licensed pursuant to Iowa Code chapter 125 by filing with the department a complaint of any alleged violation of applicable requirements of the Iowa Code or the rules adopted pursuant to it. The complaint shall state in a specific manner the basis of the complaint and the full name and address of the complainant. The complaint may be delivered personally or by mail to the division director at Lucas State Office Building, Des Moines, Iowa 50319. The executive director of the program involved ~~shall~~ *may* be notified that the department shall conduct a complaint investigation within 48 hours of the ~~on-site visit~~ *notification*. Timely filing is required in order to ensure availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

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ITEM 10. Amend paragraph **3.17(1)"e"** as follows:

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any ~~resident or~~ client/*patient*.

ITEM 11. Adopt **new** rule 643—3.18(125) as follows:

643—3.18(125) Deemed status. The commission may grant deemed status to programs accredited either by a recognized national or state not-for-profit accrediting body when the commission determines the accreditation is for the same services.

3.18(1) National accrediting bodies. The national accrediting bodies currently recognized as meeting commission criteria for possible deemed status are:

a. Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

b. Council on Accreditation of Rehabilitation Facilities (CARF).

c. Council on Accreditation of Services for Families and Children (COA).

3.18(2) State accreditation/licensing bodies. The state accreditation/licensing bodies currently recognized as meeting commission criteria for possible deemed status are:

a. Iowa department of human services (DHS).

b. Iowa department of inspections and appeals (DIA).

The accreditation/licensing credentials of these bodies must specify the type of organization, programs and services that they accredit, and include targeted population groups, if appropriate. Deemed status means that the division is accepting an outside body's review, assessment and accreditation/licensure of a program's/organization's functioning and services. Therefore, the accrediting body conducting the review must assess categories of organizations and types of programs, services and facility requirements corresponding to those described in this chapter. For example, if a program receives an inspection of food service or fire safety by the department of inspections and appeals (DIA), the division will accept the documentation or certificate from DIA. Deemed status shall not be granted for clinical services. The division will conduct an on-site review for clinical services as outlined in subrules 3.21(11) to 3.21(20). When a program has received accreditation by deemed status, the program shall continue to be held responsible for meeting all requirements under this chapter and all applicable laws and regulations. When a program which is nationally accredited requests deemed status for services not covered by the national body's standards, but covered under this chapter, the licensing for those services shall be done by the division. Technical assistance by the division staff shall be provided to deemed-status providers as time permits; however, the technical assistance will be focused on this chapter's requirements.

3.18(3) Reservations. When deemed status is granted, the commission and the division reserve the right to do the following:

a. To have division staff conduct on-site focused reviews for those programs applying for deemed status that have been previously licensed by the division.

b. To have division staff do joint on-site visits with the accrediting body, attend exit conferences, or conduct focused follow-up visits as determined to be appropriate in consultation with the national or state accrediting or licensing organization and the provider/program.

c. To be informed of and to investigate all complaints that fall under this chapter's jurisdiction, to make findings as a result of the investigation, and to require corrective action measures when indicated. Complaints, findings and corrective actions shall be reported to the national or state accrediting or licensing body. The complaint process outlined in rule 643—3.16(125) shall be followed.

d. To review and act upon deemed status when complaints have been founded, when focused reviews find instances of noncompliance with this chapter's requirements, when national or state accreditation status of the provider expires without renewal or when the provider's status is downgraded or withdrawn by the national or state accrediting or licensing body.

e. To have division staff conduct either focused or full on-site reviews in instances in which the national or state body has accredited or licensed the program for less than the maximum time period.

3.18(4) Application for deemed status. To apply for deemed status, the provider/program shall:

a. Be currently accredited by a recognized national or state accrediting agency or licensing body for services that are defined in this chapter.

b. Submit to the division application for deemed status licensure and copies of latest survey/licensure inspection report and accreditation certificate or license.

c. Sign the letter of agreement and send it to the division.

d. Provide any additional information or supporting documentation as required by the division. When granted, deemed status shall coincide with the time period awarded by the national or state accrediting body, but under no circumstances shall it be longer than two years.

ITEM 12. Amend subrule 3.21(1), introductory paragraph and paragraphs **"b"** and **"c,"** as follows:

3.21(1) Governing body. Each program shall have a formally designated governing body that is representative of the community being served, complies with the Iowa Code, and is the ultimate authority for the overall program operations. *Persons in private practice as sole practitioners shall be exempt from this subrule.*

b. The bylaws shall minimally specify the following:

(1) ~~The qualifications of the memberships;~~ *The type of membership;*

(2) ~~The type of membership;~~ *The term of appointment;*

(3) ~~The method of selecting members;~~ *The frequency of meetings;*

(4) ~~The term of appointment or election of members, officers and chairpersons of committees;~~ *The attendance requirements; and*

(5) ~~The number of the membership;~~ *The quorum necessary to transact business.*

~~(6) The frequency of meetings;~~

~~(7) The attendance requirements; and~~

~~(8) The quorum necessary to transact business.~~

c. Minutes of all meetings shall be kept and be available for review by the department and shall include, but not necessarily be limited to:

(1) Date of the meeting;

(2) Names of members attending;

(3) Topics discussed; *and*

(4) Decisions reached and actions taken~~; and~~.

~~(5) A summary of all reports presented to the governing body.~~

ITEM 13. Rescind subrule 3.21(2) and adopt the following **new** subrule in lieu thereof:

3.21(2) Executive director. This individual shall have primary responsibility for the overall program operations. The duties of the executive director shall be clearly defined

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by the governing authority, when applicable, in accordance with the policies established by the governing body.

ITEM 14. Amend subrules 3.21(3) to 3.21(6) as follows:

3.21(3) ~~Treatment supervisor services. The program shall have available consultation from a treatment supervisor to ensure quality of clinical services provided to clients/patients. This individual will assist~~ *Clinical oversight. The program shall have appropriate clinical oversight to ensure quality of clinical services provided to client/patients. This may be provided in-house or through consultation.*

Clinical oversight may include assisting the program in developing policies and procedures relating to the assessment and treatment of psychopathology. ~~The treatment supervisor will assist~~, *assisting* in the training of the staff and providing assistance to the clinical staff in ~~client~~ *assessment or* treatment. The executive director or designee shall be ultimately responsible for clinical services and implementation of treatment services to ~~clients~~ *client/patients*.

3.21(4) Staff development and training. There shall be written policies and procedures that establish ~~a~~ staff development ~~program~~. ~~The staff~~ *Staff* development ~~program~~ shall include orientation ~~for entry-level~~ *for* staff~~, on-the-job training, in-service education,~~ and opportunities for continuing job-related education. *For corporations organized under Iowa Code chapter 496C and sole practitioners, documentation of continuing education to maintain professional license or substance abuse certification will meet the requirements of this subrule.*

a. ~~Initial training is recommended for all staff, which for each treatment staff member shall include structured scheduled orientation in the following areas:~~ *Evidence of professional education, substance abuse certification, licensing, or orientation which includes the following:* psychosocial, medical, pharmacological, confidentiality, and tuberculosis and blood-borne pathogens; an orientation to the program and community resources; counseling skill development; HIV/AIDS (Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome) information/education; and the attitudes, values and lifestyles of racially diverse cultures, other cultures and special populations. ~~In addition, each treatment staff member shall complete two hours of training relating to the identification and reporting of child abuse and dependent adult abuse within six months of initial employment, and at least two hours of additional training every five years thereafter.~~

b. No change.

c. The staff development program shall take steps to ensure that staff members are kept informed of new developments in the field of substance abuse *assessment, evaluation, placement*, treatment and rehabilitation.

d. and e. No change.

f. Minutes shall be kept of on-site training activities and shall include, but not necessarily be limited to:

(1) Date of the meeting;

(2) Names of persons attending; *and*

(3) Topics discussed, to include name and title of presenters~~; and~~.

~~(4) Recommendations made.~~

g. No change.

~~h. The local program shall document staff attendance and participation at local, regional, state and national training opportunities.~~

3.21(5) Management information system. ~~All programs~~ *Programs receiving Medicaid or* ~~funded~~ *state funding and programs performing OWI evaluations in accordance with 643—Chapter 8* ~~by the department~~ shall submit client/*patient* data to the Iowa Department of Public Health, Division of Substance Abuse and Health Promotion, Lucas State Office Building, Des Moines, Iowa 50319-0075, in accordance with substance abuse reporting system procedures.

3.21(6) Procedures manual. All programs shall develop and maintain a procedures manual. This manual shall define the program's policies and procedures to reflect the program's activities. Revisions shall be entered with the date, name and title of the individual making the entries. This manual shall contain all of the required written policies, procedures, definitions, and all other documentation ~~required by~~ *outlined throughout* these standards ~~in the following areas:~~.

~~a. Legal authority and organization of the governing body;~~

~~b. Fiscal management;~~

~~c. Personnel policies;~~

~~d. Medical services;~~

~~e. Staff training;~~

~~f. Treatment planning;~~

~~g. Client case records;~~

~~h. Supportive and professional services;~~

~~i. Follow-up services;~~

~~j. Client rights;~~

~~k. Confidentiality of client records;~~

~~l. Discharge planning;~~

~~m. All clinical services, such as placement screening and initial assessment, outpatient services, primary residential treatment, extended residential treatment;~~

~~n. Treatment philosophy;~~

~~o. Objectives;~~

~~p. Table of organization;~~

~~q. The role of the coordinator/director in charge of this service; and~~

~~r. Interrelationship with other service components and providers.~~

ITEM 15. Adopt **new** paragraph **3.21(7)"d"** as follows:

d. Assessment and evaluation programs shall make public the OWI evaluation fees, and the client/patient shall be informed of the fee at the time of the evaluation.

ITEM 16. Amend subrule 3.21(8) as follows:

3.21(8) Personnel. Written personnel policies and procedures shall be developed by all programs *except for sole practitioners. The sole practitioner shall subscribe to a code of conduct such as found in professional certification or licensure.*

a. ~~These~~ *All programs shall have written* policies and procedures ~~shall~~ *that* address the following areas:

(1) to (10) No change.

(11) Methods for handling cases of inappropriate ~~client~~ care;

(12) and (13) No change.

(14) ~~Arbitration of employee~~ *Employee* grievances; *and*

(15) No change.

b. No change.

c. There shall be written job descriptions ~~for all positions~~ *that reflect the actual duties of the employee.* ~~Each job description shall identify specifically:~~

~~(1) Job title;~~

~~(2) Tasks and responsibilities of the job;~~

~~(3) The skills, knowledge, training, education and experience required for the job; and~~

~~(4) Lines of authority.~~

d. and e. No change.

f. The written personnel policies and practices shall include a mechanism for ~~the evaluating~~ *written evaluation* of

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personnel performance on at least an annual basis. ~~This evaluation shall be in writing.~~ There shall be evidence that this evaluation is reviewed with the employee and that the employee is given the opportunity to respond to this evaluation.

~~g. Any wages paid to clients engaged in vocational training or work within the program shall be in accord with local, state and federal requirements.~~

~~h~~ *g.* There shall be a personnel record kept on each staff member. These records shall contain as applicable:

~~(1) The application for employment;~~

(~~2~~ *1*) Verification of training, experience, and all professional credentials relevant to the position;

~~(3) Wage and salary information, including all changes;~~

(~~4~~ *2*) Job performance evaluations;

(~~5~~ *3*) Incident reports;

(~~6~~ *4*) Disciplinary actions taken; and

(~~7~~ *5*) Documentation of review and adherence to confidentiality laws and regulations. This review and agreement shall occur prior to assumption of duties.

~~i. For each employee working within a juvenile service area, these personnel records shall contain:~~

~~(1) Documentation of a criminal records check with the Iowa division of criminal investigation on all new applicants for employment asking whether the applicant has been convicted of a crime.~~

~~(2) A written, signed, and dated statement furnished by a new applicant for employment which discloses any substantiated reports of child abuse, neglect, or sexual abuse that may exist on the applicant.~~

~~(3) Documentation of a check after hiring on probationary or temporary status, but prior to permanently employing the individual with the Iowa central child abuse registry for any substantiated reports of child abuse, neglect, or sexual abuse.~~

~~(4) A person who has a record of a criminal conviction or founded child abuse report shall not be employed, unless an evaluation of the crime or founded child abuse has been made by the Department of Human Services which concludes that the crime or founded child abuse does not merit prohibition of employment. If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation. In its evaluation, the DHS shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuses committed by the person involved.~~

~~j~~ *h.* There shall be written policies and procedures designed to ensure confidentiality of personnel records and a delineation of authorized personnel who have access to various types of personnel information.

~~k~~ *i.* Personnel providing *screening, evaluations, assessments or* treatment shall be certified by the Iowa board of substance abuse certification, or certified by an international certification and reciprocity consortium member board in the states of Illinois, ~~Minnesota,~~ Nebraska, Missouri, South Dakota, and Wisconsin; or be eligible for certification or have education, training, ~~or~~ *and* experience in the substance abuse field.

~~l~~ *j.* There shall be written policies related to the prohibition of sexual harassment.

~~m~~ *k.* There shall be written policies related to the implementation of the Americans with Disabilities Act.

ITEM 17. Amend subrule 3.21(9) as follows:

3.21(9) Child abuse/*criminal records check.*

a. Written policies and procedures shall prohibit mistreatment, neglect, or abuse of children and specify reporting and enforcement procedures for the program. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel. Written policies and procedures on reporting alleged violations shall be in compliance with DHHS, 42 CFR, Part 2, Regulations on Confidentiality of Alcohol and Drug Abuse Client Records. Any employee found to be in violation of Iowa Code chapter 232, division III, part 2, as substantiated by the department of human services' investigation shall be subject to the agency's policies concerning dismissal.

b. For each employee working within a juvenile services area, the personnel record shall contain:

(1) Documentation of a criminal records check with the division of criminal investigation on all new applicants for employment asking whether the applicant has been convicted of a crime.

(2) A written, signed and dated statement furnished by a new applicant for employment which discloses any substantiated reports of child abuse, neglect or sexual abuse that may exist.

(3) Documentation of a check after hiring on probationary or temporary status, but prior to permanently employing the individual, with the Iowa central child abuse registry for any substantiated reports of child abuse, neglect or sexual abuse.

A person who has a record of a criminal conviction or founded child abuse report shall not be employed, unless an evaluation of the crime or founded child abuse has been made by the department of human services which concludes that the crime of founded child abuse does not merit prohibition of employment. If a record of criminal conviction or founded child abuse does exist, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation. In its evaluation, the department of human services shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime of founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation and the number of crimes or founded abuses committed by the person involved.

c. Each treatment staff member shall complete two hours of training relating to the identification and reporting of child abuse and dependent adult abuse within six months of initial employment and at least two hours of additional training every five years thereafter.

ITEM 18. Amend subrule 3.21(10) as follows:

3.21(10) Client/*patient* case record maintenance. There shall be written policies and procedures governing the compilation, storage and dissemination of individual client/*patient* case records.

a. These policies and procedures shall ensure that:

(1) The program exercises its responsibility for safeguarding and protecting the client/*patient* case record against loss, tampering, or unauthorized disclosure of information;

(2) Content and format of client/*patient* records are kept uniform; and

(3) Entries in the client/*patient* case record are signed and dated.

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b. The program shall provide adequate physical facilities for the storage, processing, and handling of client/*patient* case records. These facilities shall include suitably locked, secured rooms or file cabinets.

c. Appropriate records shall be readily accessible to those staff members providing services directly to the client/*patient* and other individuals specifically authorized by program policy. Records should be kept in proximity to the area in which the client/*patient* normally receives services.

d. There shall be a written policy governing the disposal and maintenance of client/*patient* case records. Client/*patient* case records shall be maintained for not less than five years from the date they are officially closed.

e. No change.

f. The governing body shall establish policies that specify the conditions under which information on applicants or ~~clients~~ *client/patients* may be released and the procedures to be followed for releasing such information. Even if a program is not federally funded, all such policies and procedures shall be in accordance with the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse *client/*patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse *client/*patient records, and state confidentiality laws and regulations.

g. Confidentiality of alcohol and drug abuse *client/*patient records. The confidentiality of alcohol and drug abuse *client/*patient records maintained by a program is protected by the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR, Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse *client/*patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse *client/*patient records.

ITEM 19. Amend subrule 3.21(11) as follows:

3.21(11) Placement screening, admission, assessment and evaluation. ~~There shall be clearly stated written~~ *The program shall conduct an initial assessment which shall include evaluation of the American Society of Addiction Medicine Patient Placement Criteria* ~~criteria~~ for determining the eligibility of individuals for placement and admission.

a. No change.

b. ~~The client~~ *Following admission, the comprehensive* assessment (psychosocial history) shall be an analysis and synthesis of the client/*patient* status and shall address the ~~client's~~ *client/patient's* strengths, problems, and areas of clinical concern. *Sufficient information shall be collected so that a comprehensive treatment plan can be developed.* It shall be developed within the period of time between admission and the first review date specified for that particular level of care within the ~~continued stay~~ *management of care* review process. ~~This initial assessment upon admission to treatment services is an expansion of information on the six categories contained within the placement screening document.~~

~~c. When an individual refuses to divulge information or to follow the recommended course of treatment, this refusal shall be noted in the case record.~~

~~d~~ *c.* At the time of admission, documentation shall be made that the individual has been informed of:

(1) General nature and goals of the program;

(2) Rules governing client/*patient* conduct and infractions that can lead to disciplinary action or discharge from the program;

(3) In a nonresidential program, the hours during which services are available;

(4) Treatment costs to be borne by the client/*patient*, if any;

(5) Client's rights and responsibilities; ~~and~~

(6) Confidentiality laws, rules and regulations~~.~~*;*

(7) HIV/AIDS information; and

(8) Safety and emergency procedures for residential, halfway house, inpatient and treatment services with housing.

~~e. Sufficient information shall be collected during the admission process so that the assessment process allows for the development of a complete assessment of the client's status and a comprehensive plan of treatment can be developed.~~

~~f~~ *d.* The results of the screening and admission process shall be clearly explained to the client/*patient* and to the ~~client's~~ *client/patient's* family when appropriate. This shall be documented in the client/*patient* record.

