



IOWA ADMINISTRATIVE BULLETIN

STATE LAW LIBRARY
OF IOWA

NOV 14 2001

PISTOL BUILDING
DESMOINES, IA

Published Biweekly

VOLUME XXIV
November 14, 2001

NUMBER 10
Pages 669 to 776

CONTENTS IN THIS ISSUE

Pages 682 to 771 include **ARC 1075B** to **ARC 1130B**

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Filed, Transitional rules, ch 19 **ARC 1108B** 763

ALL AGENCIES

Schedule for rule making 672
Publication procedures 673
Administrative rules on CD-ROM 673
Agency identification numbers 680

ATTORNEY GENERAL

Opinions summarized 774

CITATION OF ADMINISTRATIVE RULES 679

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Notice, Application for dental and dental hygiene licensure and local anesthesia permits, 11.1 to 11.11 **ARC 1120B** 682
Notice, Examinations—dental and dental hygiene licensure, 12.1 to 12.5 **ARC 1119B** 686
Notice, Renewal, 14.1 to 14.5 **ARC 1118B** 687
Notice, Current certification in CPR, 14.1(4), 14.3(4), 14.5(1), 25.2(10) **ARC 1117B** 688
Notice, Continuing education, 25.2 to 25.5, 25.7, 25.10 **ARC 1116B** 689
Notice, Unethical and unprofessional conduct, 27.9 **ARC 1115B** 692
Notice, Oral and maxillofacial radiology, 28.1, 28.10 **ARC 1114B** 692
Notice, Discipline; impaired practitioner review committee, 30.1, 30.2, 30.4, 30.5, ch 35 **ARC 1113B** 693
Notice, Duties of peer review committees; mandatory reporting; costs of monitoring compliance with a settlement agreement, 31.8, 31.13, 51.19(9) **ARC 1112B** 694

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice, New jobs and income program, 58.1 to 58.4 **ARC 1079B** 695
Notice, Enterprise zone program, 59.1, 59.2, 59.3(4), 59.5, 59.6, 59.8 to 59.14 **ARC 1080B** ... 698

Filed Emergency After Notice, Iowa jobs training program—entrepreneurial training, 7.17 to 7.33 **ARC 1081B** 751
Filed, Certified school to career program, 11.2, 11.3, 11.4(1) **ARC 1082B** 765
Filed, Brownfield, blighted and distressed areas—additional points or consideration for economic development-related activities, 168.92 to 168.103 **ARC 1083B** 766

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Filed, Rescind chs 1 to 7; adopt chs 1 to 13 **ARC 1094B** 767

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Notice, Drinking water and wastewater revolving loan funds, 44.1 to 44.9, 44.12 to 44.14, 44.16, 92.2 to 92.6, 92.8 to 92.11, 93.5(1) **ARC 1122B** 703
Notice, Definition—storm water discharge associated with industrial activity, 60.2 **ARC 1124B** 704
Notice, Transportation of radioactive materials in Iowa, rescind ch 132 **ARC 1123B** 704
Filed Emergency, Drinking water and wastewater revolving loan funds, 44.1 to 44.9, 44.12 to 44.14, 44.16, 92.2 to 92.6, 92.8 to 92.11, 93.5(1) **ARC 1121B** 751

EXECUTIVE DEPARTMENT

Executive Order number 23 772

HUMAN SERVICES DEPARTMENT[441]

Notice, Family investment program, 41.24, 41.27(1), 41.28, 93.110(6), 93.114(14), 93.132, 93.134, 93.138; rescind ch 94 **ARC 1076B** 705
Notice, Phase-out of 12-month waiver period, 48.24 **ARC 1075B** 709
Notice, AIDS/HIV health insurance premium payment program, 75.22 **ARC 1077B** 710

Continued on page 671

PREFACE

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

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

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

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

Subscriptions and Distribution Telephone: (515)242-5120
Fax: (515)242-5974

KATHLEEN K. BATES, Administrative Code Editor Telephone: (515)281-3355
STEPHANIE A. HOFF, Assistant Editor (515)281-8157
Fax: (515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

July 1, 2001, to June 30, 2002	\$273.00 plus \$16.38 sales tax
October 1, 2001, to June 30, 2002	\$215.00 plus \$12.90 sales tax
January 1, 2002, to June 30, 2002	\$144.50 plus \$8.67 sales tax
April 1, 2002, to June 30, 2002	\$72.00 plus \$4.32 sales tax

Single copies may be purchased for \$20.50 plus \$1.23 sales tax.

Iowa Administrative Code

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

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

Iowa Administrative Code - \$1,252.75 plus \$75.17 sales tax

(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional binders may be purchased for \$11.75 plus \$.71 sales tax.)

Iowa Administrative Code Supplement - \$440.50 plus \$26.43 sales tax

(Subscription expires June 30, 2002)

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

**Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, IA 50319
Telephone: (515)242-5120**

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

- Notice, Rehabilitative treatment service providers,
77.38 **ARC 1085B** 710
- Notice, Indian health service 638 facilities,
77.45, 78.51, 79.1, 79.14(1), 80.2(2)
ARC 1086B 710
- Notice, Nurse-midwives—services and payment
under Medicaid, 78.29 **ARC 1087B** 711

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Notice, Definition—experience or expertise;
verification of capital contributions, 25.1,
25.4(5) **ARC 1110B** 713
- Notice, Overpayment recovery unit, 71.1, 71.5
ARC 1111B 713
- Notice, Discount on raffle tickets, 100.32(3)
ARC 1109B 714

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Notice of workers' compensation rate filing 715
- Filed, Licensing of insurance producers,
10.1 to 10.25 **ARC 1125B** 767
- Filed, Motor vehicle service contracts, ch 23
ARC 1104B 767
- Filed Emergency, Coverage for contraception,
35.39(1), 71.24(1), 75.18(1) **ARC 1100B** 759

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Notice, OSHA record-keeping regulations,
4.1 to 4.3 **ARC 1099B** 715

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Notice and Notice Terminated, Process for
sealing and certifying documents; national
examination, renewal process, fees, 1.1, 1.7(1),
2.2(2), 2.4, 2.5(4), 2.8 to 2.10 **ARC 1090B** 716

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, International medical graduates—
passing score on TOEFL for special
license, 10.4(3)"a"(4) **ARC 1091B** 717
- Notice, English proficiency test—acupuncturists,
17.3, 17.4(1)"c"(2) **ARC 1092B** 718

PERSONNEL DEPARTMENT[581]

- Notice, IPERS, 21.6, 21.8, 21.24(14)"a"(1)
ARC 1129B 718
- Filed Emergency, IPERS, 21.6, 21.8,
21.24(14)"a"(1) **ARC 1130B** 760

PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591]

- Notice, Petitions for rule making, ch 2
ARC 1106B 719
- Notice, Declaratory orders, ch 3
ARC 1105B 720
- Notice, Board procedure for rule making,
ch 4 **ARC 1101B** 722
- Notice, Claims, ch 11 **ARC 1102B** 728
- Notice, Guaranteed loan program, ch 12
ARC 1103B 736

PRESERVES, STATE ADVISORY BOARD FOR[575]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Notice, Management plan, 2.2(2) **ARC 1088B** 739
- Filed Emergency, Management and use, 2.2(2)
ARC 1089B 761

PUBLIC HEARINGS

- Summarized list 674

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

- Notice, Purse information, 5.5(10) **ARC 1078B** ... 739

REVENUE AND FINANCE DEPARTMENT[701]

- Notice, Tax exemption—delivery charges for
electricity or natural gas; state sales
tax phase-out on energies, 15.13, 17.38
ARC 1126B 740
- Notice, Clarification, updating and technical
correction of existing rules, amendments to
chs 71 to 75, 78, 80 to 82, 84, 122, 125
ARC 1107B 742
- Filed, Sales and use tax, 13.10, 18.20, 19.2,
28.4, 31.7, 32.2 **ARC 1127B** 768
- Filed, Clarification—department policies,
amend chs 15 to 18, 26, 31, 32, 34, 86, 89;
adopt ch 202 **ARC 1128B** 768

TRANSPORTATION DEPARTMENT[761]

- Notice, Salvage; weight equalizing hitch
and sway control devices for trailers;
transport of wrecked or disabled vehicles
by flatbeds, 405.2, 405.3, 405.6(1), 405.15;
rescind ch 453; 454.1 **ARC 1084B** 747
- Notice, Annual oversize/overweight permit—
increase in width, 511.7(4), 511.8(1)"a,"
511.9(4) **ARC 1095B** 749
- Notice, Motor carrier regulations, 529.1
ARC 1096B 749
- Filed, Statewide standard for permitting certain
implements of husbandry, ch 181
ARC 1098B 770
- Filed, General aviation airport vertical
infrastructure program, 717.1 to 717.6,
717.8, 717.9(1), 717.10, 717.11
ARC 1097B 770

TREASURER OF STATE

- Notice—Public funds interest rates 750

WORKFORCE DEVELOPMENT DEPARTMENT[871]

- Filed, Contributions to unemployment fund;
definition—construction employer,
amendments to chs 23, 24 **ARC 1093B** 771

Schedule for Rule Making 2001

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. 22 '00	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sept. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sept. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	May 25	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	June 22	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	July 20	Aug. 8	Sept. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sept. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Aug. 17	Sept. 5	Oct. 10	Jan. 7 '02
July 6	July 25	Aug. 14	Aug. 29	Aug. 31	Sept. 19	Oct. 24	Jan. 21 '02
July 20	Aug. 8	Aug. 28	Sept. 12	Sept. 14	Oct. 3	Nov. 7	Feb. 4 '02
Aug. 3	Aug. 22	Sept. 11	Sept. 26	Sept. 28	Oct. 17	Nov. 21	Feb. 18 '02
Aug. 17	Sept. 5	Sept. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '02
Aug. 31	Sept. 19	Oct. 9	Oct. 24	Oct. 26	Nov. 14	Dec. 19	Mar. 18 '02
Sept. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 9	Nov. 28	Jan. 2 '02	Apr. 1 '02
Sept. 28	Oct. 17	Nov. 6	Nov. 21	Nov. 23	Dec. 12	Jan. 16 '02	Apr. 15 '02
Oct. 12	Oct. 31	Nov. 20	Dec. 5	Dec. 7	Dec. 26	Jan. 30 '02	Apr. 29 '02
Oct. 26	Nov. 14	Dec. 4	Dec. 19	***Dec. 19***	Jan. 9 '02	Feb. 13 '02	May 13 '02
Nov. 9	Nov. 28	Dec. 18	Jan. 2 '02	Jan. 4 '02	Jan. 23 '02	Feb. 27 '02	May 27 '02
Nov. 23	Dec. 12	Jan. 1 '02	Jan. 16 '02	Jan. 18 '02	Feb. 6 '02	Mar. 13 '02	June 10 '02
Dec. 7	Dec. 26	Jan. 15 '02	Jan. 30 '02	Feb. 1 '02	Feb. 20 '02	Mar. 27 '02	June 24 '02
Dec. 19	Jan. 9 '02	Jan. 29 '02	Feb. 13 '02	Feb. 15 '02	Mar. 6 '02	Apr. 10 '02	July 8 '02
Jan. 4 '02	Jan. 23 '02	Feb. 12 '02	Feb. 27 '02	Mar. 1 '02	Mar. 20 '02	Apr. 24 '02	July 22 '02

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
12	Friday, November 23, 2001	December 12, 2001
13	Friday, December 7, 2001	December 26, 2001
14	Wednesday, December 19, 2001***	January 9, 2002

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.

*****Note change of filing deadline**

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 publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a 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, First Floor South, Grimes State Office Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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.

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM 2001 SUMMER EDITION

Containing: **Iowa Administrative Code** (updated through June 2001)
Iowa Administrative Bulletins (January 2001 through June 2001)
Iowa Court Rules (updated through June 2001)

For free brochures and order forms contact:

Legislative Service Bureau
Attn: Ms. Stephanie Runde
State Capitol
Des Moines, Iowa 50319
Telephone: (515)281-3566 Fax: (515)281-8027
lsbinfo@staff.legis.state.ia.us

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

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
DENTAL EXAMINERS BOARD[650]		
Licensure to practice dentistry or dental hygiene, 11.1 to 11.11 IAB 11/14/01 ARC 1120B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Dental and dental hygiene examinations, 12.1 to 12.5 IAB 11/14/01 ARC 1119B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Renewal of license; fees; reinstatement of lapsed license or registration, 14.1 to 14.5 IAB 11/14/01 ARC 1118B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Evidence of current CPR certification required for license renewal or reinstatement, 14.1(4), 14.3(4), 14.5(1), 25.2(10) IAB 11/14/01 ARC 1117B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Continuing education requirements for licensees and responsibilities of continuing education sponsors, 25.2 to 25.5, 25.7, 25.10 IAB 11/14/01 ARC 1116B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Unethical and unprofessional conduct, 27.9 IAB 11/14/01 ARC 1115B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Oral and maxillofacial radiology, 28.1, 28.10 IAB 11/14/01 ARC 1114B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Discipline; impaired practitioner review committee, 30.1, 30.2, 30.4, 30.5, ch 35 IAB 11/14/01 ARC 1113B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
Duties of peer review committees; mandatory reporting, 31.8, 31.13, 51.19(9) IAB 11/14/01 ARC 1112B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	December 4, 2001 2 to 3 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
New jobs and income program, 58.1 to 58.4 IAB 11/14/01 ARC 1079B	ICN Main Conference Room 2nd Floor, 200 E. Grand Ave. Des Moines, Iowa	December 4, 2001 2:30 p.m.
Enterprise zone program, 59.1, 59.2, 59.3(4), 59.5, 59.6, 59.8 to 59.14 IAB 11/14/01 ARC 1080B	ICN Main Conference Room 2nd Floor, 200 E. Grand Ave. Des Moines, Iowa	December 4, 2001 3:30 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Permits for stationary sources— exceptions, 22.1(2) IAB 10/17/01 ARC 1024B	Conference Rooms 3 and 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	November 26, 2001 1 p.m.
Title V permits, 22.105(1), 22.113(4) IAB 10/17/01 ARC 1021B	Conference Rooms 2 to 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	November 15, 2001 11 a.m.
Drinking water revolving fund; state revolving fund loans for wastewater treatment; onsite wastewater treatment assistance program, 44.1 to 44.9, 44.12 to 44.14, 44.16, 92.2 to 92.6, 92.8 to 92.11, 93.5(1) IAB 11/14/01 ARC 1122B (See also ARC 1121B herein)	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 4, 2001 1 p.m.
Storm water discharge associated with industrial activity, 60.2 IAB 11/14/01 ARC 1124B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 4, 2001 9 a.m.
Household hazardous materials— disposal, collection, public awareness, 119.2, 119.4(2), 119.7, 144.1, 144.2, 144.4; rescind ch 210; 211.11, 211.12; rescind ch 212; 214.1, 214.7 to 214.9, 214.11 IAB 10/17/01 ARC 1022B	Conference Room 5 West Wallace State Office Bldg. Des Moines, Iowa	November 27, 2001 9 a.m.

HUMAN SERVICES DEPARTMENT[441]

PROMISE JOBS exemption, FIP eligibility, 41.24, 41.27(1), 41.28, 93.110(6), 93.114(14), 93.132, 93.134, 93.138, ch 94 IAB 11/14/01 ARC 1076B	Seventh Floor Conference Room Suite 600, Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	December 6, 2001 9 a.m.
	Administrative Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa	December 5, 2001 9 a.m.
	Fifth Floor Conference Room Bicentennial Bldg. 428 Western Davenport, Iowa	December 6, 2001 10 a.m.
	Conference Room 100 City View Plaza 1200 University Des Moines, Iowa	December 7, 2001 10 a.m.
	Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	December 5, 2001 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	December 5, 2001 9 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

	Fifth Floor 520 Nebraska St. Sioux City, Iowa	December 5, 2001 2:30 p.m.
	Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	December 6, 2001 10 a.m.
Nurse-midwives, 78.29 IAB 11/14/01 ARC 1087B	Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	December 6, 2001 10:30 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	December 6, 2001 9 a.m.
	Fifth Floor Conference Room Bicentennial Bldg. 428 Western Davenport, Iowa	December 6, 2001 11:30 a.m.
	Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	December 5, 2001 2 p.m.
	Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	December 6, 2001 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	December 5, 2001 1 p.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	December 5, 2001 1:30 p.m.
	Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	December 7, 2001 10 a.m.
Nursing facilities, 81.6(16) IAB 10/31/01 ARC 1054B	Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	November 27, 2001 10:30 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	November 27, 2001 9 a.m.
	Fifth Floor Conference Room Bicentennial Bldg. 428 Western Davenport, Iowa	November 28, 2001 10 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	November 28, 2001 10 a.m.
Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	November 26, 2001 11 a.m.
Conference Room 3 120 E. Main Ottumwa, Iowa	November 28, 2001 10 a.m.
Fifth Floor 520 Nebraska St. Sioux City, Iowa	November 27, 2001 1:30 p.m.
Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	November 27, 2001 10 a.m.

INFORMATION TECHNOLOGY DEPARTMENT[471]

Acquisition of information technology devices and services, ch 13 IAB 10/31/01 ARC 1056B	Director's Conference Room Level B, Hoover State Office Bldg. Des Moines, Iowa	November 21, 2001 9:30 a.m.
--	--	--------------------------------

INSPECTIONS AND APPEALS DEPARTMENT[481]

Iowa targeted small business certification program, 25.1, 25.4(5) IAB 11/14/01 ARC 1110B	Conference Room 422 Lucas State Office Bldg. Des Moines, Iowa	December 7, 2001 9 a.m.
Sale of raffle tickets at discounted rate, 100.32(3) IAB 11/14/01 ARC 1109B	Conference Room 422 Lucas State Office Bldg. Des Moines, Iowa	December 7, 2001 9:30 a.m.

INSURANCE DIVISION[191]

Viatical and life settlements, ch 48 IAB 10/17/01 ARC 1044B	330 Maple St. Des Moines, Iowa	November 15, 2001 2 p.m.
---	-----------------------------------	-----------------------------

LABOR SERVICES DIVISION[875]

Recording and reporting occupational injuries and illnesses, 4.1 to 4.19 IAB 11/14/01 ARC 1099B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	December 4, 2001 3 p.m.
---	--	----------------------------

MEDICAL EXAMINERS BOARD[653]

Resident, special and temporary licensure—passing score on the TOEFL, 10.4(3) IAB 11/14/01 ARC 1091B	Suite C 400 SW 8th St. Des Moines, Iowa	December 4, 2001 3 p.m.
--	---	----------------------------

MEDICAL EXAMINERS BOARD[653]

Licensure of acupuncturists— clarification of English proficiency test requirements, 17.3, 17.4(1) IAB 11/14/01 ARC 1092B	Suite C 400 SW 8th St. Des Moines, Iowa	December 4, 2001 3:15 p.m.
---	---	-------------------------------

NATURAL RESOURCE COMMISSION[571]

Certified type V flotation devices, 37.13 IAB 10/31/01 ARC 1071B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 21, 2001 9:30 a.m.
State aids to navigation, 41.2(1) IAB 10/31/01 ARC 1073B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 21, 2001 10 a.m.
Motor size rules for artificial lakes and marshes, 45.4, 45.5 IAB 10/31/01 ARC 1072B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 21, 2001 10:30 a.m.
State parks and recreation areas, 61.2, 61.4, 61.5 IAB 10/31/01 ARC 1070B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 26, 2001 9 a.m.
Endangered, threatened and special concern animals, 77.2 IAB 10/31/01 ARC 1067B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 20, 2001 10 a.m.

PERSONNEL DEPARTMENT[581]

IPERS, 21.6, 21.8, 21.24(14) IAB 11/14/01 ARC 1129B (See also ARC 1130B herein)	7401 Register Dr. Des Moines, Iowa	December 4, 2001 9 a.m.
--	---------------------------------------	----------------------------

PRESERVES, STATE ADVISORY BOARD FOR[575]

Management plans for preserves, 2.2(2) IAB 11/14/01 ARC 1088B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 6, 2001 11 a.m.
--	---	-----------------------------

PROFESSIONAL LICENSURE DIVISION[645]

Materials for board review, 12.1 IAB 10/31/01 ARC 1058B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 21, 2001 9 to 11 a.m.
Podiatry examiners—licensure, discipline, fees, chs 219, 220; 222.5, 222.9; chs 224, 225 IAB 10/31/01 ARC 1057B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 20, 2001 9 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Certification program for installers of manufactured homes, 16.622, 16.625(5) IAB 10/17/01 ARC 1029B (See also ARC 1030B)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 14, 2001 10:30 a.m.
--	---	---------------------------------

RACING AND GAMING COMMISSION[491]

Purse information, 5.5(10) IAB 11/14/01 ARC 1078B	Suite B 717 E. Court Des Moines, Iowa	December 4, 2001 9 a.m.
--	---	----------------------------

TRANSPORTATION DEPARTMENT[761]

Salvage; weight equalizing hitch and sway control devices for trailers; towing wrecked or disabled vehicles, 405.2, 405.3, 405.6(1), 405.15; rescind ch 453; 454.1 IAB 11/14/01 ARC 1084B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	December 6, 2001 8 a.m. (If requested)
---	--	--

Width allowed under annual oversize/ overweight permit; annual permits and all-system permits, 511.7(4), 511.8(1), 511.9(4) IAB 11/14/01 ARC 1095B	Conference Room, Motor Vehicle Div. Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	December 6, 2001 10 a.m. (If requested)
---	--	---

Motor carrier regulations, 529.1 IAB 11/14/01 ARC 1096B	Conference Room, Motor Vehicle Div. Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	December 6, 2001 1 p.m. (If requested)
--	--	--

UTILITIES DIVISION[199]

Application of payments to level payment accounts, 19.4(11), 20.4(12) IAB 10/3/01 ARC 0992B	Hearing Room 350 Maple St. Des Moines, Iowa	November 20, 2001 10 a.m.
---	---	------------------------------

Ratemaking principles proceeding ch 41 IAB 10/3/01 ARC 0993B	Hearing Room 350 Maple St. Des Moines, Iowa	November 27, 2001 10 a.m.
---	---	------------------------------

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).

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

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

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

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INFORMATION TECHNOLOGY DEPARTMENT[471]

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

ARC 1120B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 11, "Applications," Iowa Administrative Code.

These amendments update the Board's rules on applications for dental and dental hygiene licensure and local anesthesia permits. Specific changes require applicants for dental licensure to provide evidence of a valid certificate in cardiopulmonary resuscitation (CPR) by a nationally recognized provider. Dental hygienists and dental assistants are currently required to provide proof of CPR training prior to licensure or registration. The amendments also adopt new rules specifying the administrative procedures used by the Board to review and issue licenses and grounds for denial of a license. In addition, the amendments eliminate the requirement that local anesthesia permit holders document ongoing practice in the administration of local anesthesia in order to renew the permit.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendments.

These rules will be subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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 October 25, 2001, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147 and 153.

The following amendments are proposed.

ITEM 1. Amend the title of 650—Chapter 11 as follows:

CHAPTER 11
APPLICATIONS LICENSURE TO PRACTICE
DENTISTRY OR DENTAL HYGIENE

ITEM 2. Rescind rule 650—11.1(153) and adopt new rule 650—11.1(147,153) in lieu thereof:

650—11.1(147,153) Applicant responsibilities. An applicant for dental or dental hygiene licensure bears full responsibility for each of the following:

1. Paying all fees charged by regulatory authorities, national testing or credentialing organizations, health facilities, and educational institutions providing the information required to complete a license or permit application; and
2. Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, prior professional experience, education, training, examination scores, and disciplinary history.

ITEM 3. Amend rule 650—11.2(153) as follows:

650—11.2(147,153) Application to practice dentistry. Dental licensure by examination.

11.2(1) Applications for licensure to practice dentistry in this state shall be made ~~to the board~~ on the form provided by the board and must be completely answered, *including required credentials and documents.*

11.2(2) Applications for licensure must be filed with the board along with:

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board.

b. Certification by the dean or other authorized representative of the dental school that the applicant has been a student in good standing while attending that dental school.

c. If the applicant is a dentist licensed by another jurisdiction, the applicant shall furnish certification from the board of dental examiners of that jurisdiction that the applicant is a licensed dentist in good standing.

e d. Evidence of successful completion of Part I and Part II of the examination, with resulting scores, administered by the Joint Commission on National Dental Examinations. At the discretion of the board, any dentist who has lawfully practiced dentistry in another state or territory for five years may be exempted from presenting this evidence.

d e. Evidence of successful completion of the examination, with resulting scores, administered by the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., taken after January 1, 2001.

f. *A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges.*

e g. ~~The nonrefundable application fee as specified in 650—Chapter 15 of these rules is nonrefundable to applicants whose applications are considered by the board. A statement of reasons for rejection shall be sent to the applicant.~~

f.—~~Successful~~ h. *Evidence of successful completion of the jurisprudence examination administered by the board of dental examiners.*

i. *Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.*

j. *A photograph of the applicant suitable for positive identification.*

11.2(3) The board may require *a personal appearance or any additional information be provided by the applicant relating to the character, education and experience as may be necessary to pass upon of the applicant applicant's qualifications.*

11.2(4) Applications must be signed and ~~verified~~ *notarized* as to the truth of the statements contained therein.

This rule is intended to implement Iowa Code ~~section~~ *sections* 147.3, 147.29, and 147.34.

DENTAL EXAMINERS BOARD[650](cont'd)

ITEM 4. Amend rule 650—11.3(153) as follows:

650—11.3(153) Application for dental licensure by credentials. ~~The following requirements must be satisfied prior to licensure to practice dentistry in Iowa through the procedure of licensure by credentials:~~

11.3(1) Applications for licensure by credentials to practice dentistry in this state shall be made ~~to the board~~ on the form provided by the board and must be completely filled out answered, including required credentials and documents.

11.3(2) Applications must be filed with the board along with:

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board.

b. Evidence of successful completion of Parts I and II of the examination of the Joint Commission on National Dental Examinations, with resulting scores, or evidence of having passed a written examination during the last ten years that is comparable to the examination given by the Joint Commission on National Dental Examinations.

c. ~~Evidence that the applicant has not failed the clinical examination of CRDTS or comparable state board examination within the last three years. A statement of any dental examinations taken by the applicant, with resulting scores.~~

d. Evidence of a current, valid license to practice dentistry in another state, territory or district of the United States issued upon clinical examination.

e. Certification by a state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least five years immediately preceding the date of application and evidence of having engaged in the practice of dentistry in that state for five years immediately preceding the date of application or evidence of five years of practice satisfactory to the board.

f. Certification by the state board of dentistry, or equivalent authority, from each state in which applicant has engaged in the practice of dentistry, that the applicant has not been the subject of final or pending disciplinary action.

~~g. List of professional societies or organizations of which the applicant is a member.~~

~~h. Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dentist.~~

~~g. A statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, complaints, judgments, settlements, or criminal charges.~~

i. Evidence that the state, territory or district from which the applicant comes, extends licensure without examination to Iowa dentists who hold a current license, graduated from an accredited dental school, and have had five consecutive years in the practice. Submission of a copy of the dental licensing law and regulations of the jurisdiction will satisfy this requirement.

j. When the applicant does not meet the requirements for licensure by credentials specified in ~~11.3(2)~~¹, ~~this paragraph~~, the board will accept successful completion of a national specialty examination in lieu of ~~11.2(2)~~^d thereof.

k. The *nonrefundable application* fee for licensure by credentials verification as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners. ~~Applications considered by the board are nonrefundable.~~

j. *Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.*

k. *Evidence of successful completion of the jurisprudence examination administered by the board of dental examiners.*

l. *A photograph of the applicant suitable for positive identification.*

11.3(3) ~~Applicant shall appear for a personal interview if requested to do so by the board. The board may require a personal appearance or may require any additional information relating to the character, education, and experience of the applicant.~~

11.3(4) The board may also require such examinations as may be necessary to evaluate the applicant for licensure by credentials, including jurisprudence, oral diagnosis and treatment planning.

11.3(5) Applications must be signed and ~~verified~~ *notarized as attesting* to the truth of the statements contained therein. ~~The license, if issued, may be revoked upon evidence of misinformation or substantial omission. All information given will be investigated for verification. A minimum of 60 days will be required for the investigation.~~

This rule is intended to implement Iowa Code chapters 147 and 153.

ITEM 5. Rescind and reserve rule **650—11.4(153)**.

ITEM 6. Amend rule 650—11.5(153) as follows:

650—11.5(147,153) Application to practice dental hygiene licensure by examination.

11.5(1) Applications for licensure to practice dental hygiene in this state shall be made ~~to the dental hygiene committee~~ on the form provided by the dental hygiene committee and must be completely answered, including required credentials and documents.

11.5(2) Applications for licensure must be filed with the dental hygiene committee along with:

a. Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the dental hygiene committee.

b. Certification by the dean or other authorized representative of the school of dental hygiene that the applicant has been a student in good standing while attending that dental hygiene school.

c. If the applicant is licensed as a dental hygienist by another jurisdiction, the applicant shall furnish certification from the appropriate examining board of that jurisdiction that the applicant is a licensed dental hygienist in good standing.

d. Evidence of successful completion of the examination, with resulting scores, administered by the Joint Commission on National Dental Examinations.

e. Evidence of successful completion of the examination, with resulting scores, administered by the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., taken after January 1, 2001.

f. The *nonrefundable application* fee as specified in 650—Chapter 15. ~~is nonrefundable to applicants whose applications are considered by the dental hygiene committee. A statement of reasons for rejection shall be sent to the applicant.~~

g. *Successful Evidence of successful completion of the jurisprudence examination administered by the dental hygiene committee.*

DENTAL EXAMINERS BOARD[650](cont'd)

g. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

i. A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges.

j. A photograph of the applicant suitable for positive identification.

11.5(3) The dental hygiene committee may require a personal appearance or any additional information be provided by the applicant relating to the character, education and experience as may be necessary to pass upon of the applicant applicant's qualifications.

11.5(4) Applications must be signed and verified notarized as to the truth of the statements contained therein.

11.5(5) Following review by the dental hygiene committee, the committee shall make recommendation to the board regarding the issuance or denial of any license to practice dental hygiene. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

This rule is intended to implement Iowa Code sections 147.3, 147.80 and chapter chapters 147 and 153.