ITEM 20. Amend subrule 3.21(12) as follows:

3.21(12) Treatment plans. Based upon the initial assessment, an individualized written treatment plan shall be developed and recorded in the ~~client's~~ *client/patient* case record.

a. A treatment plan shall be developed as soon after the ~~client's~~ *client/patient's* admission as is clinically feasible and within the period of time between admission and the next review date specified for that particular level of care within the ~~continued stay reviews~~ *management of care review process.*

b. The individualized treatment plan shall minimally contain:

(1) A clear and concise statement of ~~client's~~ *the client/patient's* current strengths and needs;

(2) Clear and concise statements of the short- and long-term goals the client/*patient* will be attempting to achieve;

(3) Type and frequency of therapeutic activities in which the client/*patient* will be participating;

(4) The staff person(s) to be responsible for the ~~client's~~ *client/patient's* treatment; *and*

~~(5) The specific criteria to be met for successful completion of treatment; and~~

(~~6~~ *5*) Treatment plans shall be culturally and environmentally specific so as to meet the needs of the client/*patient*. Treatment plans shall be written in a manner readily understandable to the client/*patient*, with assistance if necessary.

c. Treatment plans shall be developed in partnership with the client/*patient* and shall be reviewed by the primary counselor and the client/*patient* as often as necessary and in accordance with the time frames specified within the ~~continued stay reviews~~ *management of care review process.*

d. The reviews shall consist of: a reassessment of the ~~client's~~ *client/patient's* current status in conjunction with the continued stay review criteria, accomplishments and needs, and a redefining of treatment goals when appropriate. The date of the review, *as well as* any changes, *shall be recorded in the record* ~~as well as the individuals involved in the review shall also be recorded in the continued stay review process~~.

e. The use of abstract terms, technical jargon, or slang should be avoided in the treatment plan. The program should provide the ~~client~~ *client/patient* with copies of all treatment plans upon request.

ITEM 21. Amend subrule 3.21(13) as follows:

3.21(13) Progress notes. A ~~client's~~ *client/patient's* progress and current status in meeting the goals set in the treatment plan shall be recorded in the ~~client's~~ *client/patient* case record. Information will be noted following each individual counseling session and a summary of group counseling services shall be documented at least weekly.

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a. Entries shall be filed in chronological order and shall include the date services were provided or observations made, the date the entry was made, the signature or initials and staff title of the individual rendering the services. All progress notes shall be entered into the client/*patient* case record in permanent pen, typewriter, or by computer. In those instances where records are maintained electronically, a staff identification code number authorizing access shall be accepted in lieu of a signature.

b. All entries that involve subjective interpretations of a ~~client's~~ *client/patient's* progress should be supplemented with a description of the actual behavioral observations which were the basis for the interpretation.

c. and d. No change.

ITEM 22. Amend subrule 3.21(14) as follows:

3.21(14) Client case record contents. There shall be a case record for each client/*patient* that contains:

a. to d. No change.

e. Medication records, which shall allow for the monitoring of all medications administered and self-administered and the detection of adverse drug reactions. All medication orders in the client/*patient* case records shall define at least the name of the medication, dose, route of administration, frequency of administration, the name of the physician who prescribed the medication, and the name of the person administering or dispensing the medication;

f. and g. No change.

h. Correspondence related to the client/*patient*, including all letters and dated notations of telephone conversations relevant to the ~~client's~~ *client/patient's* treatment;

i. to l. No change.

m. Discharge summaries of services provided shall be *completed within 30 days of discharge and shall be* sufficiently detailed to identify the types of services the ~~client~~ *client/patient* has received and action taken to address specific problems identified. General terms such as "counseling" or "activities" shall be avoided in describing services; ~~and~~

n. Management information system or other appropriate data forms~~.~~*; and*

o. Incident reports.

ITEM 23. Amend subrule 3.21(16) as follows:

3.21(16) Medical services. The applicant shall have policies and procedures developed in conjunction with a physician to examine and evaluate substance abusers/concerned persons seeking or undergoing treatment or rehabilitation. Individuals who enter an inpatient, residential, halfway house facility, chemotherapy or emergency care facility *(ASAM Levels III.I, III.3, III.5, III.7 and IV)* shall undergo a medical history and physical examination. Laboratory examinations may be performed as deemed necessary by the physician. The medical history, physical examination, and necessary laboratory examinations shall be performed as soon as possible, however minimally, as follows:

• *a.* Inpatient *medically managed* and medically monitored residential treatment services (*ASAM* Levels ~~VI & VII~~ *IV and III.7*) within 24 hours of admission;

• *b.* Primary residential ~~treatment~~ and extended residential treatment (~~Level V~~ *Levels III.5 and III.3*) within seven calendar days of admission; and

• *c.* Halfway house services (Level ~~II~~ *III.I*) within 21 calendar days of admission.

For individuals who enter a Level I or Level II service, a medical history shall be obtained upon admission.

A program may accept medical history and physical examination results from referral sources which were conducted no more than 90 days prior to admission.

All *client/patients admitted to* residential, *inpatient* ~~and halfway house residents are required to receive tuberculosis testing within 5 calendar days of admission, and all identified high-risk outpatient clients are required to receive testing within 14 calendar days~~, *or halfway house services and high-risk outpatient client/patients shall have a tuberculosis skin test administered and read within 5 days of admission. If the client/patient has documentation of a negative tuberculosis skin test within the previous 90 days, the tuberculosis test may be accepted if the client/patient does not show any symptoms. If the client/patient has unexplained symptoms or a history of positive tuberculosis skin tests, the physician shall determine what tests are needed.* ~~On individuals who enter a Level I program or any outpatient program, a medical history shall be obtained upon admission.~~

ITEM 24. Amend paragraphs **3.21(18)"d"** through **3.21(18)"l"** as follows:

d. Drugs/medications shall be prescribed by a physician ~~licensed to practice in the state of Iowa~~ or other practitioner authorized to prescribe under Iowa law.

e. Prescription drugs shall not be administered or self-administered to a client/*patient* without a written order signed by a ~~licensed~~ physician *or other practitioner authorized to prescribe under Iowa law.* All prescribed medications shall be clearly labeled indicating the ~~patient/client's~~ *client/patient's* full name, physician's name, prescription number, name and strength of the drug, dosage, directions for use, date of issue; and name, address and telephone number of the pharmacy or physician issuing the drug. Medications shall be packaged and labeled according to state and federal guidelines.

f. If the medications the client/*patient* brings to the program are not to be used, they shall be packaged, sealed and stored. The sealed packages of ~~drugs~~ *medications* shall be returned to the client/*patient*, family or significant others at the time of discharge.

g. Accountability and control of medications.

(1) There shall be a specific routine for ~~drug~~ *medication* administration, indicating dose schedules and standardization of abbreviations.

(2) There shall be specific methods for control and accountability of ~~drug~~ *medication* products throughout the program.

(3) to (5) No change.

h. ~~Drug~~ *Medication* storage shall be maintained in accordance with the security requirements of federal, state and local laws.

(1) All ~~drugs~~ *medication* shall be maintained in locked storage. Controlled substances shall be maintained in a locked box within the locked cabinet.

(2) No change.

(3) Disinfectants and ~~drugs~~ *medication* for external use ~~are~~ *shall be* stored separately from internal and injectable medications.

(4) The medication for each client/*patient* shall be stored in the original containers.

(5) All potent poisonous or caustic ~~drugs~~ *medication* shall be plainly labeled, stored separately from other ~~drugs~~ *medication* in a specific well-illuminated cabinet, closet, or storeroom, and made accessible only to authorized persons.

i. Dispensed from a licensed pharmacy. ~~Drugs~~ *Medication* provided to ~~patients/clients~~ *a client/patient* shall be dispensed only from a licensed pharmacy in the state of Iowa in

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accordance with the pharmacy laws in the Code of Iowa, or from a licensed pharmacy in another state according to the laws of that state, or by a licensed physician.

j. Use of medications. ~~No prescription~~ *Prescription* medications prescribed for one resident may *not* be administered to or allowed in the possession of another resident.

k. Patient reaction. Any unusual *client*/patient reaction to a ~~drug~~ *medication* shall be documented in the ~~patient/client's~~ *client/patient* record and reported to the attending physician immediately.

l. Dilution or reconstitution of ~~drugs~~ *medication*. Dilution or reconstitution *and labeling* of ~~drugs~~ *medication* ~~and their labeling~~ shall be done only by a licensed pharmacist.

ITEM 25. Amend 3.21(19) as follows:

3.21(19) Management of care. The program shall ensure appropriate level of care utilization by implementing and maintaining the written placement screening, continued stay, and discharge criteria process developed by the department. The programs shall also address underutilization, overutilization, and the effective use of levels of care available. *The time frames for management of care activities minimally shall be implemented within 30 days for Level I and III.1; within 7 days for Level II.1, II.5, III.3 and III.5; and daily for Levels III.7 and IV.*

The discharge planning process shall begin at admission, determining a client/patient's continued need for treatment services and developing a plan to address ongoing client/patient needs posttreatment. Discharge planning may or may not include a document identified as a discharge plan.

ITEM 26. Amend subrule 3.21(20) as follows:

3.21(20) Quality improvement. The program shall have an ongoing quality improvement program designed to objectively and systematically monitor and evaluate the quality and appropriateness of client/*patient* care, pursue opportunities to improve client/*patient* care, and resolve identified problems. Quality improvement efforts shall be facilitywide in scope and include review of clinical~~,~~ *and* professional~~, and administrative~~ services.

a. No change.

~~b. The program shall develop and implement a plan to put into operation outcome measures or performance indicators, as determined by the department.~~

~~c. Relevant findings from the quality improvement activities (as defined by program) may be considered as part of the performance evaluations for all professional, clinical, and administrative staff members.~~

~~d~~ *b.* The program shall establish written policies and procedures to both describe and document the quality improvement of the program's monitoring and evaluation activities. The policies and procedures shall ensure that:

(1) and (2) No change.

(3) Objective criteria shall be utilized in the evaluation of the information collected in order to identify important problems in, or opportunities to improve, client/*patient* care and clinical performance.

~~e~~ *c.* The program shall document that the quality of client/*patient* care is improved and identified problems are resolved through actions taken as appropriate by the program's administrative and supervisory staffs and through professional staff functions~~, which may include, but not be limited to:~~.

~~(1) Activities of the governing body;~~

~~(2) Activities of the program, program component, modality, or service;~~

~~(3) Revisions to written policies and procedures for program and professional services and staff composition.~~

~~f. The findings, conclusions, recommendations, actions taken, and results of actions taken shall be documented and reported through processes established by the program.~~

~~g~~ *d.* Necessary information shall be communicated among program components, modalities, or services when problems or opportunities to improve client/*patient* care involve more than one program component or service.

~~h~~ *e.* The program shall ensure that the status of identified problems is tracked to ensure improvement or resolution.

~~i~~ *f.* Information from program components or services and the findings of discrete quality improvement activities are used to detect trends, patterns of performance, or potential problems that affect more than one program component or service.

~~j~~ *g.* The objectives, scope, organization, and effectiveness of the quality improvement program are evaluated at least annually and revised as necessary.

ITEM 27. Amend subrule 3.21(21) as follows:

3.21(21) Building construction and safety. All buildings in which clients receive *screenings, evaluations, assessments or* treatment are designed, constructed, equipped, and maintained in a manner that is designed to provide for the physical safety of clients, personnel, and visitors.

a. to c. No change.

d. All programs shall have written policies and procedures to provide a safe environment for clients, personnel, and visitors and to monitor that environment. The program shall document implementation of the procedures. The written policies and procedures shall include, but not be limited to, the following:

(1) The process for the identification, development, implementation, and review of safety policies and procedures for all departments or services.

(2) The promotion and maintenance of an ongoing, facilitywide hazard surveillance program to detect and report all safety hazards related to clients, visitors, and personnel.

(3) The process by which the staff is to dispose of biohazardous waste within the clinical service areas.

(4) All program areas.

1. Stairways, halls, and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

2. Radiators, registers, and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

3. For juvenile facilities, fuse boxes shall be under lock and key or six feet above the floor.

4. Facilities shall have written procedures for the handling and storage of hazardous materials.

5. Facilities shall have policies and procedures for weapons removal.

6. Swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

7. Facilities shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the program and accessible to the client/patient.

ITEM 28. Rescind subrules 3.21(22) to 3.21(24) and adopt the following **new** subrules in lieu thereof:

SUBSTANCE ABUSE COMMISSION[643](cont'd)

3.21(22) Outpatient facility. The outpatient facility shall be safe, clean, well ventilated, properly heated, free from vermin and rodents and in good repair.

a. The facility shall be appropriate for providing services available from the program and for protecting confidentiality.

b. Furniture shall be in good repair.

c. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. These plans shall be conspicuously displayed at the facility.

3.21(23) Therapeutic environment. All programs shall establish an environment that enhances the positive self-image of client/patients and preserves their human dignity. The grounds of the program shall have adequate space for the program to carry out its stated goals. When client/patient needs or program goals involve outdoor activities, these activities and programs shall be appropriate to the ages and clinical needs of the client/patient.

a. All services shall be accessible to people with disabilities or the program shall have written policies and procedures that describe how people with disabilities can attain access to the facility for necessary services. All programs shall comply with the Americans with Disabilities Act.

b. The waiting or reception areas shall be of adequate size, have appropriate furniture and be located so as to ensure confidentiality of client/patients in session or receiving services.

c. Program staff shall be available in waiting or reception areas so as to address the needs of the client/patients and visitors.

d. The program shall have written policies and procedures regarding chemical substances in the facility.

e. Smoking shall be prohibited except in designated areas.

f. A program or person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under 18 years of age, and a person under 18 years of age shall not smoke, use, purchase, or attempt to purchase, any tobacco, tobacco products, or cigarettes.

g. There shall be written policies and procedures to address the following:

(1) There shall be a policy to inform client/patients of their legal and human rights at the time of admission;

(2) Client/patient communication, opinions, or grievances, with a mechanism for redress;

(3) Prohibition of sexual harassment; and

(4) Client/patient rights to privacy.

ITEM 29. Amend rule 643—3.22(125), introductory paragraph, and subrule 3.22(1) as follows:

643—3.22(125) Inpatient, residential and halfway house ~~services~~ safety. Specific safety standards for inpatient, residential and halfway house ~~services~~ *safety.*

3.22(1) Health and fire safety inspections. Inpatient, residential and halfway house substance abuse treatment facilities shall comply with appropriate department of inspections and appeals rules, state fire marshal's rules and fire ordinances, and appropriate local health, fire, occupancy code, and safety regulations. The program shall maintain documentation of such compliance.

a. Inpatient, residential and halfway house substance abuse treatment facilities required to be licensed by the department of public health shall comply with standards for food service sanitation in accordance with rules promulgated by the department of inspections and appeals pursuant to 481—Chapter 32 of the Iowa Administrative Code *and Iowa Code chapter 137B.*

b. No change.

c. The use of door locks or closed sections shall be approved by the fire marshal, professional staff and governing body.

~~d. Staff shall respect a client's right to privacy by knocking on the door of a client's room before entering.~~

ITEM 30. Rescind subrule 3.22(2) and adopt the following **new** subrule in lieu thereof:

3.22(2) Emergency preparedness. The inpatient, residential and halfway house programs shall have an emergency preparedness program designed to provide for the effective utilization of available resources so that client/patient care can be continued during a disaster.

ITEM 31. Rescind rule 643—3.23(125) and adopt the following **new** rule in lieu thereof:

643—3.23(125) Specific standards for inpatient, residential, and halfway house service. An inpatient, residential, and halfway house service shall be designed to provide comprehensive diagnostic, treatment and rehabilitation services in a 24-hour therapeutic setting.

3.23(1) Hours of operation. An inpatient, residential, and halfway house service shall operate seven days per week, 24 hours a day.

3.23(2) Meals. Inpatient and residential programs shall provide a minimum of three meals per day to each client/patient enrolled in the program. Inpatient, residential, and other programs where client/patients are not present during mealtime shall make provisions to make available the necessary meals. Menus shall be prepared in consultation with a dietitian. If client/patients are allowed to prepare meals, the program shall document conformity with all commonly accepted policies and procedures of state health regulations and food hygiene.

3.23(3) Consultation with counsel. An inpatient, residential, and halfway house program shall have policies and procedures which will ensure that all client/patients in a facility have opportunity for and access to consultation with legal counsel at any reasonable time.

3.23(4) Visitation with family and friends. An inpatient, residential and halfway house program shall have policies and procedures which will ensure opportunities for continuing contact with family and friends. If such visiting opportunities are clinically contraindicated, they shall be approved on an individual basis by the treatment supervisor and subject to review by the executive director. The justification for restrictions shall be documented in the client/patient record. If clinical indications require restrictions on visitation, such restrictions shall be evaluated for continuing therapeutic effectiveness every seven days by the treatment supervisor and primary counselor.

The program shall establish visiting hours which shall be conspicuously displayed at the facility and in such a manner to be visible to those entering the facility.

3.23(5) Telephone use. An inpatient, residential and halfway house program shall have policies and procedures which allow client/patients to conduct private telephone conversations with family and friends at the facility. If such are clinically contraindicated, they shall be approved on an individual basis by the treatment supervisor and subject to review by the executive director. The justification for restrictions shall be documented in the client/patient record. If clinical indications require restrictions, such shall be evaluated for continuing therapeutic effectiveness every seven days by the treatment supervisor and primary counselor. Access to the telephone shall be available during reasonable

SUBSTANCE ABUSE COMMISSION[643](cont'd)

hours as defined by the program in written policies and procedures except for emergency calls, which may be received at the time of the call, or made when necessary.

3.23(6) Written communication. An inpatient, residential and halfway house program shall have policies and procedures which ensure that neither mail nor other communications to or from a client/patient in a facility is intercepted, read, or censored.

3.23(7) Facility. An inpatient, residential, and halfway house facility shall be safe, clean, well-ventilated, properly heated, in good repair, and free from vermin to ensure the well-being of residents.

a. Client/patient bedrooms shall include:

(1) A sturdily constructed bed;

(2) A clean mattress protected with a clean mattress pad;

(3) A designated space for personal possessions and for hanging clothing in proximity to the sleeping area; and

(4) Windows in bedrooms shall have curtains or window blinds.

b. Sleeping areas shall include:

(1) Doors for privacy;

(2) Partitioning or placement of furniture to provide privacy for all client/patients;

(3) The number of client/patients in a room shall be appropriate to the goals of the facility and to the ages, developmental levels, and clinical needs of the client/patients;

(4) Client/patients will be allowed to keep and display personal belongings and add personal touches to the decoration of their rooms in accordance with program policy;

(5) Staff shall respect the client/patient's right to privacy by knocking on the door of the client/patient's room before entering.

c. Clean linen, towels and washcloths shall be available minimally on a weekly basis and more often as needed.

d. Bathrooms shall provide residents with facilities necessary for personal hygiene and personal privacy, including:

(1) A safe supply of hot and cold running water which is potable;

(2) Clean towels, electric hand dryers or paper towel dispensers, and an available supply of toilet paper and soap;

(3) Natural or mechanical ventilation capable of removing odors;

(4) Tubs or showers shall have slip-proof surfaces;

(5) Partitions with doors which provide privacy if a bathroom has multiple toilet stools;

(6) Toilets, wash basins, and other plumbing or sanitary facilities shall at all times be maintained in good operating condition; and

(7) The ratio of bathroom facilities to residents shall be one tub or shower head per 12 residents, one wash basin per 12 residents and one toilet per 8 residents.

(8) If the facility is coeducational, the program shall designate and so identify separate bathrooms for male and female client/patients.

e. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. These plans shall be conspicuously displayed on each floor or dormitory area that clients, residents, or visitors occupy at the facility and shall be explained to all inpatient, residential, and halfway house client/patients as a part of their orientation to the program. Fire drills shall be conducted at least monthly and tornado drills conducted during the tornado season from April through October.

f. Written reports of annual inspections by state or local fire safety officials shall be maintained with records of corrective action taken by the program on recommendations articulated in such reports.

g. Smoking shall not be permitted in bedrooms.

h. Every facility shall have an adequate water supply from an approved source. A municipal water system shall be considered as meeting this requirement. Private water sources shall be tested annually.

i. The facility shall allow for the following:

(1) Areas in which a client/patient may be alone when appropriate; and

(2) Areas for private conversations with others.

j. Articles of grooming and personal hygiene that are appropriate to the client/patient's age, developmental level, and clinical state shall be readily available in a space reserved near the client/patient's sleeping area. If clinically indicated as determined by the treatment supervisor, a client/patient's personal articles may be kept under lock and key by staff. If access to potentially dangerous grooming aids or other personal articles is contraindicated for clinical reasons, a member of the professional staff shall explain to the client/patient the conditions under which the articles may be used; and the clinical rationale for these conditions shall be documented in the client/patient case record.

k. Housekeeping. If client/patients take responsibility for maintaining their own living quarters and for day-to-day housekeeping activities of the program, these responsibilities shall be clearly defined in writing and be a part of the client/patient orientation program. Staff assistance and equipment shall be provided as needed.

l. Clothing. Client/patients shall be allowed to wear their own clothing in accordance with program rules. If clothing is provided by programs, it shall be suited to the climate and appropriate. In addition, a laundry room shall be accessible so client/patients may wash their clothing.

m. Noise-producing equipment. The program shall ensure that the use and location of noise-producing equipment and appliances, such as television sets, radios, and CD players do not interfere with clinical and therapeutic activities.

n. Recreation and outdoor activities. The program shall provide recreation and outdoor activities, unless contraindicated for therapeutic reasons.

3.23(8) Religion-culture. The inpatient, residential, and halfway house program shall have a written description of its religious orientation, particular religious practices that are observed, and any religious restrictions. This description shall be provided to the client/patients, parent(s) or guardian, and the placing agency at the time of admission in compliance with DHHS, 42 CFR, Part 2, Regulations on Confidentiality of Alcohol and Drug Abuse Client Records. This information shall also be available to adults during orientation. The client/patient shall have the opportunity to participate in religious activities and services in accordance with the client/patient's own faith or that of a minor client/patient's parent(s) or guardian. The facility shall, when necessary and reasonable, arrange transportation for religious activities.

ITEM 32. Amend rule 643—3.24(125), introductory paragraph, as follows:

643—3.24(125) Specific standards for inpatient, residential, and halfway house substance abuse ~~program~~ *service* admitting juveniles. An inpatient, residential and halfway house program that houses one or more juveniles under the age of 18 must also comply with the following standards.

ITEM 33. Amend paragraphs **3.24(5)"a"** and **3.24(5)"b"** as follows:

SUBSTANCE ABUSE COMMISSION[643](cont'd)

a. Inpatient, residential, halfway house programs, and community residential facilities as defined in 441—Chapter 114, shall have an on-call system operational 24 hours a day to provide supervisory consultation. The program shall have a written plan documenting this system. During prime programming time, there shall be at least a one-to-eight, staff-to-client/*patient* ratio.

b. Comprehensive residential facilities as defined in 441—Chapter 115, shall have at least a one-to-five, staff-to-client/*patient* ratio during prime programming time. A staff person shall be in each living unit at all times when children are in residence, and there shall be a minimum of three nighttime checks between the hours of 12 midnight and 6 a.m. These checks shall be logged. Policies *and procedures* for nighttime checks shall be in writing.

ITEM 34. Amend subrule 3.24(6) as follows:

3.24(6) Illness, accident, death, or absence from the inpatient, residential, and halfway house program. The program shall *have written policies and procedures to* notify the child's parent(s), guardian, and responsible agency of any serious illnesses, incidents involving serious bodily injury, or circumstances causing removal of the child from the facility in compliance with DHHS, 42 CFR, Part 2, Regulations on Confidentiality of Alcohol and Drug Abuse Client Records. In the event of the death of a child, a facility shall notify immediately the physician, the child's parent(s) or guardian, the placing agency, and the appropriate state authority. ~~The agency shall cooperate in arrangements made for examination, autopsy, and burial.~~

NOTICE—USURY

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

July 1, 1999 — July 31, 1999	7.50%
August 1, 1999 — August 31, 1999	8.00%
September 1, 1999 — September 30, 1999	8.00%
October 1, 1999 — October 31, 1999	8.00%
November 1, 1999 — November 30, 1999	8.00%
December 1, 1999 — December 31, 1999	8.00%
January 1, 2000 — January 31, 2000	8.00%
February 1, 2000 — February 29, 2000	8.25%
March 1, 2000 — March 31, 2000	8.75%
April 1, 2000 — April 30, 2000	8.50%
May 1, 2000 — May 31, 2000	8.25%
June 1, 2000 — June 30, 2000	8.00%
July 1, 2000 — July 31, 2000	8.50%
August 1, 2000 — August 31, 2000	8.00%

UTILITIES DIVISION[199]

Notice of Amendment to Procedural Schedule in Notice and Comment Proceeding

The Utilities Board (Board) previously gave notice that on April 11, 2000, the Board issued an order in Docket No. INU-00-3, In re: U S WEST Communications, Inc., "Order Initiating Formal Notice and Comment Proceeding," pursuant to Iowa Code section 476.1D, to consider whether the provision of local directory assistance (DA) services is subject to effective competition in Iowa and should be deregulated.

On February 11, 2000, U S WEST Communications, Inc., filed a petition asking the Board to determine that the provision of local DA services in Iowa is subject to effective competition and should be deregulated. Since the time of this filing, a corporate reorganization was closed on June 30, 2000, and the company's name has been changed to Qwest Corporation. Pursuant to 199 IAC 5.3(1), the Board initiated a formal notice and comment proceeding.

Copies of the Board's complete order initiating formal notice and comment proceedings may be obtained from the Board at (515)281-6240 or at the Board's Web site, http://www.state.ia.us/iub.

The Board has, by an order issued July 21, 2000, amended the procedural schedule. An oral presentation is scheduled, pursuant to 199 IAC 5.3(4) and 5.5(476), for the purpose of taking sworn testimony concerning the statements and counterstatements. The oral presentation shall be held September 7, 2000, beginning at 10 a.m. in the Board's Hearing Room at 350 Maple Street, Des Moines, Iowa. All persons filing written statements shall have at least one witness available at the oral presentation who may be cross-examined on the subject matter of the written statement. Cross-examination may be by the Board, the Consumer Advocate Division of the Department of Justice, and other participants as the Board may deem appropriate to develop the record fully. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

ARC 0005B

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

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

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

Pursuant to the authority of 2000 Iowa Acts, Senate File 2428, section 20, the Department of Workforce Development proposes to adopt Chapter 13, "New Employment Opportunities Fund," Iowa Administrative Code.

The Workforce Development Board approved this amendment on July 10, 2000.

This chapter implements a program created to assist members of underutilized population groups gain and retain employment. The program was established in 2000 Iowa Acts, Senate File 2428, section 20.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on Tuesday, August 29, 2000. Interested persons may submit written or oral comments by contacting Patti Curler, Workforce Development Center Administration, Iowa Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)281-9029.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

A public hearing to receive comments about the proposed new chapter will be held at the Workforce Development Center Administration Office, Room 106, 150 Des Moines Street, Des Moines, Iowa, on Tuesday, August 29, 2000, from 9 to 11 a.m. Individuals interested in providing comments at the hearing should contact Patti Curler at (515) 281-9029 by 4 p.m. on Monday, August 28, 2000, to be placed on the hearing agenda.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 0006B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2000 Iowa Acts, Senate File 2428, section 20.

ARC 0034B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby rescinds Chapter 20, "ACE PIAP Program," and adopts a new Chapter 20, "Accelerated Career Education Program," Iowa Administrative Code.

The new rules implement the Accelerated Career Education (ACE) Program authorized by Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453. The rules establish guidelines, application procedures, and evaluation criteria for the capital costs and program job credits components of the ACE Program.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because in order to allow applicants to receive program benefits in time for the fall 2000 school year, rules must be in effect so that applications can be accepted prior to the start of the fall semester. In addition, applications for the capital costs component are pending. To permit eligible projects to move forward, funding decisions need to be made in a timely manner.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the rules be made effective on July 21, 2000. These amendments confer a benefit on the public by ensuring that eligible applicants have access to ACE Program resources in time for the 2000 school year.

Notice of Intended Action regarding these rules is published herein as **ARC 0035B** to solicit public comment.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rules: publishing the rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

The IDED Board adopted the new rules on July 20, 2000.

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453.

These rules became effective on July 21, 2000.

The following new chapter is adopted.

Rescind 261—Chapter 20 and adopt in lieu thereof the following **new** chapter:

CHAPTER 20
ACCELERATED CAREER EDUCATION (ACE) PROGRAM

PART 1- GENERAL PROVISIONS

261—20.1(260G) Purpose. The ACE program has three parts: the capital costs component, the program job credits component, and the accelerated career education grants program. The Iowa department of economic development administers the first two components. The college student aid commission administers the career education grants portion of the ACE program as described in the commission's administrative rules. The goal of the ACE program is to provide an enhanced skilled workforce in Iowa.

261—20.2(260G) Definitions.

"Accelerated career education program" or "ACE" means the program established pursuant to Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439.

"Agreement" means a program agreement referred to in Iowa Code Supplement section 260G.3 between an employer and a community college.

"Community college" means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

"Employee" means a person employed in a program job.

"Employer" means a business or consortium of businesses engaged in interstate or intrastate commerce for the purposes of manufacturing, processing or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce, but excluding retail services.

"Highly skilled job" means a job with a broadly based, high-performance skill profile including advanced computation and communication skills, technology skills and workplace behavior skills, and for which an applied technical education is required.

"IDED" or "department" means the Iowa department of economic development.

"IDED board" means the Iowa economic development board authorized under Iowa Code section 15.103.

"Participant" means an individual who is enrolled in an accelerated career education program at a community college.

"Participant position" means the individual student enrollment position available in an accelerated career education program.

"Program capital cost" means classroom and laboratory renovation, new classroom and laboratory construction, site acquisition or preparation.

"Program job" means a highly skilled job available from an employer pursuant to a program agreement.

"Program job credit" means a credit that an employer may claim against all withholding taxes due in an amount up to 10 percent of the gross program job wage of a program job position as authorized in an agreement between a community college and an employer.

"Program job position" means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

"Program operating costs" means all necessary and incidental costs of providing program services.

"Program services" means services that include all of the following provided they are pursuant to a program agreement: program needs assessment and development, job task analysis, curriculum development and revision, instruction, instructional materials and supplies, computer software and upgrades, instructional support, administrative and student services, related school to career training programs, skill or career interest assessment services and testing and contracted services.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development and recreation trails. Vertical infrastructure does not include equipment; routine, recurring maintenance or operational expenses; or leasing of a building, appurtenant structure, or

utility without a lease-purchase agreement.

261—20.3(260G) ACE program eligibility and designation.

20.3(1) In order to receive financial assistance under the capital projects program, tax credits from withholding under the program job credits component or financial assistance through the college student aid commission's accelerated career education grants program, a program must be designated by a community college as an eligible ACE program. All programs must demonstrate increased capacity to enroll additional students. To be eligible, a program must be either:

a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree; or

b. A credit-equivalent career, vocational, or technical education program consisting of not less than 540 contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential.

20.3(2) By resolution of a community college board of directors, an eligible program may be approved and designated as an ACE program.

20.3(3) A copy of the designated ACE program shall be submitted to the department. The department will review the ACE program designation to ensure compliance with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439. The department will maintain a record of all approved ACE programs.

261—20.4(260G) Funding allocation.

20.4(1) Base allocation.

a. Funds for ACE program job credits and capital costs projects shall be allocated equally among the community colleges in the state for the fiscal years and in the amounts specified in 2000 Iowa Acts, Senate Files 2439 and 2453.

b. Community colleges shall submit an application, with an accompanying program agreement, to access the allocated funds. The application and program agreement shall document that all ACE eligibility requirements have been met.

20.4(2) Competitive awards. If a community college fails to obligate or encumber any of its base allocation by April 1 of the fiscal year, the funds for that community college will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules.

261—20.5(260G) Eligible and ineligible business.

20.5(1) Eligible business. An eligible business is a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce.

20.5(2) Ineligible business. A business engaged in retail services is ineligible to receive ACE program assistance.

261—20.6(260G) Program agreements.

20.6(1) Program agreements will be developed by an employer, a community college and any employee of an employer representing a program job. The development of the agreements may be facilitated by an entity representing a group of employers. Any community college that has an employer from its merged area involved in an ACE project must enter into the agreement. If a bargaining unit is in place with the employer pledging the jobs, a representative of the bargaining unit shall take part in the development of the program agreement. All participating parties must sign the program agreement. The agreement must include employer certification of contributions that are made toward the program costs.

20.6(2) A program agreement shall include, at a minimum, the following terms: match provided by the employer; tuition, student fees, or special charges fixed by the community college board of directors; guarantee of employer payments; type and amount of funding sources that will be used to pay for program costs; description of program services and implementation schedule; the term of the agreement, not to exceed five years; the employer's agreement to interview graduates for full-time positions and provide hiring preference; for employers with more than four sponsored participants, certification that a job offer will be made to at least 25 percent of those participants that complete the program; an agreement by the employer to provide a wage level of no less than 200 percent of the federal poverty guideline for a family of two; a provision that the employer does not have to fulfill the job offer requirement if the employer experiences an economic downturn; a provision that the participants will agree to interview with the employer following completion of the program; and default procedures.

261—20.7(260G) Monitoring. IDED will monitor ACE projects to ensure compliance with all program requirements.

261—20.8(260G) Customer tracking system. Participants in the ACE program shall be included in the customer tracking system implemented by Iowa Workforce Development. In order to achieve this, social security numbers of all ACE program trainees will be required.

261—20.9(260G) Program costs recalculation. Program costs shall be calculated or recalculated on an annual basis based on the required program services for a specific number of participants. Agreement updates reflecting this recalculation must be submitted to IDED annually to review compliance with program parameters.

PART II - CAPITAL COSTS COMPONENT

261—20.10(260G) Threshold requirements. To be considered for funding, an applicant shall meet the following threshold requirements:

1. There must be documentation of pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

2. Documentation must be provided to demonstrate that the program meets the definition of an eligible ACE program.

3. An applicant must demonstrate that the project builds the capacity of the community college to train additional students for available jobs.

4. Documentation must be supplied to establish a 20 percent employer cash or in-kind match for program operating funds.

5. An applicant shall describe how the project enhances geographic diversity of project offerings across the state.

6. The community college must document that other private or public sources of funds are maximized prior to ACE program capital cost funding.

7. ACE program capital cost projects must enhance the geographic diversity of state investment in Iowa. The IDED board will continuously review projects to ensure that there

is statewide impact. The IDED board will prioritize projects to ensure geographic diversity.

8. Funds shall only be used for ACE program capital costs for projects that meet the definition of vertical infrastructure. Building repair, renovation and construction for purposes of ACE program equipment installation shall be allowed.

261—20.11(260G) Application procedures.

20.11(1) Final application. Applicants shall submit a final application to IDED to request capital funds.

20.11(2) Staff review and recommendation. A committee of IDED staff will review and rate applications based upon the rating criteria stated in 261—20.12(260G). Based upon this review, a decision will be made regarding submittal of the application to the IDED board for action.

20.11(3) IDED board action. The IDED board will review ACE program capital cost projects meeting the requirements prescribed in these rules. A program agreement, which is approved by the community college board of directors, must be attached to the final application. Approval or denial of submitted applications that are complete and in final form shall be made no later than 60 days following receipt of the application by the department. Subsequent to board approval, an award letter will be sent. The award letter will be followed by a contract. After a signed contract is in place, funding for a project may be requested.

261—20.12(260G) Evaluation criteria for competitive awards—capital costs projects. Applications and accompanying program agreements meeting all ACE eligibility requirements will be prioritized and rated using the following point criteria:

1. The degree to which the applicant adequately demonstrates a lack of existing public or private infrastructure for development of the partnership. There must be a demonstration that the project will build capacity in order for the project to be considered. Capacity will be measured in terms of jobs that are pledged, students that are interested in the program area and the capacity that is built at the community college to undertake the programming. Up to 33 points will be awarded.

2. Demonstration that the jobs that would result from the partnership would include wages, benefits and other attributes that would improve the quality of employment within the region. Projects where the average wage for the pledged jobs exceeds the regional or county average wage, whichever is lower for the location where the training is to be provided, will be awarded points based upon the percentage that the average wage of the pledged jobs exceeds the applicable average wage. Up to 33 points will be awarded.

3. Evidence of local, public or private contributions that meet the requirements of Iowa Code Supplement chapter 260G. Projects will be rated based upon the percentage of match that is pledged to the ACE program capital cost for the project. Up to 34 points will be awarded.

Applications that do not receive at least 66 out of 100 points will not be forwarded to the IDED board for review. Projects will be competing against each other for IDED board approval and the number of points that a project receives will be considered in the award process.

PART III - PROGRAM JOB CREDITS

261—20.13(260G) Threshold requirements—program job credits. To be eligible to receive program job credits, an applicant shall meet the following threshold requirements:

1. There must be documentation of pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

2. Documentation must be provided to demonstrate that the program meets the definition of an eligible ACE program.

3. Documentation must be supplied to establish a 20 percent employer cash or in-kind match for program operating funds.

4. An applicant shall describe how the project enhances geographic diversity of project offerings across the state.

261—20.14(260G) Job credits allocation.

20.14(1) In FY 2001, the department shall allocate $80,000 of the first $1,200,000 of program job credits authorized and available for that fiscal year to each community college. If a community college does not commit its allocation by April 1, 2001, its allocation will be lost and will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules. If a community college commits its allocation, it is committed for the length of the project.