ITEM 7. Amend rule 650—11.6(153) as follows:

650—11.6(153) Application for dental Dental hygiene licensure by credentials. ~~The following requirements must be satisfied prior to licensure to practice dental hygiene in Iowa through the procedure of licensure by credentials: To be issued a license to practice dental hygiene in Iowa on the basis of credentials, an applicant shall meet the following requirements.~~

11.6(1) Applications ~~of~~ for licensure by credentials to practice dental hygiene in this state shall be made to the dental hygiene committee on the form provided by the dental hygiene committee and must be completely filled out answered, including required credentials and documents.

11.6(2) Applications must be filed with the dental hygiene committee along with:

a. Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the dental hygiene committee.

b. Evidence of successful completion of the examination of the Joint Commission on National Dental Examinations with resulting scores, or evidence of having passed a written examination that is comparable to the examination given by the Joint Commission on National Dental Examinations.

~~c. Evidence that the applicant has not failed the clinical examination of Central Regional Dental Testing Service or comparable state board examination within the last three years. A statement of any dental hygiene examinations taken by the applicant, with resulting scores.~~

d. Evidence of a current, valid license to practice dental hygiene in another state, territory or district of the United States issued upon clinical examination.

e. Certification by the state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least three years immediately preceding the date of application and evidence of having engaged in the practice of dental hygiene in that state for three years immediately preceding the date of application or evidence of practice satisfactory to the dental hygiene committee.

f. Certification by the state board of dentistry, or equivalent authority, from each state in which applicant has engaged in the practice of dental hygiene, that the applicant has not been the subject of final or pending disciplinary action.

~~g.—List of professional societies or organizations of which the applicant is a member.~~

~~h.—Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dental hygienist.~~

g. A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements or criminal charges.

h. Evidence that the state, territory or district from which the applicant comes, extends licensure without examination to Iowa dental hygienists who hold a current license and graduated from an accredited dental hygiene school. Submission of a copy of the dental hygiene licensing law and regulations of the jurisdiction will satisfy this requirement.

i. The nonrefundable application fee for licensure by credentials as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners. Applications considered by the dental hygiene committee are nonrefundable.

j. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

k. Successful completion of the jurisprudence examination administered by the dental hygiene committee.

l. A photograph of the applicant suitable for positive identification.

11.6(3) Applicant shall appear for a personal interview conducted by the dental hygiene committee or the board by request only.

11.6(4) The dental hygiene committee may also require such examinations as may be necessary to evaluate the applicant for licensure by credentials, including jurisprudence examination.

11.6(5) Applications must be signed and verified notarized as attesting to the truth of the statements contained therein. The license, if issued, may be revoked upon evidence of misinformation or substantial omission. All information given will be investigated for verification. A minimum of 60 days will be required for the investigation.

11.6(6) Following review by the dental hygiene committee, the committee shall make a recommendation to the board regarding issuance or denial of a dental hygiene license. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5.

This rule is intended to implement Iowa Code section 147.80 and chapter 153.

ITEM 8. Rescind rules 650—11.7(153) and 650—11.8(153) and renumber rule 650—11.10(153) as 650—11.7(153).

ITEM 9. Amend renumbered rule 650—11.7(153) as follows:

650—11.7(147,153) Application Dental hygiene application for authority of a dental hygienist to administer local anesthesia permit. A licensed dental hygienist may administer local anesthesia provided the following requirements are met:

1. The dental hygienist holds a current local anesthesia permit issued by the board of dental examiners.

2. The local anesthesia is prescribed by a licensed dentist.

3. The local anesthesia is administered under the direct supervision of a licensed dentist.

DENTAL EXAMINERS BOARD[650](cont'd)

11.7(1) Application for permit. ~~The licensed~~ A dental hygienist shall make application for issuance of a permit to administer local anesthesia on the form approved by the ~~board~~ *dental hygiene committee* and ~~meet~~ *provide* the following requirements:

a. The fee for a permit to administer local anesthesia as specified in 650—Chapter 15; and

b. Evidence that formal training in the administration of local anesthesia has been completed within 12 months of the date of application. The formal training shall be approved by the ~~board~~ *dental hygiene committee* and conducted by a school accredited by the American Dental Association Commission on Dental Education; or

c. Evidence of completion of ~~board-approved~~ formal training in the administration of local anesthesia *approved by the dental hygiene committee* and documented evidence of ongoing practice in the administration of local anesthesia *in another state or jurisdiction that authorizes a dental hygienist to administer local anesthesia.*

11.7(2) Permit renewal. The permit shall expire on the date the dental hygienist's license expires. *To renew the permit, the dental hygienist must meet the following requirements:*

a. At the time of renewal, the dental hygienist holding the permit shall document evidence of ~~ongoing practice in the administration of local anesthesia.~~ *holding an active Iowa dental hygiene license.*

b. ~~The~~ *Submit* the application fee for renewal of the permit ~~shall include a renewal fee~~ *as specified in 650—Chapter 15.*

c. ~~11.7(3) Failure to supply the documentation referred to in 11.10(1)“c” at the time of~~ *meet the requirements for renewal shall cause the permit to lapse.*

d. The permit may be reinstated upon documentation that the dental hygienist has successfully completed a certification course approved by the ~~board~~ *dental hygiene committee.*

This rule is intended to implement Iowa Code sections 147.10 and 147.80 and chapter 153.

ITEM 10. Adopt new rules 650—11.8(147,153) and 650—11.9(147,153) as follows and renumber existing rule 650—11.9(147) as 650—11.10(147):

650—11.8(147,153) Review of applications. Upon receipt of a completed application for a dental or dental hygiene license, resident license, dental assistant registration, or faculty permit, the executive director as authorized by the board has discretion to:

1. Authorize the issuance of the license, permit, or registration.

2. Refer the license, permit, or registration application to the license committee for review and consideration when the executive director determines that matters including, but not limited to, prior criminal history, chemical dependence, competency, physical or psychological illness, malpractice claims or settlements, or professional disciplinary history are relevant in determining the applicants' qualifications for license, permit, or registration.

11.8(1) Following review and consideration of a license, permit, or registration application referred by the executive director, the license committee may at its discretion:

a. Recommend to the board issuance of the license, permit, or registration.

b. Recommend to the board denial of the license, permit, or registration.

c. Recommend to the board issuance of the license, permit, or registration under certain terms and conditions or with certain restrictions.

d. Refer the license, permit, or registration application to the board for review and consideration without recommendation.

11.8(2) Following review and consideration of a license, permit, or registration application referred by the license committee the board shall:

a. Authorize the issuance of the license, permit, or registration,

b. Deny the issuance of the license, permit, or registration, or

c. Authorize the issuance of the license, permit, or registration under certain terms and conditions or with certain restrictions.

11.8(3) The license committee or board may require an applicant to appear for an interview before the committee or the full board as part of the application process.

11.8(4) The license committee or board may defer final action on an application if there is an investigation or disciplinary action pending against an applicant, who may otherwise meet the requirements for license, permit, or registration, until such time as the committee or board is satisfied that licensure or registration of the applicant poses no risk to the health and safety of Iowans.

11.8(5) The dental hygiene committee shall be responsible for reviewing any applications submitted by a dental hygienist that require review in accordance with this rule. Following review by the dental hygiene committee, the committee shall make a recommendation to the board regarding issuance of the license or permit. The board's review of the dental hygiene committee's recommendation is subject to 650—Chapter 5.

650—11.9(147,153) Grounds for denial of application. The board may deny an application for license or permit for any of the following reasons:

1. Failure to meet the requirements for license or permit as specified in these rules.

2. Failure to provide accurate and truthful information, or the omission of material information.

3. Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended.

This rule is intended to implement Iowa Code section 147.4.

ITEM 11. Amend rule 650—11.11(261) as follows:

650—11.11(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 of these rules 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 of these rules. License denial 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.

ARC 1119B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 12, "Examinations," Iowa Administrative Code.

These amendments update the Board's rules on examinations for dental and dental hygiene licensure. Specific changes are as follows:

- The title of the chapter is renamed "Dental and Dental Hygiene Examinations." This change will clarify that rules in this chapter do not apply to dental assistants.
- Several provisions related to how and where to take the examination, identification numbers given, the failure of candidates, and the procurement of patients are eliminated. The Board utilizes the Central Regional Dental Testing Service, Inc. (CRDTS) and the Western Regional Examining Board, Inc. (WREB) to administer the examination. CRDTS sets the dates and times for the examination and other examination procedures. Examinees need to follow the requirements established by CRDTS and WREB.
- Dental hygienists who fail the examination three times will be required to retake the equivalent of an additional semester of an approved dental hygiene curriculum prior to retaking the CRDTS or WREB examination on the fourth examination attempt. Dentists are currently required to retake the equivalent of their senior year prior to a fourth examination attempt.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendments.

These rules will be subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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 October 25, 2001, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147 and 153.

The following amendments are proposed.

ITEM 1. Amend the title of **650—Chapter 12** as follows:

CHAPTER 12 DENTAL AND DENTAL HYGIENE EXAMINATIONS

ITEM 2. Amend rule 650—12.1(153) as follows:

650—12.1(147,153) Examination *Clinical examination procedure for dentistry.*

~~12.1(1) Unless otherwise notified in writing, applicants shall appear at the time and place fixed by the board to take the examination. To meet the requirements for dental licensure by examination, applicants shall complete either the Central Regional Dental Testing Service, Inc. (CRDTS) examination or the Western Regional Examining Board, Inc. (WREB) examination, if taken after January 1, 2001.~~

~~12.1(2) Each applicant shall be assigned a number for identification purposes during the examination. The examination shall be conducted so as to conceal the identity of the applicant as best as possible. Examinees shall meet the requirements for testing and follow the procedures established by either the Central Regional Dental Testing Service, Inc. or the Western Regional Examining Board, Inc.~~

~~12.1(3) The ability of an examinee to read and interpret instructions shall be evaluated and considered by the board as a part of the examination.~~

~~12.1(4) Any examinee who gives or receives unauthorized assistance in any portion of the examination may be dismissed from the examination. Any examinee who violates any of the applicable rules or instructions may be declared by the board to have failed the examination.~~

~~12.1(5) An examinee must be present punctually at the time designated for commencing each session of the examination.~~

~~12.1(6,3) Prior to April 1, 1995, the examinee must attain an average grade of not less than 70 percent on each clinical portion of the examination and 70 percent on the written portion of the examination. Between April 1, 1995, and December 30, 2000, the examinee must attain an average grade of not less than 75 percent on each clinical portion of the examination and 75 percent on the written portion of the examination. Effective April 1, 1997, the written portion of Central Regional Dental Testing Service (CRDTS) was eliminated from the examination. Effective January 1, 2001, the examinee must attain a comprehensive score that meets the passing standard established by CRDTS or the Western Regional Examining Board, Inc. (WREB).~~

~~12.1(7,4) Each examinee shall be required to perform such clinical operations as may be required by the Central Regional Dental Testing Service, Inc. or the Western Regional Examining Board, Inc. (WREB) for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dentistry.~~

~~12.1(8) The examinee must furnish the examinee's own patients, all needed materials, supplies and instruments. The director of the dental clinic at the college of dentistry may aid in the procurement of patients.~~

~~12.1(9) All operations must be performed by the examinee in the presence of the examiner assigned for such purpose.~~

ITEM 3. Amend rule 650—12.2(153), parenthetical implementation, as follows:

650—12.2(147,153) System of retaking dental examinations.

ITEM 4. Amend rule 650—12.3(153) as follows:

650—12.3(147,153) Examination *Clinical examination procedure for dental hygiene.*

DENTAL EXAMINERS BOARD[650](cont'd)

12.3(1) To meet the requirements for dental hygiene licensure by examination, applicants shall complete either the Central Regional Dental Testing Service, Inc. (CRDTS) examination or the Western Regional Examining Board, Inc. (WREB) examination, if taken after January 1, 2001.

12.3(2) Examinees shall meet the requirements for testing and follow the procedures established by either the Central Regional Dental Testing Service, Inc. or the Western Regional Examining Board, Inc.

12.3(3) The examinee must attain an average grade of 70 percent on the examination.

12.3(4) Each examinee shall be required to perform such practical demonstrations as may be required by the Central Regional Dental Testing Service, Inc. or the Western Regional Examining Board, Inc. for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dental hygiene.

~~**12.3(3)** The examinee must furnish the examinee's own patients, all needed materials, supplies and instruments. The director of the clinic at the school of dental hygiene may aid in the procurement of patients.~~

ITEM 5. Amend rule 650—12.4(153), parenthetical implementation, as follows:

650—12.4(147,153) System of retaking dental hygiene examinations.

ITEM 6. Amend subrule 12.4(3) as follows:

12.4(3) Fourth examination. Prior to the fourth examination, a dental hygiene examinee must submit proof of satisfactory completion of an approved curriculum in the equivalent of an additional semester of dental hygiene at a university or school with an approved curriculum approved by the dental hygiene committee.

ITEM 7. Rescind rule **650—12.5(153)**.

ARC 1118B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 14, “Renewal,” Iowa Administrative Code.

Item 1 of the amendments specifies the expiration date of licenses and exempts licensees from the continuing education requirement for the current biennial period after initial issuance of the license. Item 2 of the amendments rescinds rule 650—14.2(153). The requirements of this rule have been incorporated into rule 650—14.1(153). Item 3 of the amendments specifies the grounds for nonrenewal of a license or registration. The late renewal requirements are also amended by shortening the length of time allowed for late renewal in order to encourage licensees to renew on time. The amendments also clarify the requirements for reinstatement of a lapsed license or registration. The reinstatement fees and continuing education requirements for reinstatement

have been capped to encourage more licensees to reinstate a lapsed license.

The Board’s Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendments.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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 October 25, 2001, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147 and 153.

The following amendments are proposed.

ITEM 1. Amend rule 650—14.1(153) as follows:

650—14.1(147,153,272C) Renewal of license to practice dentistry or dental hygiene. A license to practice dentistry or a license to practice dental hygiene must be renewed biennially. Licenses expire on June 30 of every even-numbered year. The board will notify each licensee by mail of the expiration of the license.

14.1(1) Application for renewal must be made in writing to the board on forms provided by the board at least 30 days before the current license expires.

14.1(2) The appropriate fee as specified in 650—Chapter 15 of these rules shall accompany the application for renewal of a license at least 30 days before the current license expires. A penalty shall be assessed by the board for late renewal.

14.1(3) Completion of continuing education in accordance with 650—Chapter 25 is required for renewal of an active license. However, licensees are exempt from the continuing education requirement for the current biennium in which the license is issued. Failure to comply will automatically result in an inactive renewal.

14.1(4) In order to renew a license as a dental hygienist, the licensee shall be required to furnish evidence of a valid annual current certification in a nationally recognized course in cardiopulmonary resuscitation.

14.1(5) The dental hygiene committee may, in its discretion, review any applications for renewal of a dental hygiene license and make recommendations to the board. The board’s review is subject to 650—Chapter 5.

This rule is intended to implement Iowa Code section 147.10 and chapters 153 and 272C.

ITEM 2. Rescind and reserve rule **650—14.2(153)**.

ITEM 3. Amend rules 650—14.3(153), 650—14.4(153), and 650—14.5(153) as follows:

650—14.3(147,153,272C) Grounds for nonrenewal of license to practice dentistry or dental hygiene or of regis-

DENTAL EXAMINERS BOARD[650](cont'd)

~~tration 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~~ After proper notice and hearing, for a violation of these rules or Iowa Code chapter 147, or 153, or 272C 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.~~ Failure to pay required fees.

14.3(3) Failure to obtain required continuing education.