20.14(2) In FY 2002, the department shall allocate $80,000 of the first $1,200,000 of program job credits authorized and available for that fiscal year to each community college. If a community college does not commit its allocation by April 1, 2002, its allocation will be lost and will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules. If a community college has a program to which its FY 2001 allocation has been committed, the FY 2002 allocation will be used to cover that commitment; this FY 2002 allocation is not in addition to the allocation from FY 2001.

20.14(3) In FY 2003, and for every fiscal year thereafter, the department of economic development shall divide equally among the community colleges 30 percent, or $120,000, of the program job credits available for that fiscal year to each community college to be used to provide funding for approved programs. If a community college does not commit its allocation by April 1, 2003, its allocation will be lost and will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules. If a community college has a program(s) to which its previous fiscal year's allocation is committed, the FY 2003 allocation will be used to cover that (those) commitment(s); the fiscal year's allocation is not in addition to the allocations from previous fiscal years.

20.14(4) Examples.

FY 2001: Allocation - $80,000
Contract #1 - first year — $100,000
Funded by - $80,000 from allocation
$20,000 from competitive dollars

FY 2002: Allocation - $80,000
Contract #1 - second year — $100,000
Funded by - $80,000 from allocation
$20,000 from competitive dollars
Contract #2 - first year —$120,000
Funded by - $120,000 from competitive dollars

FY 2003: Allocation - $120,000
Contract #1 - third year —$100,000
Funded by - $100,000 from allocation
Contract #2 - second year — $120,000

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Funded by - $20,000 from allocation
$100,000 from competitive dollars

261—20.15(260G) Determination of job credits, notice and certification.

20.15(1) Determination of job credit amounts. If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

a. Program job credits shall be based upon the program job positions identified and agreed to in the agreement.

b. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement.

c. An amount up to 10 percent of the gross program job wages as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to Iowa Code section 422.16.

d. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue and finance, to the community college to be allocated to and, when collected, paid into a special fund of the community college to pay, in part, the program costs.

e. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

20.15(2) Notice to revenue and finance department. The employer shall certify to the department of revenue and finance that the program job credit is in accordance with the agreement and shall provide other information the department may require.

20.15(3) Certification of amount of job credits. A community college shall certify to the department of revenue and finance that the amount of the program job credit is in accordance with an agreement and shall provide other information the department may require.

261—20.16(260G) Application procedures.

20.16(1) Initial applications for program job credits shall be accompanied by a program agreement documenting that all ACE eligibility requirements have been met. For subsequent years' funding of approved programs, agreement updates shall be submitted annually reflecting any recalculation of program costs and substantiation of continued compliance with program parameters.

20.16(2) Applications for projects that cross community college boundaries, or for projects that involve employers from multiple community college areas, must have sign off from all college areas involved.

20.16(3) Application deadlines. Applications for the fall semester 2000 will be taken at any time through the term of the fall semester. Applications for the winter semester 2001 must be submitted by October 15, 2000, for approval. Subsequent application deadlines will be:

Fall semester - applications must be submitted by May 15.

Winter semester - applications must be submitted by October 15.

20.16(4) Applications submitted for an amount less than or equal to a community college's yearly allocation will be considered noncompetitive and will be reviewed for eligibility and completeness by the department. The department reserves the right to require additional information from the community college.

261—20.17(260G) Evaluation criteria for competitive awards—program job credits. Applications submitted for funding greater than a community college's yearly allocation will be reviewed on a competitive basis and rated on the following criteria:

1. The quality of the program ..... up to 17 points.
2. The number of program participant placements ..... up to 17 points.
3. The wages and benefits in program jobs ..... up to 17 points.
4. The level of employer contributions ..... up to 17 points.
5. The industrial cluster into which the program falls ..... up to 17 points.
6. The geographic location of the employers ..... up to 15 points.

Applicants must receive at least 65 points out of 100 to be funded. An award letter will be issued followed by a contract.

261—20.18(260G) Committed funds. The department shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. When the total available program job credits have been allocated for a fiscal year, the department shall inform all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. If any committed credits become uncommitted after the above-mentioned notice has been issued, the department will inform all community colleges that some job credits are again available and applications will be accepted for those job credits until they are again committed.

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453.

[Filed Emergency 7/20/00, effective 7/21/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0033B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development amends Chapter 25, "Housing Fund," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9820A** on May 17, 2000. The Iowa Department of Economic Development Board adopted these amendments on July 20, 2000.

A public hearing to receive comments about the proposed amendments was held on June 6, 2000. Comments were received from two organizations: Heartland Properties, Inc.

and Burns & Burns, L.C. Both were supportive of the HART process and expressed a desire that the Department continue to support the effort. Heartland Properties, Inc. agreed with the proposed amendment to make HART participation voluntary. Burns & Burns recommended that the HART process continue as an integral step in the application process. Burns & Burns, L.C. also requested a revision to subrule 25.5(5) to permit an applicant to receive points for local, not IDED, HOME funds.

After review and consideration of these comments, the Department determined that participation in HART should be voluntary, rather than mandatory. The Department intends to continue to promote collaborative, preapplication communications between potential applicants and state and federal funding sources. The Department declined to revise subrule 25.5(5) as suggested. No additional points will be awarded to applicants seeking both HOME funds and tax credits. The Department believes that this restriction is the best way to maximize use of HOME funds.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on July 20, 2000, upon filing with the Administrative Rules Coordinator. These amendments confer a benefit on the public by establishing a joint review process for HOME and tax credit applicants that can be accessed during this construction season. To avoid confusion to the public as to what application process to follow, the Department and IFA have worked together to coordinate their respective rule-making processes. These amendments were Filed Emergency After Notice to ensure that final rules are effective prior to the deadline for the joint HOME and tax credit applications.

These amendments became effective on July 20, 2000.

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

The following amendments are adopted.

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

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

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

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

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

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

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

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

[Filed Emergency After Notice 7/20/00, effective 7/20/00]
[Published 8/9/00]

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ARC 0051B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455B.103A, the Environmental Protection Commission hereby amends Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

This amendment establishes the pilot project authorized by 2000 Iowa Acts, Senate File 2430, section 18. This legislation authorizes the Department to establish a pilot project to refund fees paid to the Department for issuance of authorizations to discharge storm water under general permits if the authorization is not sent to the applicant within a time period customary for such authorizations.

The Department finds, pursuant to Iowa Code section 17A.4(2) that notice and public participation are impracticable because of the immediate need to implement the amendment and the benefit conferred by the amendment.

The Department also finds, pursuant to Iowa Code section 17A.5(5)"b"(2), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on July 21, 2000, as it confers a benefit to all members of the public who experience service not meeting the standard established by the amendment.

Notice of Intended Action regarding this amendment is published herein as **ARC 0052B** to allow for public comment.

This amendment is intended to implement Iowa Code chapter 455B, division I.

The following amendment is adopted.

Amend rule 567—64.16(455B) by adding the following **new** subrule:

64.16(4) Fee refunds for storm water general permit coverage—pilot project.

a. If, upon submittal of a complete Notice of Intent to discharge under a storm water general permit as required in 64.6(1), an applicant is not sent a written notice of general

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

permit coverage by the department within 30 days of receipt by the department of a correctly completed Notice of Intent, the permit fee paid by the applicant shall be refunded to the applicant. The department shall determine if the criteria for submitting a correctly completed Notice of Intent have been met and shall notify an applicant within 30 days of receipt regarding deficiencies of the Notice of Intent. Fees for the renewal of prior authorizations under storm water general permits shall be refunded in the same manner and using the same criteria as for initial applications.

b. The decision of the department not to issue a refund under this subrule is final and not subject to further agency review.

c. This subrule expires June 30, 2001.

[Filed Emergency 7/21/00, effective 7/21/00]
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ARC 0009B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 217.6 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44, the Department of Human Services hereby amends Chapter 52, "Payment," and Chapter 177, "In-Home Health Related Care," appearing in the Iowa Administrative Code.

These amendments increase the maximum and flat State Supplementary Assistance (SSA) residential care facility (RCF) and in-home health related care (IHHRC) reimbursement rate. The maximum RCF reimbursement rate will be increased from $24.26 to $24.50 per day. The flat RCF reimbursement rate will be increased from $17.36 to $17.50 per day. The monthly IHHRC reimbursement rate will be increased from $466.49 to $471.06.

The Seventy-eighth General Assembly directed that the Department may take actions to meet the federal pass-along requirement mandated by Title XVI of the Social Security Act, Section 1618, if necessary. These rate increases are necessary to meet the federal pass-along requirements for calendar year 2000.

In order to comply with the federal pass-along requirement in calendar year 2000, Iowa's total SSA expenditures must be at least $19,575,651. Based on current projections, the Department projects that calendar year 2000 may be short of this required spending level. Current projections indicate that a 0.98 percent increase in the RCF and IHHRC reimbursement rates is necessary to ensure compliance with the pass-along requirement in calendar year 2000. This spending shortfall is attributable to a decline in in-home health-related care usage.

These amendments do not provide for waiver in specified situations because they confer a benefit and are required to meet the federal pass-along requirement, as mandated by the legislature. Individuals may request a waiver of the monthly IHHRC reimbursement under the Department's general rule on exceptions at rule 441—1.8(217).

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44, which authorize the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective August 1, 2000, as authorized by 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44.

These amendments are also published herein under Notice of Intended Action as **ARC 0008B** to allow for public comment.

The Council on Human Services adopted these amendments July 12, 2000.

These amendments are intended to implement Iowa Code sections 249.3(2) and 249.4 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a."

These amendments became effective August 1, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of ~~$17.36~~ *$17.50* or on a cost-related reimbursement system with a maximum reimbursement per diem rate of ~~$24.26~~ *$24.50*. A cost-related per diem rate shall be established for each facility choosing this method of payment according to rule 441—54.3(249).

ITEM 2. Amend rule 441—177.4(249) as follows:

Amend subrule 177.4(3) as follows:

177.4(3) Maximum costs. The maximum cost of service shall be ~~$466.49~~ *$471.06*. The provider shall accept the payment made and shall make no additional charges to the recipient or others.

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

177.4(7) Income for adults. The gross income of the individual and spouse, living in the home, shall be limited to ~~$466.49~~ *$471.06* per month if one needs care or ~~$932.98~~ *$942.12* if both need care, with the following disregards:

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

b. The income of the child shall be limited to ~~$466.49~~ *$471.06* per month with the following disregards:

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ARC 0013B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority hereby amends Chapter 1, "General," and Chapter 9, "Title Guaranty Division," and rescinds Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code, and adopts a new Chapter 12 with the same title.

IOWA FINANCE AUTHORITY[265](cont'd)

The purpose of the amendment to Chapter 1 in Item 1 is to amend rule 1.9(16) so that the language of the rule comports with the language of Iowa Code section 16.4(3) and clarifies the definition of a private agency.

In Item 2, rules 9.29(17A,16) and 9.30(17A,16) are rescinded because they are inconsistent with changes the Authority made to its contested case rules in 1999 and were overlooked when the Authority combined all of its contested case rules in one chapter.

In Item 3, Chapter 12 is being rescinded and replaced with a new Chapter 12 to incorporate by reference the qualified allocation plan, application and all related attachments and exhibits applicable to the 2000 round of low-income housing tax credit allocations. The plan sets forth the purpose of the program, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the monitoring compliance component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. The Authority has incorporated each of these documents by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules. Waivers would cause an inconsistency in the application of the amended definition of "local contributing effort" and would be inconsistent with the statute. The qualified allocation plan and application are subject to state and federal requirements that cannot be waived. (See IRC Section 42 and Iowa Code section 16.52.) Moreover, due to the competitive nature of the award of low-income tax credits, waivers would create unevenness in the application of the rules that would expose the Authority to liability. A waiver provision does not apply to rules that are being rescinded.

Consistent with Executive Order Number 9, the Authority has considered the regulatory principles identified in the Order and finds that the proposed amendments will serve an important public need in bringing the rules of the Authority into compliance with the provisions of Iowa Code section 16.4(3). The amendments will further the housing policy of the state to encourage the production of affordable housing in Iowa and will create consistency within the Authority's rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 3, 2000, as **ARC 9811A**. Informal meetings were conducted over the ICN network May 17 and 18, 2000, where the Authority accepted written and oral comments on the rules. Additionally, written comments were received on May 23, 2000, and on various dates thereafter. A public hearing was held on May 25, 2000, to receive public comments. An additional public meeting was held on June 22, 2000, to consider further comments. The comments were received on the qualified allocation plan rather than the actual text of the rule itself. The comments received regarding the plan can be divided into the following areas: (1) comments addressing mechanical or technical language changes; (2) comments addressing workability issues including the local contributing effort, participation by a local tax-exempt organization, developer fees, project caps, affordability and rent issues; and (3) comments relating to the compliance manual.

Based on these comments, changes were made to the plan and distributed to interested parties on a variety of occasions. Additionally, the plan and the changes were posted to the Authority's Web site. No comments were received relating to the changes in Chapter 9.

Based upon the comments received, the Authority elected to remove the compliance manual from this rule making. A separate rule making will be commenced to adopt the compliance manual as a rule. The Authority has also adopted additional language to clarify the definition of private agency for purposes of the local contributing effort described in rule 1.9(16). No other changes were made to the text of the rule.

The Authority finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective upon filing on July 14, 2000. These amendments confer a benefit on the public by the award of low-income tax credits to developers committed to build low-income housing in Iowa in 2000.

The Authority is taking the following steps to notify potentially affected parties of the effective date of the amendments: publishing the amendments in the Iowa Administrative Bulletin, providing free copies on request, posting the plan, application and rules to the Authority's Web site at http://www.ifahome.com and having copies available wherever requests for information about the program are likely to be made. Copies of the plan and the application will be delivered to the State Law Library.

These amendments are intended to implement Iowa Code sections 16.4(3), 16.52, 17A.12, and 17A.16 and IRC Section 42.

The Authority adopted these amendments on July 7, 2000.

These amendments became effective on July 14, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 265—1.9(16) as follows:

265—1.9(16) Local contributing effort. The authority shall consider the contribution of any of the following items in determining whether the local contributing effort has been fulfilled:

1. Payment of ~~governmental~~ funds by a political subdivision, ~~or~~ governmental entity, or ~~of private funds by a private entity~~ *by a private agency. Private agency means any entity from the location that contributes something of value and intends that the contribution qualify as the local contributing effort.* Evidence of payment and *the* authority to provide ~~same~~ *the funds* shall be furnished upon request of the authority.

2. Real property which may be vacant or improved property, suitable, in the judgment of the authority, to the proposed housing project. Liens and encumbrances, if any, shall be disclosed to satisfaction of the authority.

3. Personal property which may include appliances, furnishings, property maintenance tools, remodeling material to be purchased subsequent to project approval, and any other personal property which, in the judgment of the authority, is of relevance to the proposed housing project.

The authority may consider any type of proposed local contributing effort, in addition to or other than the above. Proposals which, in the judgment of the authority, are truly innovative will receive priority.

Local contributing efforts may be combined by type or source.

For the purpose of the rent supplement program provided in Iowa Code chapter 16, the local contributing effort shall be as described in paragraph "1," and shall be provided on a one-to-one matching basis.

IOWA FINANCE AUTHORITY[265](cont'd)

In the case where all or part of the costs of a housing project is to be funded from proceeds of the sale of authority notes or bonds, moneys paid to the authority by participating mortgage lenders may, to the extent such payments exceed the payments due from the authority to its note and bond holders, be considered satisfactory fulfillment of the local contributing effort.

This rule is intended to implement Iowa Code section 16.4(3).

ITEM 2. Rescind rules **265—9.29(17A,16)** and **265—9.30(17A,16)**.

ITEM 3. Rescind 265—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
LOW-INCOME HOUSING TAX CREDITS

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Qualified Allocation Plan effective July 14, 2000, shall be the qualified allocation plan for the distribution of low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at http://www.ifahome.com. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference IRC Section 42 and the regulations in effect as of July 14, 2000. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library and links to these statutes, regulations and rules are on the authority's Web site. Copies are available upon request at no charge from the authority.

These rules are intended to implement Iowa Code section 16.52.

[Filed Emergency After Notice 7/14/00, effective 7/14/00]
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ARC 0053B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 455A.5(6)"a," 481A.38, 481A.39, 483A.10, and 483A.18, the Natural Resource Commission hereby amends Chapter 15, "General License Regulations," Iowa Administrative Code.

The amendments establish the requirements for electronic license sales. The amendments also adopt the requirements of Iowa Code chapter 252J for the suspension of licenses due to nonpayment of child support.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because of the immediate need for changes in the rules to allow the Director to designate license sellers authorization to sell hunting and fishing licenses electronically.

The Commission 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 upon filing with the Administrative Rules Coordinator on July 21, 2000, as they confer a benefit upon the public who purchase hunting and fishing licenses.

These amendments are intended to implement Iowa Code section 252J.8.

These amendments became effective July 21, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule **15.1(1)** by adopting the following **new** definition in alphabetical order:

License seller. License seller means a retail business establishment, an office of a government entity, or a nonprofit corporation designated by the director to issue licenses to the public. For the purposes of Chapter 15, "license sellers" shall be synonymous with "depositaries" as used in Iowa Code chapter 483A.

ITEM 2. Amend rule 571—15.1(483A) by adopting the following **new** subrule:

15.1(6) Form of licenses. All licenses shall contain a general description of the licensee. Individual license applicants must also provide their date of birth and either their social security number or a valid Iowa driver's license number at the time of application. The license shall be signed by the applicant. The license shall clearly indicate the privilege granted.

ITEM 3. Amend rule 571—15.6(483A) by adopting the following **new** subrule:

15.6(9) Suspension for failure to comply with a child support order. The department is required to suspend or deny all licenses of an individual upon receipt of a certificate of noncompliance with child support obligation from the Iowa child support recovery unit pursuant to Iowa Code section 252J.8(4).

a. The receipt by the department of the certificate of noncompliance shall be conclusive evidence. Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action taken due to the department's receipt of a certificate of noncompliance with a child support obligation but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

b. Suspensions for noncompliance with a child support obligation shall continue until the department receives a withdrawal of the certificate of noncompliance from the Iowa child support recovery unit.

c. After the department receives a withdrawal of the certificate of noncompliance, an individual may obtain a new license upon application and the payment of all applicable fees.

ITEM 4. Amend 571—Chapter 15 by adopting the following **new** rule:

571—15.12(483A) Electronic license sales.

15.12(1) The director may designate a retail business establishment, an office of a government entity, or a nonprofit corporation as a seller of electronically issued licenses in ac-

cordance with the provisions of this rule. The provisions of 571—15.2(483A) shall not apply to a license seller engaging in, or applying to engage in, the electronic sale and issuance of licenses.

15.12(2) Application. Application forms may be secured by a written or in-person request to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. The following information must be provided on the application form:

a. The legal name, address, and telephone number of the entity applying for designation;

b. The hours open for business and general service to the public;

c. A brief statement of the nature of the business or service provided by the applicant;

d. The potential volume of license sales;

e. The current financial status of the proposed license seller with respect to future viability and longevity;

f. A brief statement in regard to the need for license sellers in the geographic area in which the applicant is located; and

g. A notarized signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.12(3) Designation. The director shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

a. The need for a license seller in the area;

b. The hours the applicant is open for business or general service to the public;

c. The potential volume of license sales;

d. The apparent financial stability and longevity of the license seller; and

e. The number of point-of-sale (POS) terminals available to the department.

15.12(4) Issuance of electronic licensing equipment. Upon the director's approval of an application and designation of a license seller for electronic license sales, the equipment necessary to conduct such sales will be issued to the license seller by the department subject to the following terms and conditions:

a. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall furnish to the department an equipment security deposit in an amount to be determined by the department.

b. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales including the authorized amounts to be retained by the license seller.

c. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.12(5).

d. Permit-issuing equipment and supplies must be securely stored to protect them from fire, theft, or unauthorized access. Any loss of equipment or moneys derived from license sales is the responsibility of the electronic license seller.

e. Upon termination of the agreement by either party, all equipment and supplies, including unused paper stock, ribbon, user's guides, and training videos must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available by law to the department.

15.12(5) License fees. All moneys received from the sale of permits, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department of natural resources.

a. All approved applicants must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of permit fees received by the license seller.

b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license seller shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license seller is responsible for ensuring that enough money is in the account to cover the amount due for accumulated sales.

c. License sellers may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license seller and not to the department. The license seller shall be responsible for ensuring that the license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license seller.

15.12(6) Equipment shut down. The department reserves the right to disconnect or block the license seller's access to the electronic license sales system under the following conditions:

a. Upon the first incident in which there are insufficient funds in the electronic transfer account to cover accumulated sales at the time of the electronic transfer, the license seller has seven days from the date of the first attempted transfer to correct this deficiency. If the deficiency is not corrected within seven days from the date of the first attempted transfer, the license seller's access to the electronic license sales system may be disconnected or blocked until the deficiency is corrected.

b. Upon the second incident in which there are insufficient funds in the electronic transfer account to cover accumulated sales at the time of the electronic transfer, the department may immediately disconnect or otherwise block the license seller's access to the electronic license sales system until the deficiency is corrected.

c. Upon the termination of the electronic license sales agreement pursuant to subrule 15.12(7) or 15.12(8), the department may disconnect or otherwise block the license seller's access to the electronic license sales system.

15.12(7) Termination. The department reserves the right to terminate the electronic license sales agreement and disconnect the electronic license issuing equipment for cause. Cause shall include, but is not limited to, the following:

a. Failure by the license seller to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;

b. Charging or collecting any fees in excess of those authorized by law;

c. Discriminating in the sale of a license in violation of state or federal law;

d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;

e. The personal, including business, use of license sale proceeds other than the service fee by the license seller;

NATURAL RESOURCE COMMISSION[571](cont'd)

f. The disconnecting or blocking of access to the electronic license sales system for a period of 30 days or more pursuant to subrule 15.12(6); or

g. Repeated violations of these rules or the terms of the electronic license sales agreement.

15.12(8) Voluntary termination. A license seller may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department by certified mail, return receipt requested. Voluntary termination shall become effective 30 days after the department's receipt of notice.

[Filed Emergency 7/21/00, effective 7/21/00]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0014B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.4, 17A.5, 124.201, and 124.301, the Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendments were approved during the July 12, 2000, meeting of the Board of Pharmacy Examiners.

The amendments rescind current subrules 10.20(1) and 10.20(2) because the changes to the Iowa Controlled Substances Act effected by those subrules were approved by the Iowa legislature during the 2000 regular session (2000 Iowa Acts, Senate File 2302). The amendments adopt new subrule 10.20(1) which classifies the substance gamma-hydroxybutyric acid, commonly known as GHB, as a Schedule I substance with no approved medical purpose under the Iowa Controlled Substances Act (CSA) in conformance with recent action of the federal Drug Enforcement Administration (DEA). Also in conformance with the federal action, new subrule 10.20(2) places into Schedule III of the Iowa CSA any drug products for which an application has been approved pursuant to Section 505 of the Federal Food, Drug, and Cosmetic Act.

The Board concurs with the rescheduling action initiated by the federal DEA and hereby changes Iowa law to conform to federal law. Rescheduling GHB will prohibit possession of GHB by anyone other than researchers, analytical laboratories, or others who may be authorized to possess Schedule I substances in Iowa and will establish criminal penalties for illegal possession of the substance. Recognizing the possibility of development of medical uses for substances containing GHB, the amendments provide that persons involved in legitimate drug development using this substance are permitted less stringent security and control requirements during development and production of such federally approved drugs.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary in that the amendments are within narrowly tailored categories of rules exempt, pursuant to 657—subrule 28.10(2), from the usual public notice and participation requirements.

The Board also finds, pursuant to Iowa Code subparagraph 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and these amendments should be made effective upon filing on July 18, 2000. These changes provide a benefit to the public, health practitioners, and the pharmaceutical industry by restricting access to a substance that currently has no recognized medical use in the United States and maintain conformance of the Iowa CSA with federal law.

These amendments became effective upon filing on July 18, 2000.

These amendments are intended to implement Iowa Code sections 124.201 and 124.301.

The following amendments are adopted.

ITEM 1. Rescind subrule 10.20(1) and adopt the following **new** subrule in lieu thereof:

10.20(1) Amend Iowa Code subsection 124.204(5) by adopting the following new paragraph "c":

c. Gamma-hydroxybutyric acid (some other names include GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate).

ITEM 2. Rescind subrule 10.20(2) and adopt the following **new** subrule in lieu thereof:

10.20(2) Amend Iowa Code subsection 124.208(3) by adopting the following new paragraph "l":

l. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug, and Cosmetic Act.

ITEM 3. Amend rule **657—10.20(124)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code sections 124.201 and 124.301.

[Filed Emergency 7/18/00, effective 7/18/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0025B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on July 19, 2000, adopted amendments to Chapter 602, "Classes of Driver's Licenses," Chapter 605, "License Issuance," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the June 14, 2000, Iowa Administrative Bulletin as **ARC 9866A**.

Items 1 and 2 move a reference to Iowa Code section 321.191 from rule 761—602.3(321) to rule 761—605.9(321) and delete superfluous language.

Items 3 and 4 establish the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5. This legislation authorizes the Department to conduct a pilot project at two driver's license stations pursuant to rules adopted by the De-

TRANSPORTATION DEPARTMENT[761](cont'd)

partment. In conducting the pilot project, the legislation provides that the Department may waive payment of or refund fees for a renewal or duplicate of a driver's license or nonoperator's identification card if the Department determines that the service standard for timely issuance has not been met or an error on the license or identification card requires the applicant to return to the driver's license station.

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

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that these amendments will confer a benefit on members of the public who experience service that does not meet the standards established in the new rule.

These amendments became effective July 24, 2000.

These amendments are intended to implement 2000 Iowa Acts, House File 2538, section 5.

Rule-making actions:

ITEM 1. Rescind rule **761—602.3(321)**.

ITEM 2. Amend rule 761—605.9(321), introductory paragraph, as follows:

761—605.9(321) ~~Payment of fee.~~ ***Fees for driver's licenses.*** *Fees for driver's licenses are specified in Iowa Code section 321.191.* A license fee may be paid by cash, check or money order. If payment is by check, the following requirements apply:

ITEM 3. Adopt **new** rule 761—605.10(321) as follows:

761—605.10(321) Waiver or refund of license fees—pilot project. This rule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

605.10(1) The department may waive payment of or refund the fee for a renewal or duplicate of a driver's license if:

a. An error occurs during the issuance process and is discovered by the applicant at the time of issuance. However, the fee shall not be waived or refunded if the error is discovered by department staff and is corrected within the 30-minute time period specified in paragraph "c" of this subrule.

b. An error occurs during the issuance process and is discovered during the edit process of updating the driver record, and the error requires the applicant to return to the driver's license station to have the error corrected.

c. The applicant is required to wait more than 30 minutes to renew a license or obtain a duplicate license. This 30-minute time period is determined by using an automated customer numbering system that monitors waiting time.

605.10(2) The department shall not waive payment of or refund a fee if the applicant does not have in the applicant's possession at the time of application the previously issued driver's license.

605.10(3) The department shall not waive payment of or refund fees for any of the following transactions: reinstatements following sanctions, new applications, or applications requiring knowledge or skills testing.

605.10(4) This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

This rule is intended to implement 2000 Iowa Acts, House File 2538, section 5.

ITEM 4. Amend rule 761—630.2(321) by adopting the following **new** subrule:

630.2(6) This subrule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

a. The department may waive payment of or refund the fee for a renewal or duplicate of a nonoperator's identification card if:

(1) An error occurs during the issuance process and is discovered by the applicant at the time of issuance. However, the fee shall not be waived or refunded if the error is discovered by department staff and is corrected within the 30-minute time period specified in subparagraph (3).

(2) An error occurs during the issuance process and is discovered during the edit process of updating the identification record, and the error requires the applicant to return to the driver's license station to have the error corrected.

(3) The applicant is required to wait more than 30 minutes to renew a nonoperator's identification card or obtain a duplicate card. This 30-minute time period is determined by using an automated customer numbering system that monitors waiting time.

b. The department shall not waive payment of or refund a fee if the applicant does not have in the applicant's possession at the time of application the previously issued nonoperator's identification card.

c. The department shall not waive payment of or refund fees for new applications.

d. This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

[Filed Emergency After Notice 7/20/00, effective 7/24/00]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0006B

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed Emergency

Pursuant to the authority of 2000 Iowa Acts, Senate File 2428, section 20, the Department of Workforce Development hereby adopts Chapter 13, "New Employment Opportunities Fund," Iowa Administrative Code.

The Workforce Development Board approved this amendment on July 10, 2000.

This chapter implements a program intended to help members of underutilized population groups gain and retain employment. This new program was created by 2000 Iowa Acts, Senate File 2428, section 20.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the immediate need to implement the provisions of this law.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and the rules should be made effective upon filing with the Administrative Rules Coordinator on July 11, 2000, as they confer a benefit upon underutilized population groups.

The Department of Workforce Development adopted this chapter on July 10, 2000.

These rules are also published herein under Notice of Intended Action as **ARC 0005B** to allow for public comment. This emergency filing permits the Department to implement the new provisions of the law.

These rules are intended to implement 2000 Iowa Acts, Senate File 2428, section 20.

These rules became effective July 11, 2000.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

The following **new** chapter is adopted.

CHAPTER 13
NEW EMPLOYMENT OPPORTUNITIES FUND

871—13.1(78GA,SF2428) Purpose. The new employment opportunities program is designed to help individuals in underutilized segments of Iowa's workforce gain and retain employment. The new employment opportunities program complements existing employment and training programs by providing additional flexibility and services that are often needed for underutilized segments of the population to gain and retain employment. Services may include, but are not limited to, transportation, child care, mentoring, assisting businesses with compliance issues related to the Americans with Disabilities Act, or reducing perceived risks that cause segments of the population to be underutilized in the workforce.

871—13.2(78GA,SF2428) Definitions.

"Department" means the department of workforce development.

"Regional workforce investment board" means a regional advisory board as defined in 877—Chapter 6.

"Underutilized segments of Iowa's workforce" means persons with disabilities, ex-offenders, immigrants and refugees, minority youth, dislocated workers, senior workers, seasonal workers, welfare recipients, and low-income individuals. Additional target groups may be identified by a regional workforce investment board based on the region's needs assessment and analysis.

"Workforce development region" means a region of the state designated by the state workforce development board as required by Iowa Code section 84B.2.

871—13.3(78GA,SF2428) Allocation of funds. Funds will be appropriated either by a direct allocation to the regions on a per capita basis, or made available to a limited number of pilot projects. The director of the department will determine the method by which the funds are appropriated.

871—13.4(78GA,SF2428) Projects.

13.4(1) Maximum grant amounts. The maximum grant amount for a project is set at $250,000.

13.4(2) Length of project. A proposed project may be designed for up to 18 months in duration, but must have an ending date no later than June 30 of the state fiscal year following the year funding was awarded.

871—13.5(78GA,SF2428) Pilot projects.

13.5(1) Maximum grant amounts. The maximum grant amount for a pilot project is set at $250,000.

13.5(2) Length of project. A proposed pilot project may be designed for up to 18 months in duration, but must have an ending date no later than June 30 of the state fiscal year following the year funding was awarded.

13.5(3) Eligible recipients. The regional workforce investment board will identify the recipient(s) of funds and program operator. The project must be operated in conjunction with the workforce development center system.

871—13.6(78GA,SF2428) Allowable costs and limitations. The program operator shall distribute new employment opportunities program funds on a voucher basis to address individuals' barriers to obtaining or retaining employment. A maximum of $5,000 in vouchers shall be allowed per individual served.

13.6(1) Allowable training activities and support services. The allowable training activities and support services under this program will be jointly determined by the department and the program operator. To be allowable, training activities and support services must meet needs not covered by existing programs and enhance an individual's ability to obtain and retain employment.

13.6(2) Cost categories. Allowable costs must be consistently charged against the two cost categories of administration and participant support/training.

13.6(3) Cost limitations. Costs of administration may not exceed 10 percent of the budget.

871—13.7(78GA,SF2428) Grant reporting and compliance review. Grantees are required to submit a monthly financial report detailing fund expenditures. Quarterly progress reports shall be submitted to the department detailing progress in accomplishing the goals and objectives of the project. Financial and quarterly progress report forms will be in a format approved by the department.

These rules are intended to implement 2000 Iowa Acts, Senate File 2428, section 20.

[Filed Emergency 7/11/00, effective 7/11/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0041B

CORRECTIONS DEPARTMENT[201]

Adopted and Filed

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby amends Chapter 20, "Institutions Administration," Iowa Administrative Code.

This amendment rescinds rule 20.3(904) and adopts in lieu thereof a new rule that provides for an appeal process for visitors testing positive on an electronic detection device. Language in current rule 20.3(904) authorizing strip searches of visitors is omitted in the new rule. In addition, the new rule addresses who is considered to be an authorized visitor of an offender.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9813A** on May 3, 2000. A public hearing was held on May 23, 2000. Comments centered on training requirements for operators and allowing greater flexibility on the sanctions. Discussion on providing a second test was also presented.

The following changes have been made:

Paragraph 20.3(3)"e" has been revised to include a provision that individuals involved with aiding an escape or introducing contraband will not be allowed to visit.

Paragraph 20.3(3)"j" has been revised to disallow ex-employees and volunteers from visiting only at the facility where they were employed or volunteered.

Subrule 20.3(4) has been revised to state that approved visitors are subject to a search.

Paragraph 20.3(7)"d" has been revised to clarify that visiting privileges may be modified or terminated when a visitor tests positive for drugs or explosives when an electronic detection device is used.

Subrule 20.3(11) has been revised to provide visitors a second confirmation test.

Paragraph 20.3(11)"a" has been revised to clarify that all testing records will remain confidential and will be released only when ordered by a court of proper jurisdiction.

Paragraph 20.3(11)"d" has been added to specify the training requirements of operators of the electronic detection devices.

Subrule 20.3(12) has been added to include the sanctions on visitors for testing positive on or refusing to submit to testing by an electronic detection device. Changes to this subrule also provide the warden/superintendent the discretion/flexibility to allow noncontact visiting status for visitors testing positive pending the results of their appeal. The changes to this subrule also specify that all visitors will be presented with or mailed notice regarding their visiting status or facility access when testing positive on an electronic detection device. Subrules 20.3(12) to 20.3(14) have been renumbered as 20.3(13) to 20.3(15).

Subrule 20.3(13) has been revised to clarify that only money orders/cashier's checks will be accepted for deposit in the offender's account.

In addition to the changes described above, technical corrections in wording have been made. No other changes were made to the Notice of Intended Action.

The Board of Corrections adopted this amendment on July 7, 2000.

This amendment will become effective September 13, 2000.

This amendment is intended to implement Iowa Code section 904.512.

The following amendment is adopted.

Rescind rule 201—20.3(904) and adopt the following **new** rule in lieu thereof:

201—20.3(904) Visits to offenders. Visiting is a privilege which allows offenders to maintain and strengthen relationships with family members and friends. Though visits are encouraged, institutions' space, schedule, personnel constraints, treatment considerations, or other safety and security issues of the institutions and their operations may result in limiting the number and length of visits.

20.3(1) Definitions.

"Application" means a written application identifying the visitor and the visitor's relationship to the offender.

"Background investigation" means security staff may verify the accuracy of a visitor's application for any reason.

"Immediate family" means an offender's spouse, mother, father, sister, brother, child, grandparent, established legal guardian or other who acted in place of parents, and step- or half-relation if the step- or half-relation and the offender were raised as cohabitating siblings.

"Personal search" means a pat-down search on top of the visitor's clothes or a nonintrusive use of an electronic search process.

"Visiting list" means the screened list of approved visitors with authorized visiting privileges at all department of corrections institutions.

20.3(2) Authorized visitors. Each institution will establish an approved visiting list for each offender. This visiting list remains valid when the offender is transferred to another institution. To meet facility design limitations and security considerations, the visiting list shall be limited to immediate family members and two other visitors.

a. Immediate family members. The offender's immediate family members may be included on the list without a background investigation unless one is required for security purposes.

b. Two other visitors. The offender's relatives other than immediate family may be included on the list and allowed to visit if visiting space is available. Relatives of the offender other than immediate family may be subject to a background investigation. Friends of the offender may be included on the list. All friends of the offender will be subject to a background investigation conducted by law enforcement officials.

c. Limitations. An individual on the approved visiting list of one offender shall not be on the approved visiting list of another offender unless approved by the warden/superintendent or designee of each affected institution, jurisdiction, or sovereign. The warden/superintendent or designee may make exceptions only for a visitor who is an immediate family member of more than one offender.

A person working in any institution as a volunteer shall not be on an offender's visiting list, except with the permission of the warden/superintendent or designee.