14.3(4) Reserved.

14.3(5) Receipt of a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services in accordance with 650—Chapter 33 and 650—Chapter 34.

This rule is intended to implement Iowa Code section 153.23 and ~~chapter chapters~~ 147, 252J, 261, and 272C.

650—14.4(147,153,272C) Late fee. Failure to renew the license prior to ~~August~~ July 1 following ~~June 30~~ expiration shall result in a late fee of \$50 \$100 being assessed by the board in addition to the renewal fee. Failure to renew prior to ~~September~~ August 1 following expiration shall result in a late fee of \$100 \$150 being assessed. ~~Failure to renew prior to October 1 following expiration shall result in a late fee of \$150 being assessed. The maximum late fee shall be \$150.~~

14.4(1) No renewal application shall be considered timely and sufficient until received by the board and accompanied by the material required for renewal and all applicable renewal and late fees.

14.4(2) Failure of a licensee to renew a license prior to ~~November~~ September 1 following its expiration shall cause the license to lapse and become invalid. A licensee whose license has lapsed and become invalid is prohibited from the practice of dentistry or dental hygiene until the license is reinstated in accordance with rule 14.5(153).

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

650—14.5(147,153,272C) 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) A licensee or a registrant who allows a license or registration to lapse by failing to renew 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 *on the form provided by the board.* ~~The reinstatement fee of \$150 shall accompany the application.~~

~~b. Name and address of applicant.~~

~~c. Dates and places of practice.~~

~~d. 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 the license or registration was not maintained.~~

~~g. Payment of all renewal fees then and penalties past due, not to exceed \$750, plus the reinstatement fee as specified in 650—Chapter 15.~~

~~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, up to a maximum of 75 hours.~~ 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,ch1002), *up to a maximum of 50 hours.*

~~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, dental hygienist, or dental assistant. A statement disclosing and explaining any disciplinary actions, investigations, claims, complaints, judgments, settlements, or criminal charges.~~

14.5(2) to 14.5(4) No change.

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

ARC 1117B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 14, “Renewal,” and Chapter 25, “Continuing Education,” Iowa Administrative Code.

These amendments require all licensees to provide evidence of current certification in cardiopulmonary resuscitation (CPR) from a nationally recognized provider at the time of license renewal or reinstatement. Currently, only dental hygienists and dental assistants are required to show proof of CPR at the time of renewal. Dentists are responsible for supervising all personnel in the office and solely responsible for the care and treatment of patients in their offices. Accordingly, dentists should also maintain certification in CPR to protect the health, safety, and welfare of patients in their offices.

The Board’s Committee for Regulatory Review, formed pursuant to Executive Order Number 8 and comprised of a representative from each of the dental associations and a representative from the dental education institutions, recommended the proposed amendments.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street,

DENTAL EXAMINERS BOARD[650](cont'd)

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 October 25, 2001, regular meeting of the Board of Dental Examiners.

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

The following amendments are proposed.

ITEM 1. Amend subrule 14.1(4) as follows:

14.1(4) In order to renew a license, ~~as a dental hygienist the licensee shall be required to furnish~~ evidence of a valid ~~annual current~~ certification in a nationally recognized course in cardiopulmonary resuscitation *is required*.

ITEM 2. Adopt the following new subrule 14.3(4):

14.3(4) Failure to provide proof of current certification in cardiopulmonary resuscitation.

ITEM 3. Amend subrule **14.5(1)** by adopting new paragraph "i" as follows:

i. Evidence that the applicant possesses a current certificate in a nationally recognized course in cardiopulmonary resuscitation.

ITEM 4. Amend subrule 25.2(10) as follows:

25.2(10) ~~A licensed dental hygienist or registered dental assistant~~ Licensees and registrants shall furnish evidence of valid certification for cardiopulmonary resuscitation, which shall be credited toward the continuing education requirement for renewal of 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 three continuing education credit hours per biennium. Valid 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 licensee or registrant~~ has been properly certified for each year covered by the renewal period.

ARC 1116B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 25, "Continuing Education," Iowa Administrative Code.

The purpose of the amendments is to clarify the continuing education requirements for licensees and responsibilities of continuing education sponsors. The number of credit hours allowed for home study activities is increased from 6 to 12 hours per biennium and credit for passing a recognized specialty examination is given. A continuing education sponsor fee of \$100 is proposed and an application fee of \$10

for prior approval of a program is proposed. The Board is proposing the fees to cover the costs associated with reviewing and approving sponsors and programs.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8 and comprised of representatives from the major dental associations and education programs, recommended the proposed amendments.

In addition, pursuant to 2001 Iowa Acts, House File 680, the amendments require licensees and registrants who regularly examine, attend, counsel or treat adults or children to document on the renewal application completion of mandatory training on abuse identification and reporting and to keep compliance records on file. Exemptions are also set out.

These rules will be subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7 and 650—25.7(153).

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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 October 25, 2001, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147 and 153.

The following amendments are proposed.

ITEM 1. Amend subrules 25.2(1), 25.2(2), 25.2(4) and 25.2(5) as follows:

25.2(1) ~~Beginning January 1, 1979, each person licensed to practice dentistry or dental hygiene in this state shall complete during each calendar year a minimum of 15 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal year.~~

~~Beginning January 1, 1984, each~~ Each person licensed to practice dentistry or dental hygiene in this state shall complete during the biennium ~~ending December 31, 1985, and each biennium thereafter~~ *renewal period* a minimum of 30 hours of continuing education approved by the board.

25.2(2) ~~For the license renewal period beginning July 1, 1992, the continuing education compliance period shall extend from January 1, 1990, through June 30, 1992. For all subsequent license renewal periods the~~ The continuing education compliance period shall be the 24-month period ~~ending on the June 30 immediately preceding the commencing July 1 commencement date of the license renewal period and ending on June 30 of the renewal cycle.~~

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.~~

DENTAL EXAMINERS BOARD[650](cont'd)

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.

ITEM 2. Amend subrule 25.2(9) as follows:

25.2(9) Licensees shall complete training relating to the identification and reporting of child abuse and dependent adult abuse pursuant to the requirements set forth by Iowa Code section 232.69(3) and chapter 235B. Mandatory training for child abuse and dependent adult abuse reporting.

a. Licensees or registrants who regularly examine, attend, counsel or treat children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph "f" of this subrule.

b. Licensees or registrants who regularly examine, attend, counsel or treat adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph "f" of this subrule.

c. Licensees or registrants who regularly examine, attend, counsel or treat both children and adults in Iowa shall indicate on the renewal application completion of at least two hours of training on the identification and reporting of abuse in children and dependent adults in the previous five years or conditions for exemptions as identified in paragraph "f" of this subrule. Training may be completed through separate courses or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

d. The licensee or registrant shall maintain written documentation for five years after completion of the mandatory training, including program date(s), content, duration, and proof of participation. The board may audit this information at any time within the five-year period.

e. Reserved.

f. Exemptions. Licensees and registrants shall be exempt from the requirement for mandatory training for identifying and reporting child and dependent adult abuse if the board determines it is in the public interest or that at the time of license renewal the licensee or registrant is issued a waiver, extension, or exemption pursuant to 650—25.7(153).

ITEM 3. Amend subrules 25.3(3) to 25.3(6) as follows:

25.3(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program. The program must include a manual or written outline which that substantively pertains to the subject matter of the program.

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 received five hours of credit with the maximum allowed ten hours of credit per biennium. Four hours of credit

shall be allowed for presentation 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, dental hygiene, or dental assisting convention shall receive two hours of credit as verified by the sponsor.

b. Postgraduate study relating to health sciences shall receive 15 credits per semester hour.

c. Successful completion of Part II of the National Board Examination for dentists, or the National Board Examination for dental hygienists, if taken five or more years after graduation, or a recognized specialty examination will result in 15 hours of credit.

d. Self-study activities shall result in a maximum of 12 hours of credit per biennium. Activity may include television viewing, video programs, correspondence work or research or computer CD-ROM programs that are interactive and require branching, navigation, participation and decision making on the part of the viewer are allowed a maximum of 12 hours per biennium.

e. 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 that represents part of the licensee's or registrant's normal academic duties as a full-time or part-time faculty member or consultant.

f. Publications of scientific articles in professional journals related to dentistry, dental hygiene, or dental assisting shall result in a maximum of 5 hours per article, maximum of 20 hours per biennium.

g. Credit may be given for other continuing education activities upon request and approval by the Iowa board of dental examiners.

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. An application fee of \$10, which shall be considered a repayment receipt as defined in Iowa Code section 8.2, is required. 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, 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

DENTAL EXAMINERS BOARD[650](cont'd)

sponsor 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.

ITEM 4. Amend subrule 25.3(7), paragraph "b," as follows:

b. 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 dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal. The board may deny credit for any course. Courses in patient treatment record keeping, risk management, *communication* and OSHA regulations are acceptable subject matter.

ITEM 5. Adopt ~~new~~ subrule 25.3(8) as follows:

25.3(8) 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 6. Amend subrules 25.4(2) and 25.4(3) as follows:

25.4(2) Prospective sponsors must apply to the board of dental examiners using a "Sponsor Approval Form" in order to obtain approved sponsor status. *An application fee of \$100 is required, which shall be considered a repayment receipt as defined in Iowa Code section 8.2.* Board-approved sponsors must pay the biennial renewal fee of \$100, which shall be considered a repayment receipt as defined in Iowa Code section 8.2, and file a sponsor recertification record report biennially.

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. *The sponsor of the continuing education activity shall also provide proof of attendance and the number of credit hours awarded to the licensee or registrant who participates in the continuing education activity.*

ITEM 7. Amend rule 650—25.5(153) as follows:

650—25.5(153) Review of programs or sponsors. The board on its own motion or at the recommendation of the advisory committee on continuing education may monitor or review any continuing education program or sponsors already approved by the board. ~~and upon~~ Upon evidence of significant variation in the program presented from the program approved, *the board* may disapprove all or any part of the approved hours granted to the program *or may rescind the approval status of the sponsor.*

ITEM 8. Amend rule 650—25.7(153) as follows:

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

25.7(1) ~~Waivers.~~ Illness or disability. The board may, in individual cases involving physical disability or illness, grant ~~waivers an exemption~~ of the minimum education requirements or ~~extensions an extension~~ of time within which to fulfill the same or make the required reports. No ~~waiver exemption~~ or extension of time shall be granted unless written application 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~~ Extensions or exemptions 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 an exemption~~ has been granted continues beyond the period of the ~~waiver granted~~, the licensee or registrant must reapply for an extension of the ~~waiver exemption~~. The board may, as a condition of the ~~waiver exemption 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.~~ Other 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. Periods that the person serves honorably on active duty in the military services;
- b. Periods that the person practices the person's profession in another state or district having a continuing education requirement and the licensee or registrant meets all requirements of that state or district for practice therein;
- c. Periods that the person is a government employee working in the person's licensed or registered specialty and assigned to duty outside the United States; or
- d. Other periods of active practice and absence from the state approved by the board; ;
- e. *The current biennium renewal period, or portion thereof, following original issuance of the license.*

ITEM 9. Amend rule 650—25.10(153) as follows:

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 *or nonrenewal of the license or registration.*

~~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 10. Amend **650—Chapter 25**, implementation clause, as follows:

These rules are intended to implement Iowa Code section sections 147.10, 153.15A and 153.39 and chapter 272C.

ARC 1115B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

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

This amendment updates the Board's rule on unethical and unprofessional conduct.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendment.

In accordance with rule 650—27.12(17A,147,153,272C), this amendment is not subject to waiver or variance because the amendment establishes ethical standards that must be adhered to in order to protect public health, safety, and welfare.

Any interested person may make written comments or suggestions on the proposed amendment on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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 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 October 25, 2001, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 147, 153, and 272C.

The following amendment is proposed.

Amend rule 650—27.9(153) as follows:

650—27.9(153) Unethical and unprofessional conduct.

27.9(1) Licensee or registrant actions determined by the board to be verbally abusive, coercive, intimidating, harassing, untruthful or threatening in connection with the practice of dentistry shall constitute unethical or unprofessional conduct.

27.9(2) A treatment regimen shall be fully explained and patient authorization obtained before treatment is begun.

27.9(3) A dentist or dental hygienist licensee or registrant determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel as defined in Iowa Code section 139C.1, established by the Iowa department of public health under subsection 139C.2(3), or if the dentist or dental hygienist licensee or registrant works in a hospital setting, the licensee or registrant may elect either the expert review panel established by the hospital or the expert review panel established by the Iowa department of public health for the

purpose of making a determination of the circumstances under which the dentist or dental hygienist licensee or registrant may perform exposure-prone procedures. The licensee or registrant shall comply with the recommendations of the expert review panel. Failure to do so shall constitute unethical and unprofessional conduct and is grounds for disciplinary action by the board.

27.9(4) Providing false or misleading information to the board or an agent of the board is considered unethical and unprofessional conduct.

ARC 1114B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 28, "Designation of Specialty," Iowa Administrative Code.

These amendments recognize a new dental specialty of oral and maxillofacial radiology. The American Dental Association recognized this new specialty in October 1999. Definitions of the specialty have recently been approved.

These rules are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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 October 25, 2001, regular meeting of the Board of Dental Examiners.

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

The following amendments are proposed.

ITEM 1. Amend rule 650—28.1(153) as follows:

650—28.1(153) General review. A dentist may represent that the dentist is a specialist in the specialties of dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial surgery, orthodontics, pediatric dentistry, periodontics, or prosthodontics, or oral and maxillofacial radiology provided the requirements of that area of specialty have been met. The board recognizes there are overlapping responsibilities among the recognized areas of dental practice. However, as a matter of principle, a specialist shall not

DENTAL EXAMINERS BOARD[650](cont'd)

routinely provide procedures that are beyond the scope of the specialty as defined below.

ITEM 2. Adopt **new** rule 650—28.10(153) as follows:

650—28.10(153) Oral and maxillofacial radiology.

28.10(1) Definition. Oral and maxillofacial radiology is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region.

28.10(2) Requirements.

a. Be a diplomate of the American Board of Oral and Maxillofacial Radiology; or

b. Have successfully completed a formal graduate or residency training program in oral and maxillofacial radiology accredited by the Commission on Dental Accreditation of the American Dental Association.

ARC 1113B**DENTAL EXAMINERS BOARD[650]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 30, "Discipline," and adopt a new Chapter 35, "Impaired Practitioner Review Committee," Iowa Administrative Code.

These amendments clarify the Board's disciplinary rules and add two new grounds for disciplinary action: (1) providing false information to the board or an agent of the board during the course of an inspection or investigation or interfering with an inspection or investigation; and (2) violating the terms of an initial agreement with the Impaired Practitioner Review Committee (IPRC) or a recovery contract entered into with the IPRC. In addition, the amendments move the Board's existing rule on the IPRC to a new Chapter 35, "Impaired Practitioner Review Committee."

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendments.

In accordance with rule 650—30.4(147,153,272C), these amendments are not subject to waiver or variance because the amendments establish grounds for discipline that must be adhered to in order to protect public health, safety, and welfare.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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 October 25, 2001, regular meeting of the Board of Dental Examiners.

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

The following amendments are proposed.

ITEM 1. Amend rules 650—30.1(153) and 650—30.2(153) as follows:

650—30.1(153) General. The board has authority to impose discipline for any violation of Iowa Code ~~chapter 153,~~ title IV, ~~subchapter 3,~~ chapter 272C, or the rules promulgated thereunder.