20.3(3) Nonauthorized visitors. The following persons shall not be authorized to visit without prior approval of the warden/superintendent or designee:

a. Individuals discharged from a correctional institution, from parole or from probation within the last 18 months. Noncontact visiting may be authorized for an offender's spouse or child who has been discharged from a correctional institution, from parole or from probation within the last 18 months.

b. Individuals whose behavior represents a control problem or is counterproductive to stable offender behavior. This

may be reflected in the background investigation report which shows that the individual has a record of carrying concealed weapons, use of a controlled substance, previous violation of institutional rules, or similar behavior.

c. Individuals under criminal indictment.

d. Individuals on probation, work release, or parole.

e. Individuals found to be involved with or convicted of incidents of aiding an escape or introducing contraband in any detention or supervised correctional setting.

f. Individuals who intentionally give false information on the visitor's application form.

g. Individuals convicted of a felony.

h. Persons who may compromise the order and security of the institution.

i. Current and former employees, volunteers or ex-volunteers, and individuals who currently are providing, or have previously provided, contract services to the department of corrections or a judicial district.

j. Former department of corrections employees of this or other federal, state, or local jurisdiction or volunteers who have left employment voluntarily or been terminated as a result of accusation or investigation for misconduct shall not be allowed to visit at the facility where they were employed or volunteered.

k. Neither a victim of a sex offense, whether registered or not, nor the victim's family members will be approved for the visiting list of the perpetrator in the victim's case.

20.3(4) Written notification. Written notification of denial will be given to both the offender and the applicant within 30 days from application to be on a visiting list. Notification of approval will be given only to the offender. The offender is responsible for notifying the approved visitor.

a. When approved, visitors will be subject to the following conditions:

(1) Visitors are subject to a search;

(2) The search may include a pat down, search by an electronic detection device, or visual search.

b. When an application is denied, the applicant and the offender shall be apprised of the reasons for denial.

(1) Applicants may appeal to the warden/superintendent or designee in writing.

(2) The decision of the warden/superintendent or designee may be appealed to the director of the department of corrections or the director's designee. The decision of the director or the director's designee constitutes final agency action.

20.3(5) Identification. All visitors shall present proper identification upon entrance to the institution. Photo identification is preferred, but all identification shall identify personal characteristics, such as color of hair and eyes, height, weight, and birth date.

a. Signature cards may be required from visitors.

b. All visitors may be required to be photographed for future identification purposes only.

20.3(6) Special visitors. Attorneys, division of criminal investigation agents, Federal Bureau of Investigation agents, law enforcement officials, and ministers shall present proof of identity upon entrance to the institution. The offender must express a desire to visit a minister or attorney before the minister or attorney will be admitted. Attorney and minister visits shall be during normal visiting hours unless a special visit has been requested by the offender and approved by the warden/superintendent or designee prior to the visit.

An attorney or minister testing positive by an electronic detection device may be required to visit without direct contact.

20.3(7) Termination of visits. Individuals may have visiting privileges modified or terminated when:

a. The offender or visitor engages in behavior that may in any way be disruptive to order and control of the institution.

b. The visitor or offender fails to follow the established rules and procedures of the institution.

c. The visitor and offender directly exchange or attempt to exchange any object or article. This does not apply to purchases from the canteen or visiting room vending machines that are consumed during the visit.

d. The visitor tests positive for drugs or explosives using an authorized electronic detection device calibrated and operated for testing for the presence of drugs or other contraband.

e. The visit or future visiting is detrimental to the health or welfare of the offender or visitor.

f. The visitor does not supervise the visitor's children to prevent them from interfering with or disrupting other visits.

Offenders may request reconsideration of denied visitors six months after resolution of the reason for denial or when approved by the warden/superintendent or regional deputy director.

20.3(8) Noncontact visiting. The warden/superintendent or designee may allow noncontact visits when the order or security of the institution may be threatened or when disciplinary rules or procedures have been violated. Noncontact visiting hours will be provided on a scheduled basis. The hours and days will be posted by the warden/superintendent or designee, and notice will be posted at least one week prior to any change. Visitors on the noncontact list at the time of a schedule change will be notified of the schedule change by regular mail sent to the last-known address.

20.3(9) Minors. Minors outside the offender's immediate family shall have written permission from a parent or guardian and be accompanied by an adult on the approved visiting list. All minors shall have adult supervision. Exceptions shall have prior approval of the warden/superintendent or designee.

20.3(10) Clothing. Visitors shall be properly attired prior to entering a correctional setting. All visitors shall wear shoes. Visitors wearing miniskirts, shorts, muscle shirts, see-through clothing or halter tops will not be allowed to visit. Visitors wearing clothing with slogans, pictures, or words intended to deprecate race, sex, or cultural values will not be allowed entry. Visitors may be required to remove for the duration of the visit outerwear such as, but not limited to, coats, hats, gloves, or sunglasses. A medical need for sunglasses must be verified by prescription.

20.3(11) Security procedures. Visitors may be requested to submit to a personal search (pat down) or an electronic search for weapons or contraband. "Personal search" means a pat-down search on top of the visitor's clothes or a nonintrusive use of an electronic search process. If the initial electronic test confirms the presence of a controlled substance, the visitor will be given a second confirmation test. When the electronic detection device alarm is activated, the visitor shall produce the item that set off the alarm or a personal search may be made to find the item. If the visitor refuses to submit to a search, access to visiting shall be denied and entrance shall be denied. All searches shall be conducted in a courteous manner to respect the visitor's privacy. Minors are subject to personal and electronic searches. When a visitor accompanied by a minor refuses to leave the minor with a staff person and does not want the minor present during the

search, the visit will be denied. When a minor is searched, the supervising adult shall be present in the room at all times.

a. The warden/superintendent or designee will maintain records of all searches which produce positive results including the name of each person subjected to a search, the names of the persons conducting and in attendance at the search, and the time, date, and place of the search. The written record shall reflect the reason for the search and the results of the search. The written authorization for the search shall be included in the record. Testing records will be maintained by the institution for one year and then expunged. Records of positive tests will be maintained for five years and then expunged. All testing records are confidential and will be released only when ordered by a court of proper jurisdiction.

b. When a visitor tests positive by an electronic search device, the visitor may appeal to the warden/superintendent or designee in writing. The decision of the warden/superintendent or designee may be appealed to the director of the department of corrections or the director's designee. The decision of the director or the director's designee constitutes final agency action.

c. Staff may request that local law enforcement search visitors if search procedures or an electronic testing device shows that there is a clear, reliable reason to believe a particular visitor is attempting to smuggle contraband into the facility. If the search reveals drugs or illegal contraband, the item shall be confiscated and preserved by local law enforcement. Visitors found in possession of contraband shall be referred by local law enforcement to the county attorney for prosecution.

d. Facilities will establish procedures for personnel selection and training of search personnel. Operators will be trained in accordance with manufacturer's standards, which require 16 hours of initial certification and 4 hours of annual training thereafter. Each facility will have at least two certified trainers of trainers.

20.3(12) Sanctions. Visitors testing positive or refusing to be tested by an electronic detection device will be restricted.

a. Testing positive. The following restrictions will apply to visitors testing positive:

(1) First occurrence. Visiting privileges will be suspended from the date and time of the test for the next 2 visiting days. Future visits may be restricted to noncontact status.

(2) Second occurrence. Visiting privileges will be suspended from the date and time of the test for the next 7 visiting days. Future visits may be restricted to noncontact status.

(3) Third occurrence. Visiting privileges will be suspended from the date and time of the test for the next 15 visiting days. Future visits may be restricted to noncontact status.

(4) Fourth occurrence. Visiting privileges will be suspended from the date and time of the test for the next 30 visiting days. In addition, the visitor will be placed on noncontact visiting status for 180 days from the date of the first eligible visit. If the visitor tests positive from this date forward, visiting privileges may be permanently restricted to noncontact status.

Upon request by the visitor, the warden/superintendent or designee may allow visits in noncontact status for the first, second, and third occurrence pending the receipt of laboratory reports for any visitor testing positive by an electronic detection device.

b. Refusing to be tested. Refusal to submit to a drug test by an electronic testing device will result in suspension of visiting privileges for 15 calendar days from the time of refusal.

Written notice regarding visiting status or facility access will be presented or mailed within 5 working days to any individual (nonoffenders) testing positive or who refuses consent to search. Such notice will include the duration of any restriction and procedures for reconsideration or reinstatement.

20.3(13) Money orders/cashier's checks. Money orders/cashier's checks for deposit in the offender's account may be left at the cashier's office during business hours or in accordance with rule 20.5(904) or as designated by the warden/superintendent or designee. Money orders/cashier's checks must be made payable to the warden/superintendent and must include the offender's name and ID number. Suspected abuse of money requests from the public by an offender may be cause for limits or restrictions on the amounts of money which can be received and from whom money can be received.

20.3(14) Limits. Each institution, according to its facilities and conditions, shall limit the number of visitors an offender may have at any one time and the length of visits.

20.3(15) Segregation status. Offenders in segregation status may have visits modified in regard to place, time, and visitor, depending on the staff and space available.

20.3(16) Abuse of visiting privileges. Visiting privileges may be modified, suspended, or terminated when abuses are evidenced or planned.

20.3(17) Special visits. The warden/superintendent or designee may permit special visits not otherwise provided for in this rule. These may include, but are not limited to, extended visits for close family members traveling extended distances, immediate visits for close relatives or friends about to leave the area, visits necessary to straighten out critical personal affairs, and other visits for similar reasons. All these visits shall be at the sole discretion of the warden/superintendent or designee. When ruling on such visits, the warden/superintendent or designee shall consider appropriate factors including the uniqueness of the circumstances involved for both the offender and the visitor; security, order, and administrative needs of the institution; and available alternatives to a special visit. The decision of the warden/superintendent or designee in these cases constitutes final agency action.

20.3(18) Temporary modifications. Visiting procedures may be temporarily modified or suspended in the following circumstances: riot, disturbance, fire, labor dispute, space restrictions, natural disaster, or other emergency.

This rule is intended to implement Iowa Code section 904.512.

[Filed 7/21/00, effective 9/13/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0037B

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 27, "Principles of Professional Ethics," Iowa Administrative Code.

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

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

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9818A**. A public hearing on the amendments was held on June 6, 2000. No one attended the hearing and no written comments on the amendments were received. The amendments are identical to those published under Notice.

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

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

These amendments will become effective September 13, 2000.

The following amendments are adopted.

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

CHAPTER 27
STANDARDS OF PRACTICE AND
PRINCIPLES OF PROFESSIONAL ETHICS

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

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

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

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

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

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

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

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

a. Personal data.

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

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

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

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

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

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

(2) Plan of intended treatment and treatment sequence;

(3) Services rendered and any treatment complications;

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

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

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

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

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

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

27.11(4) Correction of records. Notations shall be legible, written in ink, and contain no erasures or white-outs. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by a dental health care worker.

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

DENTAL EXAMINERS BOARD[650](cont'd)

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

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

[Filed 7/21/00, effective 9/13/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0027B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of 2000 Iowa Acts, Senate File 2193, section 7, subsection 2, and section 21, the Department of Elder Affairs hereby adopts Chapter 28, "Iowa Senior Living Program—Home- and Community-Based Services for Seniors," Iowa Administrative Code.

These rules were simultaneously Adopted and Filed Emergency as **ARC 9864A** and published under Notice of Intended Action as **ARC 9884A** in the June 14, 2000, Iowa Administrative Bulletin. Based on comments received and direction from the Administrative Rules Review Committee, rule 28.6(78GA,SF2193) has been changed so that legal services providers will be exempted from reporting specific information related to the reports, so as to protect the identity of a client as provided for in an attorney-client privilege.

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, the Iowa Senior Living Program Act. The goal of the Iowa Senior Living Program Act is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and noninstitutionally provided services, and contributes to the quality of the lives of Iowans.

Funds are available from the Iowa Senior Living Trust Fund to the Area Agencies on Aging and subcontracting long-term care providers for designing and expanding home- and community-based services to low- and moderate-income seniors to promote independence and delay the use of institutional care. These rules set procedure for disbursement of the funds to the Area Agencies on Aging and their subcontractors for state fiscal year (SFY) 2001 and call for incorporation of the disbursement of funds for subsequent state fiscal years into the existing procedure for disbursement of other senior service funds. Allowable and priority uses for the funds and reporting requirements for the Area Agencies on Aging and their subcontractors and the department are established.

These rules do not provide for any waivers in specific situations because disbursement of the trust fund will confer a benefit on providers and consumers. Participation by long-term care providers is voluntary.

In compliance with Iowa Code section 17A.4(2), the Department of Elder Affairs has consulted with an advisory group consisting of providers, consumers and other members of the public regarding these rules.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 7, 9, and 10.

These rules will become effective September 13, 2000, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 28] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 9884A** and Adopted and Filed Emergency as **ARC 9864A**, IAB 6/14/00.

[Filed 7/20/00, effective 9/13/00]
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[For replacement pages for IAC, see IAC Supplement 8/9/00.]

ARC 0018B

EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Emergency Management Division amends Chapter 1, "Organization," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9828A**. The Division held a public hearing on June 12, 2000, at which time no comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the Emergency Management Division on June 23, 2000.

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

These amendments will become effective September 13, 2000.

The following amendments are adopted.

Amend 605—Chapter 1 as follows:

CHAPTER 1
ORGANIZATION

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

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

1.1(2) Administrator. The emergency management division shall be under the management of an administrator appointed by the governor. The administrator shall be vested with the authority to administer emergency management affairs in this state and shall be responsible for preparing and executing the emergency management programs of this state subject to the direction of the adjutant general. The adminis-

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

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

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

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

"Comprehensive countywide emergency operations plan" means documents which describe the actions to be taken *to lessen the effects of, prepare for, respond to and recover from* ~~in the event of an extraordinary emergency~~ *a disaster* by county and city ~~government resources~~ *governments*, quasi-government agencies, and private organizations which have ~~countywide~~ emergency operations ~~capabilities~~ *responsibility*. The plan is multihazard in scope (covers ~~a variety of disasters~~) *all hazards for the county)* and provides for *a* coordinated ~~response~~ *effort*. It references authority, assigns functional responsibilities, provides for direction and control, and the effective use of resources.

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

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

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

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

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

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

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

"Local commission" means the local emergency management commission.

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

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

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

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

ance payments, disaster loans and grants, disaster unemployment assistance, public information, *community outreach,* temporary housing, and reconstruction.

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

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

[Filed 7/18/00, effective 9/13/00]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0020B

EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Emergency Management Division rescinds Chapter 2, "Petitions for Rule Making," and adopts a new Chapter 2 with the same title; rescinds Chapter 3, "Declaratory Rulings," and adopts a new Chapter 3, "Declaratory Orders"; rescinds Chapter 4, "Agency Procedure for Rule Making," and adopts a new Chapter 4 with the same title; rescinds Chapter 5, "Public Records and Fair Information Practices," and adopts a new Chapter 5, "Fair Information Practices"; rescinds Chapter 6, "Iowa Emergency Plan," and adopts a new Chapter 6, "Contested Cases"; and adopts a new Chapter 9, "Iowa Emergency Plan," Iowa Administrative Code.

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

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9827A**. The Division held a public hearing on June 12, 2000, at which time no comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the Emergency Management Division on June 23, 2000.

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

These amendments will become effective September 13, 2000.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 2 to 6, 9] is being omitted. These rules are identical to those published under Notice as **ARC 9827A**, IAB 5/17/00.

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ARC 0019B

EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Emergency Management Division hereby rescinds Chapter 7, "Local Emergency Management," Iowa Administrative Code, and adopts a new Chapter 7 with the same title.

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

These rules were previously Adopted and Filed Emergency and published in the May 17, 2000, Iowa Administrative Bulletin as **ARC 9824A**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9826A**.

These rules have been revised based on public comment to define the terms "shall" and "should" as they are used in these rules, and to clarify the duties and responsibilities of local or joint emergency management commissions and local emergency management coordinators.

The Emergency Management Division adopted these rules on June 23, 2000.

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

These rules shall become effective September 13, 2000, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendment is adopted.

Rescind 605—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
LOCAL EMERGENCY MANAGEMENT

605—7.1(29C) Scope and purpose. These rules apply to each local emergency management commission as provided for in Iowa Code section 29C.9. These rules are intended to establish standards for emergency management and to pro-

vide local emergency management commissions with the criteria to assess and measure their capability to mitigate against, prepare for, respond to, and recover from emergencies or disasters.

605—7.2(29C) Definitions. For purposes of this chapter, the following definitions will apply:

"Shall" indicates a mandatory requirement.

"Should" indicates a recommendation or that which is advised but not required.

605—7.3(29C) Local emergency management commission.

7.3(1) The county board of supervisors, city councils, and school district boards of directors in each county shall cooperate with the emergency management division to establish a local emergency management commission to carry out the provisions of Iowa Code chapter 29C.

a. The local commission shall be named the (county name) county emergency management commission.

b. The commission shall be comprised of the following members:

(1) A member of the county board of supervisors or its appointed representative.

(2) The county sheriff or the sheriff's appointed representative.

(3) The mayor or the mayor's appointed representative from each city within the county.

c. The commission is a municipality as defined in Iowa Code section 670.1.

7.3(2) Local commission bylaws. The commission shall develop bylaws to specify, at a minimum, the following information:

a. The name of the commission.

b. The list of members.

c. The date for the commencement of operations.

d. The commission's mission.

e. The commission's powers and duties.

f. The manner for financing the commission and its activities and maintaining a budget therefor.

g. The manner for acquiring, holding and disposing of property.

h. The manner for electing or appointing officers and the terms of office.

i. The manner by which members may vote.

j. The manner for appointing, hiring, disciplining and terminating employees.

k. The rules for conducting meetings of the commission.

l. Any other necessary and proper rules or procedures.

The bylaws, as adopted, shall be signed by each member of the commission. The commission shall record the signed bylaws with the county recorder and shall forward a copy of the bylaws to the administrator of the state emergency management division.

7.3(3) Commission business. Commission business shall be conducted in compliance with Iowa Code chapter 21, "Official Meetings Open to Public," and Iowa Code chapter 22, "Examination of Public Records."

7.3(4) The commission shall have the following minimum duties and responsibilities:

a. Administration and finance.

(1) Establish and maintain an agency responsible for the local emergency management program. The primary responsibility of this agency is to develop and maintain a comprehensive emergency management capability in cooperation with other governmental agencies, volunteer organizations, and private sector organizations. The name of this agency shall be the (county name) county emergency management agency.

(2) Determine the mission of the agency and its program.

(3) Develop and adopt a budget in accordance with the provisions of Iowa Code chapter 24 and Iowa Code section 29C.17 in support of the commission and its programs. The commission shall be the fiscal authority and the chairperson or vice chairperson shall be the certifying official for the budget.

(4) Appoint an emergency management coordinator who meets the qualifications established in subrule 7.4(3).

(5) Develop and adopt policies defining the rights and liabilities of commission employees, emergency workers and volunteers.

(6) Provide direction for the delivery of the emergency management services of planning, administration, coordination, training, exercising, and support for local governments and their departments.

(7) Coordinate emergency management activities and services among county and city governments and the private sector agencies within the county.

b. Hazard identification, risk assessment, and capability assessment.

(1) The commission should continually identify credible hazards that may affect their jurisdiction, the likelihood of occurrence, and the vulnerability of the jurisdiction to such hazards. Hazards to be considered should include natural, technological, and human-caused.

(2) The commission should conduct an analysis to determine the consequences and impact of identified hazards on the health and safety of the public, the health and safety of responders, property and infrastructure, critical and essential facilities, public services, the environment, the economy of the jurisdiction, and government operations and obligations.

(3) The hazard analysis should include identification of vital personnel, systems, operations, equipment, and facilities at risk.

(4) The commission should identify mitigation and preparedness considerations based upon the hazard analysis.

(5) A comprehensive assessment of the emergency management program elements should be conducted periodically to determine the operational capability and readiness of the jurisdiction to address the identified hazards and risks.

c. Resource management.

(1) The commission should develop a method to effectively identify, acquire, distribute, account for, and utilize resources essential to emergency functions.

(2) The commission shall utilize, to the maximum extent practicable, the services, equipment, supplies and facilities of the political subdivisions that are members of the commission.

(3) The commission should identify resource shortfalls and develop the steps and procedures necessary to overcome such shortfalls.

(4) The commission shall, in collaboration with other public and private agencies within this state, develop written mutual aid agreements. Such agreements shall provide reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with by the jurisdiction unassisted. Mutual aid agreements shall be in compliance with the appropriate requirements contained in Iowa Code chapter 28E.

d. Planning.

(1) The commission shall develop comprehensive countywide emergency operations plans which are multihazard and multifunctional in nature and which shall include, but

not be limited to, a part "A" operations plan, part "B" mitigation plan, and part "C" recovery plan that may be contained in a single document or multiple documents.

1. An operations plan assigns responsibilities to organizations and individuals for carrying out specific actions at projected times and places in an emergency or disaster.

2. The mitigation plan shall establish interim and long-term strategies to eliminate hazards or to reduce the impact of those hazards that cannot be eliminated. This requirement notwithstanding, to qualify for federal funding for mitigation assistance the eligible applicant must comply with the mitigation planning requirements set forth in 44 CFR 206, Subpart M, and the Iowa Hazard Mitigation Grant Program Administrative Plan, as appropriate.

3. A recovery plan shall identify the short-term and long-term strategic priorities, processes, vital resources, and acceptable time frames and procedures for restoration.

(2) Plans shall contain the following common elements.

1. The functional roles and responsibilities of internal and external agencies, organizations, departments, and individuals during mitigation, preparedness, response and recovery shall be identified.

2. Lines of authority for those agencies, organizations, departments, and individuals shall be established and identified.

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with schedules established by the commission, to include at a minimum:

1. A complete review, and amendment as appropriate, of the operations plan at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion of the plan shall be conducted on a yearly basis.

2. A complete review, and amendment as appropriate, of the mitigation plan at a minimum of every five years and in conjunction with any presidentially declared disaster for which mitigation assistance is requested.

3. A complete review, and amendment as appropriate, of the recovery plan at a minimum of every five years and in conjunction with any presidentially declared disaster for which individual or public assistance is requested.

(4) In addition to the standards heretofore established in subrule 7.3(4), paragraph "d," the operations plan shall include provisions for damage assessment.

(5) Hazardous materials plans shall meet the minimum requirements of federal law, 42 U.S.C., Sec. 11003.

(6) Counties designated as risk or host counties for a nuclear facility emergency planning zone shall meet the standards and requirements as published by the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency, in NUREG-0654, FEMA-REP-1, Rev.1, March 1987.

(7) Required plans, submitted for approval to the division by a local or joint emergency management commission, shall be reviewed within 60 calendar days from the receipt of the plan. The division shall notify the local emergency management coordinator in writing of the approval or nonapproval of the plan. If the plan is not approved, the division shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(8) A comprehensive countywide emergency operations plan shall not be considered approved by the emergency management division as required in Iowa Code subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in subrule 7.3(4), paragraph "d."

(9) Iowa Code section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the local government's having on file a state-approved, comprehensive, countywide plan as provided in Iowa Code subsection 29C.9(8). Required plans must be received and approved by the division by the time the first public or private, nonprofit entity within the county otherwise becomes eligible to receive state assistance or within one year from the date of presidential declaration, whichever is earlier.

e. Direction, control and coordination.

(1) The commission shall execute and enforce the orders or rules made by the governor, or under the governor's authority.

(2) The commission shall establish and maintain the capability to effectively direct, control and coordinate emergency and disaster response and recovery efforts.

(3) The commission shall establish a means of interfacing on-scene management with direction and control personnel and facilities.

(4) The commission should actively support use of the Incident Command System (ICS) model by all emergency and disaster response agencies within the jurisdiction.

f. Damage assessment.

(1) The commission shall develop and maintain a damage assessment capability consistent with local, state and federal requirements and shall designate individuals responsible for the function of damage assessment.

(2) Individuals identified by the commission to perform the function of damage assessment shall be trained through a course of instruction approved by the division.

g. Communications and warning.

(1) The commission should identify a means of disseminating a warning to the public, key officials, emergency response personnel and those other persons within the jurisdiction that may be potentially affected.

(2) The commission should identify the primary and secondary means of communications to support direction, control, and coordination of emergency management activities.

h. Operations and procedures. The commission should encourage public and private agencies, having defined responsibilities in the countywide emergency operations plan, to develop standard operating procedures, policies, and directives in support of the plan.

i. Training.

(1) The commission shall require the local emergency management coordinator to meet the minimum training requirements as established by the division and identified in subrule 7.4(4).

(2) The commission should, in conjunction with the local emergency management coordinator, arrange for and actively support ongoing emergency management related training for local public officials, emergency responders, volunteers, and support staff.

(3) Persons responsible for emergency plan development or implementation should receive training specific to, or related to, hazards identified in the local hazard analysis.

(4) The commission should encourage individuals, other than the emergency management coordinator, with emergency management responsibilities as defined in the countywide emergency operations plan, to complete, within two years of appointment, training consistent with their emergency management responsibilities.

(5) The commission should encourage all individuals with emergency management responsibilities to maintain current and adequate training consistent with their responsibilities.

j. Exercises.

(1) The commission shall ensure that exercise activities are conducted annually in accordance with local, state and federal requirements.

(2) Exercise activities should follow a progressive five-year plan that is designed to meet the needs of the jurisdiction.

(3) Local entities assigned to an exercise should actively participate and support the role of the entity in the exercise.

(4) Local entities assigned to an exercise should actively participate in the design, development, implementation, and evaluation of the exercise activity.

k. Public education and information.

(1) The commission should designate the individual or individuals who are responsible for public education and information functions.

(2) The commission should ensure a public information capability, to include:

1. Designated public information personnel trained to meet local requirements.

2. A system of receiving and disseminating emergency public information.

3. A method to develop, coordinate, and authorize the release of information.

4. The capability to communicate with special needs populations.

(3) The commission should actively support the development of capabilities to electronically collect, compile, report, receive, and transmit emergency public information.

7.3(5) Two or more commissions. Two or more local commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors and cities, enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

605—7.4(29C) Emergency management coordinator.

7.4(1) Each county emergency management commission or joint commission shall appoint an emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission's and coordinator's duties as provided in Iowa Code sections 29C.9 and 29C.10, as further described in subrule 7.3(4), and as otherwise assigned and authorized by the commission.

7.4(2) Political activity.

a. A member of a local or joint commission shall not be appointed as the emergency management coordinator.

b. An individual serving in a full-time or part-time governmental position incompatible with the position of coordinator shall not be appointed as the emergency management coordinator.

c. Any employee of an organization for emergency management shall not become a candidate for any partisan elective office. However, the employee is not precluded from holding any nonpartisan elective office for which no pay or only token payment is received.

7.4(3) Emergency management coordinator qualifications. Each person appointed after July 1, 1990, as an emergency management coordinator shall meet the following requirements with regard to education, abilities, experience, knowledge and skills:

a. Demonstrate a knowledge of local, state, and federal laws and regulations pertaining to emergency management.

b. Demonstrate an understanding of communications systems, frequencies, and equipment capabilities.

c. Demonstrate a knowledge of basic accounting principles and practices.

d. Express oneself clearly and concisely, both orally and in writing.

e. Establish and maintain effective working relationships with employees, public officials, and the general public.

f. Prepare accurate reports.

g. Write plans, direct the use of resources, and coordinate emergency operations under extraordinary circumstances.

h. Exercise good judgment in evaluating situations and making decisions.

i. Coordinate with agencies at all levels of government.

j. Have graduated from an accredited four-year college or university and have two years of responsible experience in emergency management, public or business administration, public relations, military preparedness or related work; or have an equivalent combination of experience and education, substituting 30 semester hours of graduate study for each year of the required work experience to a maximum of two years; or have an equivalent combination of experience and education, substituting one year of experience in the aforementioned areas for each year of college to a maximum of four years; or be an employee with current continuous experience in the state classified service that includes the equivalent of 18 months of full-time experience as an emergency management operations officer; or be an employee with current continuous experience in the state classified service that includes the equivalent of 36 months of full-time experience as a local emergency management assistant.

7.4(4) Emergency management coordinator continuing education requirements. Each local coordinator shall meet the following educational development requirements. The administrator may extend the time frame for meeting these continuing education requirements upon request from the local or joint commission.

a. By July 1, 2002, or within five years of appointment as an emergency management coordinator, whichever is later, completion of the following independent study courses:

(1) Citizens Guide to Disaster Assistance.

(2) Emergency Operations Center Role in Community Preparedness Response and Recovery Operations.

(3) Emergency Program Manager: An Orientation to the Position.

(4) Emergency Preparedness U.S.A.

(5) Hazardous Materials: A Citizen's Guide.

(6) An Orientation to Community Disaster Exercise.

(7) The Professional in Emergency Management.

(8) Radiological Emergency Management.

(9) Introduction to Hazard Mitigation.

(10) Basic Incident Command System.

b. By July 1, 2002, or within five years of appointment as an emergency management coordinator, whichever is later, completion of the professional development series of courses as prescribed by the Federal Emergency Management Agency.

c. Upon completion of the requirements established in subrule 7.4(4), paragraphs "a" and "b," annual completion of

a minimum of 24 hours of state-approved emergency management training.

d. The local emergency management coordinator must document completion of courses by submitting a copy of the certificate of completion, a letter indicating satisfactory completion, or other appropriate documentation.

605—7.5(29C) Local commission or joint commission personnel.

7.5(1) Personnel for the local commission or joint commission shall be considered as employees of that local commission to include the coordinator, operations officers, and emergency management assistants.

7.5(2) The local or joint commission shall determine the personnel policies of the agency to include holidays, rate of pay, sick leave, vacation, and health benefits. The local commission may adopt existing county or city policies in lieu of writing their own policies.

605—7.6(29C) Damage assessment and financial assistance for disaster recovery. Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the emergency management division prior to the governor's making a determination that the magnitude and impact are sufficient to warrant a request for a presidential disaster declaration.

7.6(1) Local preliminary damage assessment and impact statement. The county emergency management coordinator shall be responsible for the coordination and collection of damage assessment and impact statement information immediately following a disaster that affects the county or any municipality within the county.

7.6(2) Damage assessment guidance and forms to be provided. The state emergency management division will provide guidance regarding the methodologies to be used in collecting damage assessment and impact statement information and shall provide the forms and format by which this information shall be recorded.

7.6(3) Joint preliminary damage assessment. Once the governor has determined that a request for a presidential disaster declaration is appropriate, joint preliminary damage assessment teams, consisting of local, state, and federal inspectors, will assess the uninsured damages and costs incurred or to be incurred in responding to and recovering from the disaster. All affected city, municipality, or county governments shall be required to provide assistance to the joint preliminary damage assessment teams for conducting damage assessments. The jurisdiction may be required to develop maps to show the damaged areas and to compile lists of names and telephone numbers of individuals, businesses, private nonprofit entities, and governmental agencies sustaining disaster response and recovery costs or damages. This joint preliminary damage assessment may be required before the request for presidential declaration is formally transmitted to the Federal Emergency Management Agency.

7.6(4) Public assistance and hazard mitigation briefing. In the event that a presidential disaster declaration is received, affected jurisdictions and eligible private nonprofit entities should be prepared to attend a public assistance and hazard mitigation briefing to acquire the information and documents necessary to make their formal applications for public and hazard mitigation assistance. Failure to comply with the deadlines for making application for public and mitigation assistance as established in 44 CFR Part 206 and the Stafford Act (PL 923-288) may jeopardize or eliminate the jurisdiction's or private nonprofit entity's ability to receive assistance.

7.6(5) Forfeiture of assistance funding. Failure to provide timely and accurate damage assessment and impact statement information may jeopardize or eliminate an applicant's ability to receive federal and state disaster assistance funds that may otherwise be available.

State participation in funding of disaster financial assistance in a presidentially declared disaster shall be contingent upon the local or joint emergency management commission's having on file a state-approved, comprehensive, countywide emergency operations plan which meets the standards as provided in subrule 7.3(4), paragraph "d."

605—7.7(29C) Emergency management performance grant program. Emergency management is a joint responsibility of the federal government, the states, and their political subdivisions. Emergency management means all those activities and measures designed or undertaken to mitigate against, prepare for, respond to, or recover from the effects of a human-caused, technological, or natural hazard. The purpose of the emergency management performance grant program is to provide the necessary assistance to local governments to ensure that a comprehensive emergency preparedness system exists for all hazards.

7.7(1) Eligibility. Local or joint emergency management commissions may be eligible for funding under the state and emergency management performance grant program by meeting the requirements, conditions, duties and responsibilities for emergency management commissions and county emergency management coordinators established in subrules 7.3(29C) and 7.4(29C). In addition, the local commission shall ensure that the coordinator works an average of 20 hours per week or more toward the emergency management effort. Joint commissions shall ensure that the coordinator works an average of 40 hours per week toward the emergency management effort.

7.7(2) Application for funding. Local or joint commissions may apply for funding under the emergency management performance grant program by entering into an agreement with the division and by completing the necessary application and forms, as published and distributed yearly to each commission by the division.

7.7(3) Allocation and distribution of funds. The emergency management division shall allocate funds to eligible local or joint commissions within 45 days of receipt of notice from the Federal Emergency Management Agency that such funds are available. The division shall use a formula for the allocation of funds based upon the number of eligible applicants, the coordinator's salary and benefits and an equal distribution of remaining funds, not to exceed an individual applicant's request. Funds will be reimbursed to local and joint commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the local or joint commission's allocation. In no case will the allocation or reimbursement of funds be greater than one-half of the total cost of eligible emergency management related expenses.

7.7(4) Compliance. The administrator may withhold or recover emergency management performance grant funds from any local or joint commission for its failure or its coordinator's failure to meet any of the following conditions:

a. Appoint a qualified coordinator.

b. Comply with continuing education requirements.

c. Adopt a comprehensive countywide emergency operations plan that meets current standards.

d. Determine the mission of its agency.

e. Show continuing progress in fulfilling the commission's duties and obligations.

f. Conduct commission business according to the guidelines and rules established in this chapter.

g. Enter into and file a cooperative agreement with the division by the stipulated filing date.

h. Abide by state and federal regulations governing the proper disbursement and accountability for federal funds, equal employment opportunity and merit system standards.

i. Accomplish work specified in one or more program areas, as agreed upon in the cooperative agreement, or applicable state or federal rule or statute.

j. Provide the required matching financial contribution.

k. Expend funds for authorized purposes or in accordance with applicable laws, regulations, terms and conditions.

l. Respond to, or cooperate with, state efforts to determine the extent and nature of compliance with the cooperative agreement.

7.7(5) Serious nonperformance problems. If a local or joint commission cannot demonstrate achievement of agreed-upon work products, the division is empowered to withhold reimbursement or to recover funds from the local or joint commission. Corrective action procedures are designed to focus the commission's attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the administrator becomes aware of present or future serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local agency or commission, from indications in the commission's or coordinator's quarterly reports that indicate a significant shortfall from planned accomplishments, or from the commission's or coordinator's failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

7.7(6) Corrective actions.

a. Informal corrective action. As a first and basic step to correcting nonperformance, a designated member of the state emergency management division staff will visit, call or write the local coordinator to determine the reason for nonperformance and seek an agreeable resolution.

b. Formal corrective action. On those occasions when there is considerable discrepancy between agreed-upon and actual performance and response to informal corrective action is not sufficient or agreeable, the division will take the following steps:

(1) Emergency management staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the local or joint commission.

(2) The administrator will prepare a letter to the local or joint commission which will contain, at a minimum, the following information:

1. The reasons why the division believes the local or joint commission may be in noncompliance including the specified provisions in question.

2. A description of the efforts made by the division to resolve the matter and the reasons these efforts were unsuccessful.

3. A declaration of the local or joint commission's commitment to accomplishing the work agreed upon and specified in the comprehensive cooperative agreement and its importance to the emergency management capability of the local jurisdiction.

4. A description of the exact actions or alternative actions required of the local or joint commission to bring the problem to an agreed resolution.

5. A statement that this letter constitutes the final nopenalty effort to achieve a resolution and that financial sanctions provided for in these rules will be undertaken if a satisfactory response is not received by the division within 30 days.

7.7(7) Financial sanctions. If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the administrator may invoke the following financial sanction procedures:

a. Send a "Notice of Intention to Withhold Payment" to the chairperson of the local or joint commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the local or joint commission request a hearing before the administrator.

b. Any request by a local or joint commission for a hearing must be made in writing, to the division, within 15 days of receipt of the notice of intention to withhold payment.

c. Any hearing under the notice of intention to withhold payment shall be held before the administrator. However, the administrator may designate an administrative law judge to take evidence and certify to the administrator the entire record, including findings and recommended actions.

d. The local or joint commission shall be given full opportunity to present its position orally and in writing.

e. If, after a hearing, the administrator finds sufficient evidence that the local or joint commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the administrator may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with said rules, regulations, terms and conditions has been corrected or the administrator is satisfied that there will no longer be any such failure.

f. If, upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the administrator may issue the findings and take appropriate action as described in the preceding paragraph.

g. If the administrator finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the local or joint commission as described in this rule, the commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the division and the commission.

h. Any emergency management performance grant program funds withheld or recovered by the division as a result of this process shall be reallocated at the end of the federal fiscal year to the remaining participating counties.