650—30.2(153) Methods of discipline. The board has authority to impose *one or more of* the following disciplinary sanctions:

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.
4. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require ~~reexamination~~ *clinical or written examination*.
8. Order a physical, ~~or~~ mental, *or clinical evaluation examination*.
9. Impose civil penalties not to exceed \$10,000 where specifically provided by rules.
10. Issue citation and warning.
11. Such other sanctions allowed by law as may be appropriate.

ITEM 2. Amend **650—30.4(147,153,272C)** as follows:

Amend numbered paragraphs "4," "7," "11," "13," and "24," as follows:

4. Conviction of a felony *or misdemeanor crime if the conviction relates to the practice of the profession.*

7. ~~Improper sexual contact with, or making~~ *Making suggestive, lewd, lascivious or improper remarks or advances to a patient or a coworker.*

11. ~~Splitting fees, accepting rebates, or accepting commissions from any source associated with the service rendered to the patient except as provided elsewhere by law or rule. The sharing of income in a partnership or association shall not be construed as splitting fees nor shall compensating dental hygienists on the basis of a percentage of the fee received for the overall service be deemed accepting a commission. Receiving or paying any fees for referral of patients.~~

13. Unprofessional conduct including, but not limited to, those acts defined by Iowa Code section 153.32 ~~and~~ *or any violation of 650—Chapter 27.*

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, dental hygiene, or dental assisting.

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

DENTAL EXAMINERS BOARD[650](cont'd)

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

Every conviction or violation of law or statute of this or another state as set forth in paragraph 30.4 "4."

Rescind and reserve paragraph "25."

Amend numbered paragraphs "26" to "29," "35," and "37" as follows:

26. ~~Employing or making use of advertising solicitors or publicity agents or soliciting employment personally or by representative except as is expressly authorized by rules of the board. Providing false information to the board or an agent of the board during the course of an inspection or investigation or interfering with an inspection or investigation.~~

27. ~~Employing any person to obtain, contract for, sell or solicit patronage, or make use of free publicity press agents except as is expressly authorized by rules of the board. In a case that has been referred by the impaired practitioner review committee (IPRC) to the board, violating the terms of an initial agreement with the IPRC or a recovery contract entered into with the IPRC.~~

28. ~~Any violation of Violating any provision of Iowa Code chapter 153 law, or for being a party to or assisting in any violation of any provision of Iowa Code chapter 153 law.~~

29. Any willful or repeated violations of Iowa Code chapter 153 law, or for being a party to or assisting in any violation of any provision of Iowa Code chapter 153 law.

35. Failure to comply with the ~~recommendations universal precautions~~ for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures ~~infectious diseases~~ as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

37. Failure to comply with the infection control standards which are consistent with the standards set forth in ~~347—Chapters 10 and 26 875—Chapters 10 and 26.~~

ITEM 3. Amend ~~650—Chapter 30~~, implementation clause, as follows:

~~This chapter is~~ *These rules are* intended to implement Iowa Code sections ~~261.121 to 261.127 153.34(9), 252H.10, 272C.3(1)"k," 272C.3(2)"e," 272C.4, 272C.5, 272C.10, 598.21(4)"e," and 598.21(8) and Iowa Code chapter chapters 147, 153, 252J, 272C, and 598.~~

ITEM 4. Renumber rule ~~650—30.5(153)~~ as rule ~~650—35.1(153,272C)~~ in new Chapter 35, "Impaired Practitioner Review Committee."

ITEM 5. Amend renumbered rule ~~650—35.1(153,272C)~~ as follows:

Strike "licensee" wherever it appears and insert in lieu thereof "practitioner".

Adopt the following new definitions in alphabetical order:

"Initial agreement" means the written document establishing the initial terms for participation in the impaired practitioner recovery program.

"Practitioner" means a licensed dentist or dental hygienist or a registered dental assistant.

Amend the following definition:

"Impairment" means an inability to practice dentistry, or dental hygiene, or dental assisting with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

Amend subrule 35.1(2) as follows:

35.1(2) Purpose. The IPRC evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of dentists, or hygienists, or assistants who self-report impairments. Reports on the activities of the IPRC shall be made to the board on a quarterly basis.

Amend subrule 35.1(4), paragraph "a," as follows:

a. The licensee practitioner engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third person or for personal profit or gain;

Amend subrule 35.1(5) as follows:

35.1(5) Type of program. The IPP is an individualized recovery or rehabilitation program designed to meet the specific needs of the impaired practitioner. The committee shall ~~meet with the licensee, in consultation with the practitioner~~ and, upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery or rehabilitation program required to treat the licensee's practitioner's impairment. The committee shall prepare a contract, to be signed by the licensee practitioner, that shall provide a detailed description of the goals of the program, the requirements for successful completion, and the licensee's practitioner's obligations therein.

ARC 1112B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 31, "Complaints and Investigations," and Chapter 51, "Contested Cases," Iowa Administrative Code.

These amendments clarify the duties of peer review committees and the duties of licensees and registrants concerning mandatory reporting. The amendments also add a provision to recoup costs associated with monitoring practitioners when the practitioners agree to the stipulation in a settlement agreement.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendments.

These amendments are not subject to waiver or variance because the amendments establish administrative procedures only for peer review committees, mandatory requirements for licensees, and an optional settlement provision.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 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 December 4, 2001, from 2 to 3 p.m. in the 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

DENTAL EXAMINERS BOARD[650](cont'd)

have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 25, 2001, regular meeting of the Board of Dental Examiners.

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

The following amendments are proposed.

ITEM 1. Amend rule 650—31.8(272C) as follows:

650—31.8(272C) Duties of peer review committees.

31.8(1) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

31.8(2) The board may provide ~~investigatory~~ *investigative* and related services to peer review committees.

31.8(3) A peer review committee shall thoroughly investigate a complaint as assigned and ~~make provide a written recommendations report~~ to the board in accordance with the board's direction.

31.8(4) ~~Written recommendations~~ *The peer review report* shall contain a statement of facts, ~~the and a recommendation for disposition and the rationale supporting the recommendation as to whether a violation of the standard of care occurred.~~ The peer review *committee* should consider relevant statutes, board rules, ethical standards and standards of care in making its recommendations.

31.8(5) ~~Written recommendations~~ *The peer review report* shall be signed by the members of the peer review committee concurring in the report.

31.8(6) Upon completion, ~~the peer review report and all investigative reports prepared by peer review committees or staff together with any recommendations information~~ shall be submitted to the board.

ITEM 2. Rescind rule 650—31.13(272C) and adopt the following **new** rule:

650—31.13(272C) Mandatory reporting.

31.13(1) Definitions. For the purposes of this rule, the following definitions apply:

“Knowledge” means any information or evidence acquired from personal observation, from a reliable or authoritative source, or under circumstances that cause the licensee to believe that there exists a substantial likelihood that an act or omission may have occurred.

“Reportable act or omission” means any conduct that may constitute a basis for disciplinary action under the rules or statutory provisions governing the practice of dentistry, dental hygiene, or dental assisting in Iowa.

31.13(2) Reporting requirement. A report shall be filed with the board when a licensee or registrant has knowledge that another person licensed or registered by the board may have committed a reportable act or omission.

a. The report shall be filed with the board within seven days from the date the licensee or registrant acquires knowledge of the reportable act or omission.

b. The report shall contain the name and the address of the licensee or registrant who may have committed the reportable act or omission, the date, time, place and circumstances in which the reportable act or omission may have occurred, and a statement indicating how the knowledge was acquired.

c. The requirement to report takes effect when a licensee or registrant has knowledge that another licensee may have committed a reportable act or omission. The final deter-

mination of whether or not such act or omission has occurred is the responsibility of the board.

31.13(3) Failure to report. Failure to report knowledge of a reportable act or omission within the required seven-day period shall constitute a basis for the initiation of a board disciplinary action against the licensee or registrant who failed to report.

ITEM 3. Adopt the following **new** subrule 51.19(9):

51.19(9) A provision for payment of the actual costs associated with monitoring a licensee's or registrant's compliance with the settlement agreement may be included in the settlement agreement. Actual costs include mileage, meals, travel expenses, hourly investigative time, and all incidental expenses associated with monitoring compliance, which shall be considered repayment receipts as defined in Iowa Code section 8.2.

ARC 1079B

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 58, “New Jobs and Income Program,” Iowa Administrative Code.

The Department is proposing these amendments with the objective of balancing two important policies: maintaining program flexibility to meet the needs of new and expanding businesses and ensuring that the State's financial assistance resources promote fiscal responsibility.

Comments about ways in which the Department can best meet the stated objectives are solicited from all interested parties. One area for which comments are particularly sought is described in Item 3 and concerns negotiation of certain program benefits, proposed negotiation criteria, and procedures for applying these criteria.

Item 1 of the proposed amendments clarifies the policy that projects that have been initiated before receiving application approval from the Department are not eligible for assistance.

Item 2 amends the definition of “project completion” to specify that completion will be considered as occurring on the date when all improvements included in the economic development area have been made. New definitions for “project” and “project initiation” are proposed. “Project” is defined as a set of activities proposed in the application and which will accomplish New Jobs and Income Program goals. A definition for “project initiation” is proposed to more clearly delineate when a project will be considered ineligible for assistance due to lack of demonstrated need.

In Item 3, the rule concerning application prerequisites is amended to notify applicants that the Department will negotiate with an eligible business to determine the amount of certain tax incentives and assistance available for a project.

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

The criteria to be used to establish the amount of benefits available are described.

The proposed amendments in Item 4 clarify that the amount of program benefits available to a business will be reflected in an agreement executed between the Department and the business. The proposed revisions also update statutory references, incorporate legislative changes, and describe administrative requirements that must be met for the processing of tax credit certificates to cooperatives.

Item 5 extends from six months to one year the time period a business has to file with the Department of Revenue and Finance for a refund of sales, service and use taxes paid to contractors or subcontractors.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 4, 2001. Interested persons may submit written or oral comments by contacting Allen Williams, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4771.

A public hearing to receive comments about the proposed amendments will be held on December 4, 2001, at 2:30 p.m. at the above address in the second floor ICN Main Conference Room.

These amendments are intended to implement 2001 Iowa Acts, House File 716.

The following amendments are proposed.

ITEM 1. Amend rule 261—58.1(15) as follows:

261—58.1(15) Purpose. The purpose of the new jobs and income program is to encourage relationships between state government and business by supporting mutual development objectives. The program is designed to encourage sustained profitability for eligible businesses that invest and operate in the state in return for the desired state outcomes of new jobs and higher income. *Projects that have been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.*

ITEM 2. Amend rule 261—58.2(15) as follows:

Amend the following definition:

“Project completion” means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the economic development area is at least 50 percent of the initial design capacity of the operation of the facility. The eligible business shall inform the department of revenue and finance in writing, on forms approved by the department of revenue and finance, within two weeks of project completion. *For existing facilities, project completion means the date of completion of all improvements included in the economic development area.*

Adopt the following new definitions in alphabetical order:

“Project” means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the new jobs and income program, and for which the business requests the benefits of the new jobs and income program.

“Project initiation” means any one of the following: the start of construction of new or expanded buildings; the start of rehabilitation of existing buildings; the purchase or leasing of existing buildings; or the installation of new machinery and equipment or new computers to be used in the operation of the business’s project. The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building

construction, expansion or rehabilitation shall not constitute project initiation.

ITEM 3. Amend rule 261—58.3(15) as follows:

261—58.3(15) Agreement prerequisites. Before the department and a business or group of businesses enter into an agreement for program benefits, the following steps must be completed:

58.3(1) The business or group of businesses submits an application in compliance with the provisions of these rules.

58.3(2) The department determines that the business or group of businesses has met the threshold requirements for program participation.

58.3(3) *The department enters into negotiations with the business or group of businesses regarding the amount of tax incentives and assistance the business or group of businesses may be eligible to receive. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; the refund of sales, service and use taxes paid to contractors and subcontractors; the sales and use tax exemption; and the exemption from land ownership restrictions for nonresident aliens. The criteria to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:*

a. The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; turnover rate; fringe benefits provided; safety; skill level.

b. The wage levels of the jobs to be created.

c. The amount of capital investment to be made.

d. The level of need of the business. Factors to be considered include but are not limited to the degree to which the business needs the tax incentives and assistance in order for the project to proceed. Methods of documenting need may include criteria such as financial concerns; risk of the business’s locating in or relocating to another state; or return-on-investment concerns.

e. The economic impact and cost to the state and local area of providing tax incentives and assistance in relation to the public gains and benefits to be provided by the business. Factors to be considered include but are not limited to the amount of tax credits likely to be used by the business and the impact on the local and state tax base and economic base.

f. Other state or federal financial assistance received or applied for by the business for the project.

58.3(3) 58.3(4) The board approves the application and the amount of tax incentives and assistance negotiated by the department that the business or group of businesses shall receive and authorizes the department to execute an agreement with the business or group of businesses.

ITEM 4. Amend rule 261—58.4(15) as follows:

261—58.4(15) Program benefits. *The department reserves the right to negotiate, using the criteria in subrule 58.3(3), the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; the refund of sales, service and use taxes paid to contractors and subcontractors; the sales and use tax exemption; and the exemption from land ownership restrictions for nonresident aliens. The following benefits are may be available to an eligible business and are subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in the executed agreement:*

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

58.4(1) and **58.4(2)** No change.

58.4(3) Investment tax credit and insurance premium tax credit.

a. Investment tax credit. An eligible business may claim an investment tax credit as provided in ~~Iowa Code Supplement section 15.333 as amended by 2000 Iowa Acts, chapter 1213, section 1~~ *2001 Iowa Acts, House File 716, section 1*. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. Subject to prior approval by the department in consultation with DRF, an eligible business whose project primarily involves the production of value-added agricultural products may elect to apply for a refund for all or a portion of an unused tax credit. *For purposes of this subrule, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol.* The refund may be used against a tax liability imposed for individual income tax, corporate income tax, or franchise tax.

b. No change.

c. Eligible capital expenditures. For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the *new jobs and income* program are the costs of machinery and equipment as defined in Iowa Code section 427A.1(1)"e" and "j" and purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles. For the investment tax credit *and for the insurance premium tax credit*, the cost of improvements made to real property which is used in the operation of the eligible business ~~and which receives a partial property tax exemption for the actual value added as described in Iowa Code section 15.332~~ is an eligible capital expenditure. ~~For the insurance premium tax credit, the cost of improvements made to real property which is used in the operation of the eligible business is an eligible capital expenditure.~~

d. No change.

e. Refunds. An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, may elect to receive as a refund all or a portion of an unused investment tax credit.

(1) The department will determine whether a business project primarily involves the production of value-added agricultural products. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

(2) The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. *For a cooperative described in Section 521 of the United States Internal Revenue Code that is not required to file an Iowa corporate income tax return, the department shall require the cooperative to submit a list of members whom the cooperative wishes to re-*

ceive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

(3) The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. By June 15 of each year any business that has submitted a request for a tax credit certificate for that year may be allowed to amend or withdraw any such request. The department will issue tax credit certificates ~~by June 30 of each fiscal year~~ *within a reasonable period of time.*

(4) No change.

(5) Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred *except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol.* For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until depleted, whichever occurs first.

(6) No change.

f. No change.

58.4(4) and **58.4(5)** No change.

58.4(6) Refund of sales, service and use taxes paid to contractors or subcontractors.

a. No change.

b. Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, ~~within six months~~ *one year* after project completion, make an application to the Iowa department of revenue and finance.

58.4(7) and **58.4(8)** No change.

ARC 1080B

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 59, "Enterprise Zone Program," Iowa Administrative Code.

The Department is proposing these amendments with the objective of balancing two important policies: maintaining program flexibility to meet the needs of new and expanding businesses and ensuring that the state's financial assistance resources promote fiscal responsibility.

Comments about ways in which the Department can best meet the stated objectives are solicited from all interested parties. One area for which comments are particularly sought is described in Item 4, which concerns negotiation of certain program benefits, proposed negotiation criteria, and procedures for applying these criteria.

Item 1 clarifies the policy that projects that have been initiated before receiving application approval from the Department are not eligible for enterprise zone assistance.

Item 2 proposes the addition of three new definitions: "development business," "project" and "project initiation." "Development business" is a new category of eligible applicants, as authorized by 2001 Iowa Acts, House File 349. "Project" is defined as a set of activities proposed in the application which will accomplish Enterprise Zone Program goals. A definition for "project initiation" is proposed to more clearly delineate when a project will be considered ineligible for assistance due to lack of demonstrated need.

Item 3 rescinds an outdated rule concerning county zone designation.

Item 4 adds a reference to the fourth way a business may apply for assistance: as an eligible development business. This rule is further amended to add a new subrule concerning the ability of the Department to negotiate certain program benefits using the proposed criteria.

Item 5 amends the rule concerning program requirements to notify applicants that the Department will negotiate with an eligible business to determine the amount of certain tax incentives and assistance available for a project. In this Item, the rule that a company will be deemed eligible if it pays an hourly wage of \$9.50 or greater is rescinded. The amendment also clarifies that an eligible business must pay at least the program's statutory minimum. Additional proposed amendments clarify that the amount of program benefits available to a business will be reflected in an agreement executed between the Department and the business. The revisions update statutory references, incorporate legislative changes, describe administrative requirements that must be met for the processing of tax credit certificates to cooperatives, and provide that the Department will issue tax credits within a reasonable period of time rather than a stated date.

Item 6 rescinds the rule that, in order to be an eligible housing business, the per-house or per-unit valuation may

not exceed \$120,000. There is now no limit on the per-house or per-unit valuations. Item 6 also amends the rule so that the investment tax credit to be taken by the eligible housing business is now limited to the first \$140,000 of value for each single-family house or for each multifamily unit.

Item 7 adds a new rule 261—59.9(79GA, HF349) concerning eligible development businesses, a new category of eligible applicants authorized by 2001 Iowa Acts, House File 349.

Item 8 amends the rule applicable to Commission review of applications by adding references to "eligible development business."

Items 9 and 10 propose the addition of language to indicate that the level of certain benefits available to an eligible business will be as negotiated with the Department.

Item 11 amends the rule dealing with the calculation of repayment by a development business in the event of noncompliance.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 4, 2001. Interested persons may submit written or oral comments by contacting Allen Williams, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4771.

A public hearing to receive comments about the proposed amendments will be held on December 4, 2001, at 3:30 p.m. at the above address in the second floor ICN Main Conference Room.

These amendments are intended to implement 2001 Iowa Acts, House File 349.

The following amendments are proposed.

ITEM 1. Amend rule 261—59.1(15E) as follows:

261—59.1(15E) Purpose. The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. ~~Eligible businesses (including eligible housing businesses)~~ *Businesses that are eligible and locating or located in an enterprise zone, and approved by the department, are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city. Projects, except for those of development businesses, that have already been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.*

ITEM 2. Amend rule 261—59.2(15E) by adopting the following new definitions in alphabetical order:

"Development business" means a developer or development contractor that constructs, expands or rehabilitates a building space with a minimum capital expenditure of \$500,000.

"Project" means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the enterprise zone program, and for which the business requests the benefits of the enterprise zone program.

"Project initiation" means any one of the following: the start of construction of new or expanded buildings; the start of rehabilitation of existing buildings; the purchase or leasing of existing buildings; or the installation of new machinery and equipment or new computers to be used in the operation of the business's project. The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building

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

construction, expansion or rehabilitation shall not constitute project initiation. This definition does not apply to eligible development businesses.

ITEM 3. Rescind subrule 59.3(4).

ITEM 4. Amend rule 261—59.5(15E) as follows:

261—59.5(15E) Eligibility and negotiations.

59.5(1) To participate in the enterprise zone program, a business must qualify under one of ~~three~~ *four* categories: as an eligible business, an alternative eligible business, ~~or~~ an eligible housing business, *or an eligible development business.* Refer to rule 261—59.6(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible business.” Refer to rule 261—59.7(15E) for a description of the eligibility requirements and benefits available to a qualified “alternative eligible business.” Refer to rule 261—59.8(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible housing business.” *Refer to rule 261—59.9(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible development business.”*

59.5(2) Negotiations. *The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria, as applicable to the category under which the business is applying, to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:*

a. *The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; turnover rate; fringe benefits provided; safety; skill level.*

b. *The wage levels of the jobs to be created.*

c. *The amount of capital investment to be made.*

d. *The level of need of the business. Factors to be considered include but are not limited to the degree to which the business needs the tax incentives and assistance in order for the project to proceed. Methods of documenting need may include criteria such as financial concerns; risk of the business's locating in or relocating to another state; or return on investment concerns.*

e. *The economic impact and cost to the state and local area of providing tax incentives and assistance in relation to the public gains and benefits to be provided by the business. Factors to be considered include but are not limited to the amount of tax credits likely to be used by the business and the impact on the local and state tax base and economic base.*

f. *Other state or federal financial assistance received or applied for by the business for the project.*

ITEM 5. Amend rule 261—59.6(15E) as follows:

261—59.6(15E) Eligible business.

59.6(1) Requirements. A business which is or will be located in an enterprise zone is eligible to receive incentives and assistance under the Act if the business meets all of the following:

a. to c. No change.

d. **Wage levels.** The business pays an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than ~~\$7.50 per hour~~ *the statutory minimum.* The department will periodically calculate, revise and issue the “average county

wage” and the “average regional wage” figures that will be used for determining business eligibility in the program. ~~However, in any circumstance, a company will be deemed eligible for participation in the enterprise zone if it pays an hourly wage of \$9.50 or greater.~~ The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires.

e. and f. No change.

59.6(2) No change.

59.6(3) Benefits. *The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors.*

The following incentives and assistance ~~are~~ *may* be available to an eligible business within a certified enterprise zone, *subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in an executed agreement, only when the average wage of all the new project jobs meets the minimum wage requirements of 59.6(1)“d”:*

a. and b. No change.

c. **Investment tax credit and insurance premium tax credit.**

(1) **Investment tax credit.** An eligible business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. Subject to prior approval by the department in consultation with DRF, an eligible business whose project primarily involves the production of value-added agricultural products may elect to apply for a refund for all or a portion of an unused tax credit. *For purposes of this paragraph, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol.* The refund may be used against a tax liability imposed for individual income tax, corporate income tax, or franchise tax. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

(2) No change.

(3) **Eligible capital expenditures.** For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the enterprise zone program are the costs of machinery and equipment as defined in Iowa Code section 427A.1(1)“e” and “j” purchased for use in the operation of the eligible business, the purchase prices of which have been depreciated in accordance with generally accepted accounting principles. For the investment tax credit *and for the insurance premium tax credit*, the cost of improvements made to real property which is used in the operation of the eligible business ~~and which re-~~

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

~~ceives a partial property tax exemption for the actual value added as described in Iowa Code section 15.332 is an eligible capital expenditure. For the insurance premium tax credit, the cost of improvements made to real property which is used in the operation of the eligible business is an eligible capital expenditure.~~

(4) No change.

(5) Refunds. An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, may elect to receive as a refund all or a portion of an unused investment tax credit.

1. The department will determine whether a business's project primarily involves the production of value-added agricultural products. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

2. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. *For a cooperative described in Section 521 of the United States Internal Revenue Service Code that is not required to file an Iowa corporate income tax return, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.*

3. The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. By June 15 of each year any business that has submitted a request for a tax credit certificate for that year may be allowed to amend or withdraw any such request. The department will issue tax credit certificates ~~by June 30 of each fiscal year~~ within a reasonable period of time.

4. No change.

5. Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred *except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code and which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol. For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates.* Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until depleted, whichever occurs first. An eligible

business may apply for tax credit certificates once each year for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the \$4 million of available credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 for up to seven years or until the credit is depleted, whichever occurs first.

d. No change.

e. Refund of sales, service and use taxes paid to contractors or subcontractors. A business is eligible for a refund of sales, service and use taxes paid to contractors and subcontractors as authorized in Iowa Code section 15.331A.

(1) An eligible business may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the enterprise zone.

(2) Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, within ~~six months~~ *one year* after project completion, make an application to DRF. For new manufacturing facilities, "project completion" means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the enterprise zone is at least 50 percent of the initial design capacity of the facility. For existing facilities, "project completion" means the date of completion of all improvements included in the enterprise zone project.

f. No change.

g. *Limitation on receiving incentives. A business, other than a development business as defined in rule 261—59.9(79GA, HF349), that is eligible to receive incentives and assistance under subrule 59.6(1), is not eligible to receive the following incentives and assistance if these incentives and assistance were previously approved for a development business:*

(1) *An investment tax credit received for the purchase price of land or improvements to real property. An eligible business that is not a development business may only claim an investment tax credit on additional, new improvements made to real property provided that these improvements were not included in the development business's approved application for benefits.*

(2) *The refund of sales, service, and use taxes paid to contractors or subcontractors as described in paragraph 59.6(3)"e." An eligible business that is not a development business may only claim a refund of sales, service and use taxes paid to contractors or subcontractors for new buildings or additions to existing buildings for improvements made to real property provided that these improvements were not included in the development business's approved application for benefits.*

(3) *Value-added property tax exemptions. An eligible business that is not a development business may not claim a value-added property tax exemption for improvements to real property if the development business has received a*

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

property tax exemption due to those improvements to the real property.

ITEM 6. Amend rule 261—59.8(15E) as follows:

261—59.8(15E) Eligible housing business. An eligible housing business includes a housing developer or housing contractor.

59.8(1) Requirements. A housing business shall satisfy all of the following as conditions to receiving the benefits described in this rule.

a. The housing business must build or rehabilitate either:

(1) A minimum of four single-family homes ~~with a value, after completion of the building or rehabilitation, not exceeding \$120,000 for each home~~ located in that part of a city or county in which there is a designated enterprise zone, or

(2) One multiple dwelling unit building containing three or more individual dwelling units ~~with a total value per unit, after completion of the building or rehabilitation, not exceeding \$120,000~~ located in that part of a city or county in which there is a designated enterprise zone.

b. to d. No change.

59.8(2) Benefits. A business that qualifies under the “eligible housing business” category ~~is~~ *may be* eligible to receive the following benefits for a period of ten years:

a. ~~Income~~ *Investment* tax credit. An eligible housing business, *subject to negotiations with the department*, may claim an ~~income investment~~ tax credit up to a maximum of 10 percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. *The new investment that may be used to compute the tax credit shall not exceed the new investment used for the first \$140,000 of value for each single-family home or for the first \$140,000 of value for each unit of a multiple dwelling unit building containing three or more units. The tax credit may be used to reduce tax liabilities imposed under Iowa Code chapter 422, Division II—personal net income tax; Division III—income taxes on corporations; or Division V—franchise tax on financial institutions.* Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro-rata share of the individual’s earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust.

b. No change.

59.8(3) No change.

ITEM 7. Adopt new rule 261—59.9(79GA, HF349) as follows and renumber rules 261—59.9(15E) to 261—59.13(15E) as 261—59.10(15E) to 261—59.14(15E):

261—59.9(79GA, HF349) Eligible development business. An eligible development business includes a developer or development contractor.

59.9(1) Requirements. A development business shall satisfy all of the following conditions to receive the benefits described in this rule.

a. The development business must construct, expand or rehabilitate a building space with a minimum capital investment of at least \$500,000. There are two partial exemptions to the \$500,000 investment requirement:

(1) If the development business will be buying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000 as determined by the local enterprise zone commission, shall be counted toward the minimum \$500,000 capital investment requirement.

(2) If the development business will be rehabilitating an existing building space that has been located within an area for at least five years and that area has been certified as an enterprise zone, the fair market value as established by an appraisal of the building, not to exceed \$250,000, shall be counted toward the minimum \$500,000 capital investment requirement.

Only one of these two exemptions may be used as an exemption by the development business in meeting the minimum capital investment requirement of at least \$500,000.

b. Upon completion of the project, an approved development business shall not allow a retail business to occupy space within the building space described in the development business’s application.

c. The eligible development business shall complete its construction, expansion or rehabilitation within three years from the time the business receives approval from the department. The failure to complete construction, expansion or rehabilitation within three years shall result in the eligible development business becoming ineligible and subject to the repayment requirements and penalties in rule 261—59.14(15E).

d. Prior to applying for assistance under this rule, an eligible development business shall enter into an agreement with at least one nondevelopment business for purposes of locating the business in all or a portion of the building space for a period of at least five years.

e. An eligible development business shall provide the local enterprise zone commission with all of the following information:

(1) The long-term strategic plan for the proposed development project, including infrastructure needs, and a copy of any agreement entered into by the eligible business as required under paragraph 59.9(1)“d.”

(2) Information describing the benefits the development project will bring to the area.

(3) Examples to illustrate why the proposed development project should be considered a good business enterprise.

(4) Information on the impact the development business’s project will have on other Iowa businesses in competition with it.

(5) An affidavit that the business has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or, if such violations have occurred, that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

59.9(2) Benefits. A business that qualifies under the eligible development business category may be eligible to receive the following benefits for a period of up to ten years:

a. *Investment* tax credit. An eligible development business, subject to negotiations with the department, may claim a tax credit up to a maximum of 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities. For purposes of this paragraph, “new investment” means the

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

purchase price of land and the cost of improvements made to real property. This tax credit may be claimed by an eligible development business beginning in the tax year in which the construction, expansion or rehabilitation is completed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. The tax credit may be used to reduce tax liabilities imposed under Iowa Code chapter 422, Division II—personal net income tax; Division III—income taxes on corporations; Division V—franchise tax on financial institutions; or the tax credit may instead be used to offset the tax liability imposed under Iowa Code chapter 432, premium taxes on insurance companies. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro-rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust.

b. Sales, service, and use tax refund. An approved development business shall receive a sales, service, and use tax refund as described in paragraph 59.6(3)"e."

c. Value-added property tax exemption. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible development business constructs, expands or rehabilitates property in an enterprise zone. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible development business under this program. The amount of value added for purposes of Iowa Code section 15E.196 shall be the amount of the increase in assessed valuation of the property following the construction, expansion or rehabilitation of the development business in the enterprise zone. If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county enterprise zone commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable uniform criteria that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. Planning objectives may include, but are not limited to, land use, rehabilitation of distressed property, or brownfield remediation. The exemption may be allowed for a period not to exceed ten years beginning the year value added by improvements to real estate is first assessed for taxation in an enterprise zone. The exemption is allowed for the development business only. Any succeeding owner of the building space is not eligible to receive the value-added property tax exemption.