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

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0017B

EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Emergency Management Division hereby rescinds Chapter 8, "Criteria for Awards or Grants," Iowa Administrative Code, and adopts a new Chapter 8 with the same title.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9825A**. The Division held a public hearing on June 12, 2000, at which time no comments were received. The adopted rules are identical to those published under Notice.

These rules were adopted by the Emergency Management Division on June 23, 2000.

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

These rules will become effective September 13, 2000.

The following amendment is adopted.

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

CHAPTER 8
CRITERIA FOR AWARDS OR GRANTS

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

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

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

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

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

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

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

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

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

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

605—8.4(29C,17A) Public notice of available competitive grants. When making funds available through a competitive grant application process, the division shall, at least 60 days prior to the application due date, issue a public notice in the Iowa Administrative Bulletin that identifies the availability of funds and states how interested parties may request an application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas, and eligible applicants shall be described in the public notice.

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

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

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

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

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

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

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

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

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

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

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

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

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ARC 0007B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 218.4, the Department of Human Services hereby amends Chapter 28, "Policies for All Institutions," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment July 12, 2000. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9829A**.

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

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

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

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

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

4. If any credit remains after applying credits as stated in paragraphs "1" to "3," the county with the remaining credit may seek a refund by filing a claim to the state appeal board pursuant to 543—Chapter 3, or the county may allow the credit to remain outstanding until such time as the county has an additional state institution or an institutional program debt.

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

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

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

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

The catchwords to subrule 28.13(1) were revised for clarification.

This amendment is intended to implement Iowa Code section 218.78.

This amendment shall become effective October 1, 2000.

The following amendment is adopted.

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

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

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

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

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

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

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

This rule is intended to implement Iowa Code section 218.78.

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ARC 0010B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 252B.7A, the Department of Human Services hereby amends Chapter 99, "Support Establishment and Adjustment Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments July 12, 2000.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9830A**.

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

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

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

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

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

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

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

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

Eight public hearings were held around the state. Seven persons attended.

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

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

These amendments shall become effective October 1, 2000.

The following amendments are adopted.

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

99.2(3) ~~Health~~ *Full cost of health* insurance premiums *either* deducted from wages or paid ~~pursuant to a court or administrative order~~ *by a parent or a stepparent*, provided the health insurance coverage includes the dependents for whom support is being sought. ~~All dependent health insurance costs shall be verified before being allowed as a deduction.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

The parent claiming the deduction shall verify the health insurance premium before the deduction is allowed. Any expected health insurance ~~expenses~~ *premiums* shall be allowed as a deduction if the parent provides verification of this anticipated expense.

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

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

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

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

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

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

[Filed 7/13/00, effective 10/1/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0011B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

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

The Council on Human Services adopted these rules July 12, 2000.

Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on May 17, 2000, as **ARC 9831A**.

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

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

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

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

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

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

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

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

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

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

in the pilot project. Finally, CSRU may initiate a modification if a parent's income changes, but the change must be at least a 20 percent change in the amount of the order.

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

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

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

Eight public hearings were held around the state. Six persons attended.

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

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

These rules shall become effective October 1, 2000.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 100] is being omitted. These rules are identical to those published under Notice as **ARC 9831A**, IAB 5/17/00.

[Filed 7/13/00, effective 10/1/00]
[Published 8/9/00]

[For replacement pages for IAC, see IAC Supplement 8/9/00.]

ARC 0030B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 91.6 and 2000 Iowa Acts, House File 2206, the Labor Commissioner hereby amends Chapter 1, "Description of Organization and Procedures before the Division," Iowa Administrative Code.

These rules establish procedures for waivers and variances of Division rules. The purpose of these rules is to implement 2000 Iowa Acts, House File 2206, and Executive Order Number Eleven and to further the goals of the executive order and the legislation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 26, 2000, as **ARC 9631A**. No public comments were received on these amendments.

These amendments have been changed from the Notice of Intended Action to conform to 2000 Iowa Acts, House File 2206. The Notice of Intended Action applied only to waivers, but the adopted rules apply to waivers and variances. The reference to waivers on the Division's own motion has been removed. The rules now specify that a petition shall be evaluated on the unique, individual circumstances set forth in the petition and that the petitioner must prove facts by clear and convincing evidence. The four statutory criteria replace the three criteria from the Notice of Intended Action. Language mandating waivers in certain circumstances is deleted. Language specifying when permanent waivers or variances may be granted is added. Language concerning narrow drafting of waivers and variances and conditions applied to waivers and variances is added.

These amendments implement Executive Order Number Eleven and 2000 Iowa Acts, House File 2206.

These amendments will become effective September 13, 2000.

The following amendments are adopted.

ITEM 1. Reserve rule **875—1.100** in Division VI.

ITEM 2. Amend 875—Chapter 1 by adopting the following **new** Division VII:

DIVISION VII
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

875—1.101(17A,91) Scope.

1.101(1) These rules provide general procedures for waivers and variances from division rules. Specific waiver or variance procedures must be followed when applicable. No waiver or variance may be granted from a requirement or duty imposed by statute or when granting a waiver or variance would cause a denial of federal funds or be inconsistent with federal statute or regulation. Any waiver or variance must be consistent with statute. These waiver and variance procedures do not apply to rules that merely define the meaning of a statute or other provision of law unless the division possesses delegated authority to bind the courts with its rules.

1.101(2) Waivers or variances of rules may be granted either in response to a petition for waiver or variance filed within a contested case proceeding, or in response to a petition filed in the absence of a contested case proceeding.

875—1.102(17A,91) Petitions. If the petition for waiver or variance relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be submitted in writing to Byron K. Orton, Labor Commissioner, 1000 E. Grand Avenue, Des Moines, Iowa 50319. In either case, the petition shall include the following information where applicable:

1.102(1) The name, address, case file number or state identification number, and telephone number of the person requesting the waiver or variance and the person's representative, if any.

1.102(2) A description and citation of the specific rule to which the petition applies.

1.102(3) The specific waiver or variance requested, including the precise scope and time period for the waiver or variance.

1.102(4) The relevant facts the petitioner believes justify a waiver or variance.

1.102(5) A description of any prior contacts between the division and the petitioner relating to the subject matter of the proposed waiver or variance, including but not limited to

a list or description of division licenses, registrations, or permits held by the petitioner, and any notices of violation, citations, contested case hearings, or investigative reports relating to the subject matter of the proposed waiver or variance within the last five years.

1.102(6) The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the grant of a waiver or variance.

1.102(7) Any information known to the petitioner regarding the division's treatment of similar cases.

1.102(8) The name, address, and telephone number of all persons inside or outside state government who would be adversely affected by the grant of the petition or who possess knowledge of relevant facts.

1.102(9) A signed release of information authorizing persons with knowledge regarding the request to furnish the division with information pertaining to the waiver or variance.

1.102(10) A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition.

875—1.103(17A,91) Notice and acknowledgment. The division will acknowledge petitions upon receipt. The division shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of receipt of the petition. The division may require the petitioner to serve the notice and a concise summary on all persons to whom notice is required by any provision of law, and provide a written statement to the division attesting that notice has been provided. Notice and a concise summary may also be provided to others.

875—1.104(17A,91) Review. Each petition for a waiver or variance shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. Discretion to grant or deny a waiver or variance petition rests with the labor commissioner or the labor commissioner's designee. The burden of persuasion shall be upon the petitioner. The division may request additional information relating to the requested waiver or variance from the petitioner and may conduct any necessary and appropriate investigation.

1.104(1) A waiver or variance may be granted if the division finds all of the following based on clear and convincing evidence:

a. Application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested;

b. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statue or another provision of law;

c. Waiver or variance of the rule in the specific circumstances would not prejudice the substantial legal rights of any person or cause a denial of federal funds; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

1.104(2) Petitioners requesting permanent waivers or variances must also show that a temporary waiver or variance would be impracticable.

875—1.105(17A,91) Ruling.

1.105(1) The division shall grant or deny all requests as soon as practicable, but no later than 120 days from receipt without consent of the petitioner. However, waiver or variance petitions filed in contested cases shall be granted or denied no later than the date of the decision in the contested case proceeding. Failure to grant or deny a petition within the required time period shall be deemed a denial.

1.105(2) If a waiver or variance is granted, it shall be drafted to provide the narrowest exception possible to the provisions of the rule. The ruling shall be in writing and shall include the reasons for granting or denying the petition and, if approved, the time period during which the waiver or variance is effective. The division may place any condition on a waiver or variance that the division finds desirable to protect the public health, safety, and welfare.

1.105(3) Within seven days of issuance of the ruling, a copy shall be mailed to the petitioner or the petitioner's representative, and to any other person(s) entitled to such notice by any provision of law or rule.

875—1.106(17A,91) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"e," orders granting and denying waivers or variances shall be indexed by rule and available for public inspection.

875—1.107(17A,91) Cancellation. The division may cancel a waiver or variance upon appropriate notice and hearing if the facts alleged in the petition or supplemental information provided were not true, material facts were withheld or have changed, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, the requester has failed to comply with conditions set forth in the waiver or variance approval, or the rule or enabling Act has been amended.

875—1.108(17A,91) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

875—1.109(17A,91) Appeals. Appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the ruling. However, any appeal from a decision on a petition for waiver or variance in a contested case proceeding shall be in accordance with the procedures for appeal of the contested case decision.

ITEM 3. Amend **875—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 22 and 91, *2000 Iowa Acts, House File 2206, and Executive Order Number Eleven.*

[Filed 7/20/00, effective 9/13/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0054B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 456A.24, the Natural Resource Commission hereby amends Chapter

NATURAL RESOURCE COMMISSION[571](cont'd)

78, "Ginseng Harvesting and Sale," Iowa Administrative Code.

These amendments eliminate language that is not necessary and clarify the annual reporting requirements of licensed ginseng dealers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 31, 2000, as **ARC 9860A**. A public hearing was held on June 22, 2000. No comments were received during the comment period or at the public hearing. The adopted amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 456A.24.

These amendments will become effective September 13, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule **78.3(2)**, paragraph **"e,"** as follows:

e. The wild ginseng harvester's permit shall include the applicant's signature, address, ~~description~~ and ~~such~~ other facts as may be required by the department.

ITEM 2. Amend 571—78.4(456A) as follows:

571—78.4(456A) Dealer's records. Each permitted ginseng dealer shall keep an accurate and complete record ~~in the English language~~ of each cultivated or wild ginseng purchase or sale. Forms for these records shall be provided by the department. A copy of each record shall be kept for a period of three years after the expiration of the dealer's permit.

78.4(1) The dealer's record of each ginseng purchase shall include:

a. Date of purchase;

~~b. Name and address of seller;~~

~~c~~ *b.* Harvester's permit number or dealer's permit number of seller;

~~d~~ *c.* Dry weight of ginseng root purchased;

~~e~~ *d.* Name of county where ~~purchased~~ ginseng was harvested if purchased from a harvester ~~with a valid harvester's permit~~;

~~f~~ *e.* ~~Such additional~~ *Additional* information as may be requested by the department.

78.4(2) The dealer's record of each ginseng sale of cultivated or wild ginseng shall include:

a. Date of sale;

b. Name and address of buyer;

c. Dry weight of ginseng root sold;

d. Year in which the ginseng sold was harvested;

e. ~~Such additional~~ *Additional* information as may be requested by the department.

78.4(3) Each permitted dealer shall submit ~~an annual report~~ to the department ~~on forms provided by the department~~ *copies of* ~~for~~ all ~~purchases~~ *purchase* and sales *records for* ~~of~~ cultivated and wild ginseng. These ~~reports~~ *records* shall be submitted to the department by April 15~~. These reports~~ *and* shall cover all sales and purchases from September 1 of the year of the harvest through March 31 of the following year.

78.4(4) Each dealer must submit a report to the department which inventories all cultivated and wild ginseng remaining in the dealer's possession after March 31. Any roots remaining with the dealer shall be weighed and certified by the dealer. The report shall be submitted to the department by April 15 of each year even if the dealer no longer has any ginseng roots in possession. The dealer shall keep a copy of the inventory report and record all future sales of the roots listed in the report. The dealer shall submit an amended annual report to the department within 30 days of the sale of all ginseng roots listed in the inventory report.

ITEM 3. Rescind subrules **78.5(3)** and **78.5(4)**.

[Filed 7/21/00, effective 9/13/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0028B

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby rescinds Chapter 1, "Organization and Operation," and adopts a new Chapter 1 with the same title; amends Chapter 4, "Contested Cases and Other Proceedings"; rescinds Chapter 5, "Applications for Track Licenses and Racing Dates," and adopts a new Chapter 5, "Track and Excursion Boat Licensees' Responsibilities"; rescinds Chapter 6, "Criteria for Granting Licenses and Determining Race Dates"; amends Chapter 7, "Greyhound Racing," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred Racing," and Chapter 13, "Occupational and Vendor Licensing"; rescinds Chapter 20, "Application Process for Excursion Boats and Racetrack Enclosure Gaming License," and Chapter 21, "Criteria for Granting an Excursion Boat and Racetrack Enclosure Gaming License"; amends Chapter 22, "Manufacturers and Distributors," and Chapter 24, "Accounting and Cash Control"; rescinds Chapter 25, "Riverboat Operation"; and amends Chapter 26, "Rules of the Games," Iowa Administrative Code.

This rule making rescinds current Chapters 1, 5, 6, 20, 21, and 25 and puts in place new Chapters 1 and 5. There have been no new rules added of any substance. This rule making only rewrites existing rules to make them consistent with current practice, eliminates duplicative rules, and moves some current rules to more appropriate chapters. The chapters that are rescinded mirror each other except that some are for pari-mutuel facilities and others for excursion boat gambling facilities. These amendments make the rules of the Commission more clear and concise and ensure that each licensee is treated fairly.

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

These amendments were published under Notice of Intended Action in the June 14, 2000, Iowa Administrative Bulletin as **ARC 9865A**.

A public hearing was held on July 10, 2000. No comments were received.

The following changes from the Notice have been made:

Cross references in subrule 1.5(5) and subparagraph 5.4(10)"b"(3) were corrected.

Subrule 5.4(9), which proposed cash access restrictions, was rewritten as follows:

5.4(9) Checks. The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

Subrule 10.3(12), paragraph "i," was reworded for clarification. It now states that the licensee shall provide:

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

i. Following any race in which there is an inquiry or objection, the videotaped replays of the incident in question which were utilized by the stewards in making their decision. The licensee shall display to the public these videotaped replays on designated monitors.

These amendments will become effective September 13, 2000.

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

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 1, 4 to 7, 9, 10, 13, 20 to 22, 24 to 26] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9865A**, IAB 6/14/00.

[Filed 7/20/00, effective 9/13/00]
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[For replacement pages for IAC, see IAC Supplement 8/9/00.]

ARC 0024B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on July 18, 2000, adopted an amendment to Chapter 150, "Improvements and Maintenance on Primary Road Extensions," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the May 17, 2000, Iowa Administrative Bulletin as **ARC 9817A**.

Subrule 150.2(3) addresses the responsibilities and warrants for the lighting of primary road extensions that are freeways. Subrule 150.2(3) is being amended to define "freeway," for the purpose of highway lighting, as a roadway constructed with Priority I access control for a length of five miles or greater. Priority I access control allows access only at interchange locations. The effect of this amendment is that the Department will pay for the lighting of interchanges on these roadway segments in accordance with the provisions of subrule 150.2(3). Cities would no longer be required to pay for this lighting.

A waiver is not provided because this amendment confers a benefit on cities.

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

This amendment is intended to implement Iowa Code chapters 313 and 314 and Iowa Code section 306.4.

This amendment will become effective September 13, 2000.

Rule-making action:

Amend subrule 150.2(3) as follows:

150.2(3) Lighting.

a. For the purpose of highway lighting, "freeway" means a roadway constructed with Priority I access control for a length of five miles or greater.

~~a~~ *b.* The department shall be responsible for the cost of installation of lighting on the main-traveled-way lanes and the on and off ramps including the terminals with cross streets when the department determines that lighting is required under established warrants.

~~b~~ *c.* The department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes.

~~c~~ *d.* The department shall be responsible for the energy and maintenance costs of lighting through interchange areas and ramps thereto at interchanges between freeways which do not provide service to local streets.

~~d~~ *e.* The department shall be responsible for the energy and maintenance costs of lighting in interchange areas at interchanges between freeways and primary roads which are on corporate lines.

~~e~~ *f.* At interchanges with city cross streets, the department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes, on and off ramps, ramp terminals, and, when the department determines full interchange lighting is required, the cross street between the outermost ramp terminals.

~~f~~ *g.* The department shall not be responsible for the installation, energy, and maintenance costs of any lighting on cross streets in advance of interchanges and between the outermost ramp terminals at interchanges where the department determines partial interchange lighting or no lighting is required.

~~g~~ *h.* Warrants for the lighting of freeways shall be according to the 1984 "AASHTO Information Guide for Roadway Lighting."

[Filed 7/20/00, effective 9/13/00]
[Published 8/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/00.

ARC 0023B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on July 19, 2000, adopted amendments to Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the June 14, 2000, Iowa Administrative Bulletin as **ARC 9876A**.

Currently, an applicant for a dealer's or used vehicle wholesaler's license must certify compliance with zoning requirements. Items 1 and 3 amend this procedure to require written evidence of compliance with zoning requirements. This change will ensure that applicants are aware of zoning requirements. Item 2 updates an Iowa Acts citation.

No waiver provisions have been included in these amendments. It was determined that waivers are not appropriate.

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

These amendments are intended to implement Iowa Code chapters 322 and 322C.

These amendments will become effective September 13, 2000.

Rule-making actions:

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Amend subrule 425.10(6) as follows:

425.10(6) Zoning. The applicant shall ~~certify on the application~~ *provide to the office of vehicle services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states* that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

ITEM 2. Amend rule **761—425.31(322)**, implementation clause, as follows:

This rule is intended to implement Iowa Code ~~section 322.5 as amended by 1999 Iowa Acts, Senate File 203, section 23~~ *Supplement subsection 322.5(5).*

ITEM 3. Amend subrule 425.52(1) as follows:

425.52(1) Application for license.

a. To apply for a license as a used vehicle wholesaler, the applicant shall complete Form 417004, "Used Vehicle Distributor/Wholesaler Application for License," and submit it to the office of vehicle services.

b. The applicant shall ~~certify on the application~~ *provide to the office of vehicle services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states* that the applicant's designated location complies with all applicable zoning provisions or is a legal nonconforming use.

c. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

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IOWA ADMINISTRATIVE BULLETIN
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