59.9(3) Limitation on receiving incentives. A business which is not a development business that is eligible to receive incentives and assistance under subrule 59.6(1) is not eligible to receive the following incentives and assistance if these incentives and assistance were previously approved for a development business:

a. An investment tax credit received for the purchase price of land or improvements to real property. An eligible business that is not a development business may only claim an investment tax credit on additional, new improvements made to real property provided that these improvements

were not included in the development business's approved application for benefits.

b. The refund of sales, service, and use taxes paid to contractors or subcontractors as described in paragraph 59.6(3)"e." An eligible business that is not a development business may only claim a refund of sales, service and use taxes paid to contractors or subcontractors for new buildings or additions to existing buildings for improvements made to real property provided that these improvements were not included in the development business's approved application for benefits.

c. Value-added property tax exemptions. An eligible business that is not a development business may not claim a value-added property tax exemption for improvements to real property if the development business has received a property tax exemption due to those improvements to the real property.

59.9(4) Application submittal and review. An eligible development business shall first submit an application to the commission for approval. The commission shall forward applications that it has approved to receive benefits and assistance to the department for final review and approval.

ITEM 8. Amend renumbered rule 261—59.10(15E) as follows:

261—59.10(15E) Commission review of businesses' applications.

59.10(1) No change.

59.10(2) Application. The department will develop a standardized application that it will make available for use by a business applying for benefits and assistance as an eligible business, an alternative eligible business, ~~or~~ an eligible housing business *or an eligible development business*. The commission may add any additional information to the application that it deems appropriate for a business to qualify as an eligible business, ~~or~~ an eligible housing business *or an eligible development business*. If the commission determines that a business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

ITEM 9. Amend renumbered rule 261—59.12(15E) by adopting **new** subrule 59.12(7) as follows:

59.12(7) Negotiations. The department may enter into negotiations regarding the amount of tax incentives and assistance the business may be eligible to receive. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria to be used in the negotiations to determine the amount of tax incentives and assistance are as described in subrule 59.5(2).

ITEM 10. Amend renumbered rule 261—59.13(15E) as follows:

261—59.13(15E) Agreement. ~~The~~ *After the department negotiates and approves the application and the amount of incentives and assistance that the business shall receive, the department and the city or county, as applicable, shall enter into an agreement with the business. The term of the agreement shall be ten years from the agreement effective date plus any additional time necessary for the business to satisfy the job maintenance requirement. This three-party agreement shall include, but is not limited to, provisions governing the number of jobs to be created, representations by the business that*

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

it will pay the wage and benefit levels pledged and meet other requirements of the Act as described in the approved application, reporting requirements such as an annual certification by the business that it is in compliance with the Act, *the amount or level of tax incentives and assistance that the business shall receive as negotiated by the department*, and the method for determining the amount of incentives or assistance ~~paid received by the business~~ which will be repaid in the event of failure to maintain the requirements of the Act and these rules. In addition, the agreement will specify that a business that fails to maintain the requirements of the Act and these rules shall not receive incentives or assistance for each year during which the business is not in compliance.

ITEM 11. Amend renumbered rule 261—59.14(15E) as follows:

261—59.14(15E) Compliance; repayment requirements; recovery of value of incentives.

59.14(1) and 59.14(2) No change.

59.14(3) Calculation of repayment due. If a business fails in any year to meet any one of the requirements of the Act or these rules to be an eligible business, it is subject to repayment of all or a portion of the amount of incentives received.

a. Failure to meet/maintain requirements. If a business fails in any year to meet or maintain any one of the requirements of the Act or these rules, except its job creation requirement which shall be calculated as outlined in paragraph "b" below, the business shall repay the value of the incentives received for each year during which it was not in compliance. *If a development business, within five years of project completion, or its successor, sells or leases any space to any retail business, the development business shall proportionally refund the value of any tax credits, refunds or property tax exemptions that were claimed under this program.*

b. Job creation shortfall. If a business does not meet its job creation requirement, repayment shall be calculated as follows:

(1) If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

59.14(4) *Calculation of repayment due for a development business. The proportion of any tax credits, refunds or property tax exemptions claimed that are due for repayment if a development business, or its successor, sells or leases building space to a retail business will be determined by dividing the square footage of building space occupied by the retail business by the total square footage of the total building space as described in the application and approved for benefits under this program.*

59.14(4) 59.14(5) DRF; county/city recovery. Once it has been established, through the business annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and finance and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the

exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under ~~1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.193A or 15E.196.~~ The value of state incentives provided under ~~1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.193A or 15E.196~~ includes applicable interest and penalties.

These rules are intended to implement Iowa Code sections 15.333, 15.333A, and 15E.191 to 15E.196 and 2001 Iowa Acts, House File 349.

ARC 1122B

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.105, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 44, "Drinking Water Revolving Fund," Chapter 92, "State Revolving Fund Loans for Wastewater Treatment," and Chapter 93, "Onsite Wastewater Treatment Assistance Program," Iowa Administrative Code.

The amendments revise the loan interest rate determination to a flat rate, revise loan repayment criteria, amend parity requirements with respect to other obligations outstanding, and specify revenue pledge coverage requirements. The amendments also update terminology and recognize the relationship to the Onsite Wastewater Assistance Fund established in 567—Chapter 93.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 4, 2001. Written materials should be directed to the Wastewater Section, 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 December 4, 2001, at 1 p.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time people may present their views either orally or in writing.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 1121B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 455B.291 to 455B.299.

ARC 1124B**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 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Iowa Administrative Code.

The amendment to Chapter 60 modifies the definition of “storm water discharge associated with industrial activity” to allow more types of facilities to qualify for the “no-exposure” exemption whereby facilities are exempted from permitting if no activities or materials are exposed to precipitation.

Any interested person may make written suggestions or comments on the proposed amendment on or before December 4, 2001. Written comments should be directed to Storm Water Coordinator, 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 December 4, 2001, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

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

The following amendment is proposed.

Amend rule **567—60.2(455B)**, definition of “storm water discharge associated with industrial activity,” first unnumbered paragraph, as follows:

For the categories of industries identified in ~~paragraph~~ *paragraphs “1” to “9” and “11,”* the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. *To qualify for this exclusion, a storm-resistant shelter is not required for: drums, barrels, tanks and similar containers that are tightly sealed with bands or otherwise secured and have no taps or valves, are not deteriorated and do not leak; adequately maintained vehicles used in material handling; and final products other than products that would be mobilized in storm water discharge.* The term excludes areas located on

plant lands separate from the plant’s industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated) that meet the description of the facilities listed in paragraphs “1” to “11” of this definition include those facilities designated under 40 CFR 122.26(a)(1)(v) as amended through June 15, 1992. The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this definition:

ARC 1123B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.105, 455B.332 and 455B.333, the Environmental Protection Commission hereby gives Notice of Intended Action to rescind Chapter 132, “Transportation of Radioactive Materials in Iowa,” Iowa Administrative Code.

The Department of Natural Resources currently delegates all authority granted under Iowa Code sections 455B.332 and 455B.333 to the Iowa Department of Public Health under a 28E agreement between the two agencies. The Department of Public Health now has authority to establish policy for the transportation, storage, handling and disposal of radioactive material for the purpose of protecting the public health and safety. This authority is granted by Iowa Code chapter 136C and in conjunction with agreements between the Iowa Department of Transportation and the U.S. Nuclear Regulatory Commission. Therefore, it is proposed that this chapter be rescinded in its entirety.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 4, 2001. Such written materials should be directed to Kathleen Lee, Emergency Response Unit, Department of Natural Resources, 401 SW 7th Street, Suite I, Des Moines, Iowa 50309; fax (515)725-0218; or E-mail kathy.lee@dnr.state.ia.us. Persons who wish to convey their views orally should contact the Emergency Response Unit at (515) 725-0384 or may visit the Emergency Response Unit Office at 401 SW 7th Street, Suite I, Des Moines, Iowa.

This amendment is intended to implement Iowa Code sections 455B.105, 455B.332 and 455B.333.

The following amendment is proposed.

Rescind and reserve **567—Chapter 132**.

ARC 1076B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services proposes to amend Chapter 41, “Granting Assistance,” and Chapter 93, “PROMISE JOBS Program,” and to rescind Chapter 94, “Iowa Transitional Assistance for Direct Education Costs Program,” appearing in the Iowa Administrative Code.

These amendments eliminate the PROMISE JOBS exemption for disabled persons who do not receive Supplemental Security Income (SSI) benefits, require application for SSI and social security disability benefits as a condition of Family Investment Program (FIP) eligibility when a person in the FIP-eligible group or a parent living in the home of a child in the eligible group appears eligible for these benefits, shorten the Limited Benefit Plan (LBP) resolution process, and eliminate the Iowa Transitional Assistance for Direct Education Costs Program.

Specifically, the proposed amendments impact the Family Investment Program (FIP) as follows:

- Currently, disabled FIP recipients and disabled parents living in the home of a child on FIP are exempt from participation in a Family Investment Agreement (FIA) and from participation in employment and training activities through the PROMISE JOBS program. To be exempt, the person must be disabled according to the federal Americans with Disabilities Act and to the extent that the person is unable to participate in the program. Persons receiving SSI or social security benefits due to disability or blindness are considered disabled to this extent. FIP participants who are disabled to this extent may volunteer for PROMISE JOBS services.

Under the proposed changes, disabled FIP recipients and disabled parents living in the home of a child on FIP will be referred to PROMISE JOBS for employment and training opportunities to help the family become self-supporting. Disabled PROMISE JOBS participants will be required to sign an FIA and to carry out the activities of the agreement to continue receiving FIP assistance. In the same respect, these persons will have access to the same supportive PROMISE JOBS services as a FIP participant with no disability.

State law allows the change that requires disabled FIP recipients and disabled parents living in the home of a child on FIP to be referred to PROMISE JOBS for work and training unless the person is an SSI recipient. Lawsuits have been filed against several states alleging failure to make accommodations in their Temporary Assistance for Needy Families (TANF) programs for persons with learning disabilities. The Office of Civil Rights has provided federal guidance on the issue to state TANF administrators. The Department is proposing the rule changes to the Family Investment Program (Iowa’s TANF cash assistance program) based on this federal guidance and out of concern that the current exemption does not meet the intent of federal law. The Department believes that exempting persons with disabilities from employ-

ment and training opportunities is in conflict with other Iowa efforts to support the employment of these persons.

- Under current rules, every person in the eligible group must apply for and accept other income benefits for which that person may be qualified. The needs of any person who refuses to cooperate in applying for or accepting benefits from other sources are removed from the eligible group. This includes application for social security benefits. Note: While these rules do not specifically exclude application for SSI benefits, current policy excludes application for SSI from this requirement.

With the proposed changes, every person in the eligible group will continue to be required to apply for social security benefits through the Social Security Administration as a condition of FIP eligibility when it appears that the person may qualify for social security benefits. The proposed changes will require applicants and recipients to apply for social security benefits and SSI benefits based on disability if the applicant or recipient is a parent in the home of a child on FIP or a person in the FIP-eligible group and claim a disability that is expected to last longer than 12 months, or otherwise appear eligible for these benefits. When the person refuses to cooperate in applying for or accepting these benefits, the entire family is not eligible for FIP.

The Department is proposing the changes that will require persons in the FIP-eligible group and parents living in the home of a child in the eligible group who claim a disability that will last more than 12 months, or otherwise appear eligible, to apply for all disability benefits available through the Social Security Administration as a means of assisting the participant’s family to overcome its barriers through increased financial support.

- Under existing rules, when a FIP participant is choosing a Limited Benefit Plan (LBP) by not carrying out the responsibilities of the Family Investment Agreement, PROMISE JOBS staff make every effort to resolve the issue before issuing a Notice of Decision to impose an LBP. The PROMISE JOBS supervisor is involved in this process as well. These resolution actions take place after participation has become an issue. With most participation issues, a participant is sent two written notifications and is given two opportunities to participate before PROMISE JOBS considers participation, or lack thereof, an “issue.”

Also under existing rules, when a FIP participant is choosing a subsequent LBP by not attending PROMISE JOBS orientation, the PROMISE JOBS supervisor sends a letter to explain the consequences of a subsequent LBP. The letter also allows the participant an additional ten days to schedule orientation before a Notice of Decision to impose an LBP is issued. The supervisory letter is sent after the person has failed twice to schedule or attend orientation.

Under the proposed changes, for participants choosing an LBP by not carrying out the responsibilities of the Family Investment Agreement, PROMISE JOBS staff will make the effort to resolve the participation issue at the time of the first occurrence in most situations. Rules will no longer require that the PROMISE JOBS supervisor be involved in this situation; however, the supervisor will continue to be available to all participants upon request.

For participants choosing a subsequent LBP by not attending PROMISE JOBS orientation, PROMISE JOBS will offer supervisory intervention and explain the consequences of a subsequent LBP after the person has failed the first time to schedule or attend orientation.

The Department is proposing the changes to the LBP resolution process in an attempt to save on administrative costs by eliminating actions that result in unnecessary delays and

HUMAN SERVICES DEPARTMENT[441](cont'd)

costs. The actions were established under former LBP policy that existed before June 1, 1999. Former policy was more severe for persons who chose a first LBP by not following the requirements of the FIA as there was a definite period of ineligibility and the persons could not take action to stop the LBP. The Department believes that these actions are no longer necessary under current policy since persons can take action to end a first LBP at any time following the issuance of the Notice of Decision and there is no set period of ineligibility. The Department believes the actions are not needed for second and subsequent LBPs as the participants should be aware of the consequences of their actions due to their past experience.

- The final item eliminates Chapter 94, the chapter used to implement the Iowa Transitional Assistance for Direct Education Costs (ITADEC) program, as the program no longer exists. The ITADEC program provided state funding to participants who were enrolled and participating in a PROMISE JOBS-funded postsecondary training plan as of March 1, 1997. There is no longer anyone eligible for ITADEC and it is not possible for current applicants or participants to qualify for the program.

These amendments do not provide for waivers to the eligibility requirements because individuals may request a waiver of the eligibility requirements under the Department's general rule on exceptions at rule 441—1.8(17A,217).

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 December 5, 2001.

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

Cedar Rapids – December 6, 2001 9 a.m.
Cedar Rapids Regional Office
Iowa Building - Suite 600
Seventh Floor Conference Room
411 Third Street S.E.
Cedar Rapids, Iowa 52401

Council Bluffs – December 5, 2001 9 a.m.
Administrative Conference Room
Council Bluffs Regional Office
417 E. Kanessville Boulevard
Council Bluffs, Iowa 51501

Davenport – December 6, 2001 10 a.m.
Davenport Area Office
Bicentennial Building - Fifth Floor Conference Room
428 Western
Davenport, Iowa 52801

Des Moines – December 7, 2001 10 a.m.
Des Moines Regional Office
City View Plaza
Conference Room 100
1200 University
Des Moines, Iowa 50314

Mason City – December 5, 2001 10 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa – December 5, 2001 9 a.m.
Ottumwa Area Office
Conference Room 3
120 East Main
Ottumwa, Iowa 52501

Sioux City – December 5, 2001 2:30 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska Street
Sioux City, Iowa 51101

Waterloo – December 6, 2001 10 a.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 420
1407 Independence Avenue
Waterloo, Iowa 50703

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

These amendments are intended to implement Iowa Code chapter 239B.

The following amendments are proposed.

ITEM 1. Amend rule 441—41.24(239B) as follows:

Amend subrule **41.24(2)** by rescinding paragraph “d” and adopting the following **new** paragraph “d” in lieu thereof:

d. A person found eligible for supplemental security income (SSI) benefits based on disability or blindness. The exemption based on disability is amended effective April 1, 2002. A person exempt from PROMISE JOBS participation prior to April 1, 2002, due to a disability according to the Americans with Disabilities Act and determined unable to participate in PROMISE JOBS shall be referred to PROMISE JOBS, unless eligible for SSI benefits due to disability or blindness. The referral shall occur at the time of the next semiannual or annual review or exempt status redetermination as described at subrule 41.24(5), but no later than March 31, 2003.

Amend subrule 41.24(7) as follows:

41.24(7) Referral to vocational rehabilitation. The department shall make the department of education, division of vocational rehabilitation services, aware of any person ~~determined exempt from referral to PROMISE JOBS because of who is referred to PROMISE JOBS and who claims a medically determined physical or mental impairment.~~ However, acceptance of vocational rehabilitation services by the client is optional.

Rescind and reserve subrule **41.24(8)**, paragraph “f,” subparagraph (1).

ITEM 2. Amend subrule **41.27(1)**, paragraph “g,” as follows:

g. Every person in the eligible group *and any parent living in the home of a child in the eligible group shall take all steps necessary to apply for benefits and, if entitled, accept any financial benefit for which that person may be qualified and accept those benefits,* even though the benefit may be reduced because of the laws governing a particular benefit. ~~The needs of any individual who refuses to cooperate in applying for or accepting benefits from other sources shall be removed from the eligible group. The individual is eligible for the 50 percent work incentive deduction in paragraph 41.27(2)“c.” This includes taking the steps necessary to file an appeal of a denial of other financial benefits when appeal rights are available and it is reasonable to expect that an ap-~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

peal may result in entitlement to the benefit. When the person claims a physical or mental disability that is expected to last for more than 12 consecutive months from the time of the claim, or otherwise appears eligible, the person shall apply for social security benefits and supplemental security income benefits.

(1) Except as described in the next subparagraph, the needs of any person who refuses to take all steps necessary to apply for and, if eligible, to accept other financial benefits shall be removed from the eligible group. The person is eligible for the 50 percent work incentive deduction in paragraph 41.27(2) "c."

(2) The entire assistance unit is ineligible for FIP when a person refuses to apply for or, if entitled, to accept social security or supplemental security income. For applicants, this subparagraph applies to those who apply on or after April 1, 2002. For FIP recipients, this subparagraph applies at the time of the next six-month or annual review as described at 441—subrule 40.27(1) or at the time the recipient reports a change that may qualify a person in the eligible group or a parent living in the home for these benefits, whichever occurs earlier.

ITEM 3. Amend rule 441—41.28(239B) as follows:

Amend subrule 41.28(1), introductory paragraph, as follows:

41.28(1) Definition of the eligible group. The eligible group consists of all eligible persons specified below and living together, except when one or more of these persons have elected to receive are receiving supplemental security income under Title XVI of the Social Security Act. There shall be at least one child in the eligible group except when the only eligible child is receiving supplemental security income. The unborn child is not considered a member of the eligible group for purposes of establishing the number of persons in the eligible group.

Amend subrule **41.28(1)**, paragraph "b," subparagraph (3), numbered paragraph "2," as follows:

2. The determination of incapacity shall be supported by medical or psychological evidence. The evidence may be submitted in the same manner specified in paragraph 41.24(2) "d." obtained from either an independent physician or psychologist or the state rehabilitation agency. The evidence may be submitted either by letter from the physician or on Form 470-0447, Report on Incapacity. When an examination is required, and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on Form 470-0502, Authorization for Examination and Claim for Payment. A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of incapacity in this situation.

Amend subrule **41.28(2)**, paragraph "b," subparagraph (3), as follows:

(3) When a person who would ordinarily be in the eligible group has elected to receive is receiving supplemental security income benefits, the person, income and resources, shall not be considered in determining family investment program benefits for the rest of the family.

ITEM 4. Amend subrule **93.110(6)**, paragraph "e," as follows:

Amend subparagraph (1) as follows:

(1) Medical evidence of disability or incapacity may shall be obtained from either an independent physician or

psychologist or the state rehabilitation agency. in the same manner specified in 441—paragraph 41.24(2) "d."

Adopt the following new subparagraph (3):

(3) The evidence may be submitted either by letter from the physician or on Form 470-0447, Report on Incapacity. When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit claim for payment on Form 470-0502, Authorization for Examination and Claim for Payment. A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of disability.

ITEM 5. Amend subrule **93.114(14)**, paragraph "f," as follows:

Amend the introductory paragraph and subparagraph (1) as follows:

f. Classroom training participants who do not follow the requirements of a training plan are considered to have chosen the limited benefit plan as described in 441—subrule 41.24(8). Before issuing a notice of decision to impose the limited benefit plan, PROMISE JOBS staff shall send one written reminder or letter to attempt to resolve the issue. The reminder or letter shall identify the participation issue, clarify expectations, attempt to identify barriers to participation, explain the consequences of the LBP, and offer supervisory intervention. LBP resolution policies at subrule subrules 93.138(2) and 93.138(3) apply when the classroom training participant chooses the LBP in the following circumstances:

(1) The participant fails to appear for two consecutive scheduled appointments with the worker without good cause. The client shall have been notified of the appointments in writing. The written notice to schedule the second appointment shall remind the client of the need to participate and attempt to resolve the issue as previously described in this paragraph.

Rescind and reserve subparagraph (2).

Amend the unnumbered paragraph following subparagraph (8) as follows:

Policies at rules 441—93.133(239B) and 441—93.134(239B) apply to all of the above. When a situation described in subparagraphs (3) through (8) above occurs, participation is an issue at the first occurrence unless the person is experiencing problems or barriers to participation as described at rules 441—93.133(239B) and 441—93.134(239B). To attempt to resolve the issue, PROMISE JOBS staff shall send a letter as previously described in this paragraph.

ITEM 6. Amend rule 441—93.132(239B) as follows:

441—93.132(239B) Participation issues for FIA-responsible persons. PROMISE JOBS participants who do not carry out the responsibilities of the FIA are considered to have chosen the limited benefit plan, as described at 441—subrule 41.24(8).

The participation issues in this rule are those which are important for effective functioning in the workplace or training facility and to the completion of the FIA.

When PROMISE JOBS staff send a written reminder, request, or other notification as specified below in the descriptions of the participant issues that apply to this rule, the notification shall identify the participation issue, clarify expectations, attempt to identify barriers to participation, explain the consequences of the LBP, and offer supervisory intervention.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Participants ~~aged 18 or older~~ who, for reasons other than those described at rule 441—93.133(239B), do not resolve these issues shall be considered to have chosen the limited benefit plan, unless participant circumstances are revealed which indicate that a barrier to participation exists which should be addressed in the FIA.

Those who may be considered to have chosen the limited benefit plan are:

1. Participants who are more than 15 minutes late for a third time within three months of the first lateness, after receiving a *one* written reminder ~~of the importance of complying with the FIA~~ at the time the second lateness occurred.

2. Participants who do not, for a second time after receiving a *one* written reminder ~~of the importance of complying with the FIA~~ at the first occurrence, appear for scheduled appointments, participate in appraisal activities, complete required forms, or take required vocational or aptitude tests, or are absent from activities designated in the FIA or other self-sufficiency plan.

3. Participants who do not, for a second time after receiving *one* written reminder ~~of the importance of complying with the FIA~~ at the first occurrence, notify work experience sponsors or PROMISE JOBS staff of absence within one hour of the time at which they are due to appear.

4. Participants who exhibit disruptive behavior for a second time after receiving a *one* written reminder ~~of the importance of complying with the FIA~~ at the first occurrence. Disruptive behavior means the participant hinders the performance of other participants or staff, refuses to follow instructions, uses abusive language, or is under the influence of alcohol or drugs.

5. Participants who fail to secure physical examinations after a *one* written request to do so.

~~6. Participants who continue an offense after being notified that the behavior is disruptive and in what manner it is disruptive.~~

7 6. Participants whose performance continues to be unsatisfactory after being notified by program or provider agency staff of unacceptable performance and what is necessary to make performance acceptable. Notification of unsatisfactory performance may be oral initially, but shall be documented to the participant in writing.

8 7. Participants who make physical threats to other participants or staff. A physical threat is defined as having a dangerous weapon in one's possession and either threatening with or using the weapon or committing assault.

9 8. Participants who do not accept work experience assignments when the work experience option is part of the FIA.

10 9. Participants who do not, for a second time after receiving a written reminder ~~of the importance of complying with the FIA~~ at the first occurrence, appear for work experience interviews.

11 10. Participants who do not follow up on job referrals, refuse offers of employment or terminate employment, or who are discharged from employment due to misconduct. For the purposes of these rules, "misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of the worker's contract of employment. To be considered "misconduct," the employee's conduct must demonstrate deliberate violation or disregard of standards of behavior ~~which that~~ the employer has the right to expect of employees. Mere inefficiency, unsatisfactory conduct, failure to perform well due to inability or incapacity, ordinary negligence in isolated instances, or good-faith errors in judgement

or discretion are not to be deemed misconduct for the purpose of these rules.

12 11. Participants who do not secure adequate child care when registered or licensed facilities are available.

13 12. Participants for whom child care, transportation, or educational services become unavailable as a result of failure to use PROMISE JOBS funds or child care assistance funds to pay the provider or failure to provide required receipts.

14 13. FIA-responsible persons who are required to participate in high school completion activities and who fail to provide grade transcripts or reports.

When a situation as described in numbered paragraphs "7," "8," "10," "11," "12," or "13" above occurs, participation is an issue at the first occurrence unless the participant is experiencing problems or barriers to participation as described at rules 441—93.133(239B) and 93.134(239B). Before issuing a notice of decision to impose the limited benefit plan, PROMISE JOBS staff shall send one letter that includes the elements described earlier in this rule to attempt to resolve the issue. When a situation as described in numbered paragraph "7" above occurs, the letter shall give the participant an opportunity to provide written documentation from a doctor, licensed psychologist, probation officer, or law enforcement official to resolve the participation issue. The documentation must verify that the act was caused by either a temporary problem or a serious problem or barrier that needs to be included in the FIA. The documentation must also provide reasonable assurance that the threatening behavior will not occur again.

ITEM 7. Amend rule 441—93.134(239B) as follows:

Amend the introductory paragraph as follows:

441—93.134(239B) Barriers to participation. Problems with participation of a permanent or long-term nature shall be considered barriers to participation and shall be identified in the FIA as issues to be resolved so that participation can result. These barriers may be identified during assessment and shall be part of the FIA from the beginning. When barriers are revealed by the participant during the FIA or are identified by problems ~~which that~~ develop after the FIA is signed, the FIA shall be renegotiated and amended to provide for removal of the barriers. FIA-responsible persons who choose not to cooperate in removing identified barriers to participation shall be considered to have chosen the LBP *unless the following exception applies. When a person claims a physical or mental disability that is expected to last for more than 12 consecutive months but refuses to apply for social security benefits or supplemental security income, the FIP household is ineligible for FIP as described at 441—subrule 41.27(1) and the limited benefit plan does not apply.*

Adopt the following **new** numbered paragraph "6":

6. Physical or mental disability.

ITEM 8. Amend rule 441—93.138(239B) as follows:

Amend subrule **93.138(2)**, paragraph "b," introductory paragraph, as follows:

b. For participants who ~~choose appear to be choosing~~ a first limited benefit plan by not carrying out the FIA responsibilities, the PROMISE JOBS worker shall make every effort to negotiate for a solution, ~~clearing misunderstanding of~~ *at the time that the PROMISE JOBS worker determines that a reminder, request, or other written notification must be sent due to a potential participation issue as described at rule 441—93.132(239B). The written reminder, request, or other notification shall identify the participation issue, clarify expectations, or identifying attempt to identify barriers to par-*

HUMAN SERVICES DEPARTMENT[441](cont'd)

participation which should be addressed in the FIA, *explain the consequences of the LBP, and offer supervisory intervention.* ~~The PROMISE JOBS supervisor shall be involved to provide further advocacy, counseling, or negotiation support, such as~~ *This subrule applies* when a participant fails to respond to the PROMISE JOBS worker's request to renegotiate the FIA when the participant has not attained self-sufficiency by the date established in the FIA. ~~An~~ *In this situation, an LBP shall be imposed regardless of whether the request to renegotiate is made prior to or after expiration of the FIA.*

Amend subrule **93.138(3)**, paragraph "a," as follows:

a. For participants who choose a subsequent limited benefit plan as described at 441—subparagraph 41.24(8)"c"(1), the PROMISE JOBS supervisor shall send ~~the participant one letter to explain~~ *reminder letter shall include an explanation of the consequences of a subsequent limited benefit plan and to offer the participant an additional ten calendar days to schedule an orientation appointment before a notice of decision establishing the subsequent limited benefit plan is issued offer supervisory intervention.*

Amend subrule **93.138(3)**, paragraph "b," introductory paragraph, as follows:

b. For participants who ~~choose~~ *appear to be choosing* a subsequent limited benefit plan by not carrying out the FIA responsibilities, the PROMISE JOBS worker shall make every effort to negotiate for a solution, ~~clearing misunderstanding of at the time that the PROMISE JOBS worker determines that a reminder, request, or other written notification must be sent due to a potential participation issue as described at rule 441—93.132(239B) and at subrule 93.114(14).~~ *The written reminder, request, or other notification shall identify the participation issue, clarify expectations, or identifying attempt to identify barriers to participation which should be addressed in the FIA, explain the consequences of the LBP, and offer supervisory intervention. This paragraph applies such as* when a participant fails to respond to the PROMISE JOBS worker's request to renegotiate the FIA when the participant has not attained self-sufficiency by the date established in the FIA. An LBP shall be imposed regardless of whether the request to renegotiate is made prior to or after expiration of the FIA. *Local PROMISE JOBS management shall have the option to involve an impartial third party to assist in a resolution process. Arrangements shall be indicated in the local service plan of the local service delivery region.*

Further amend subrule **93.138(3)**, paragraph "b," by rescinding subparagraphs (1) and (2).

ITEM 9. Rescind and reserve **441—Chapter 94.**

ARC 1075B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services proposes to amend

Chapter 48, "Family Investment Program Eligibility Under Self-Employment Demonstration Projects," appearing in the Iowa Administrative Code.

This amendment provides that the Department will no longer grant 12-month income and resource waivers to entrepreneurial training participants effective April 1, 2002. Persons already receiving waivers as of April 1, 2002, will be allowed to continue to receive the waivers until the 12-month period ends.

The goal of entrepreneurial training is to assist FIP recipients who pursue self-employment as a route to self-sufficiency. Entrepreneurial training is available statewide. The entrepreneurial training service providers work with the Department to provide technical advice and business training to FIP participants.

Entrepreneurial training is a component of PROMISE JOBS. A FIP participant must be an active PROMISE JOBS participant to receive training and technical assistance through the entrepreneurial training program.

The classroom training portion of the program lasts from three to six months, with additional months of follow-up by the service provider as needed. Training is provided in researching and writing a business plan, completing a market survey, doing cash-flow projections, and learning basic accounting and money-management skills.

Under current policy, entrepreneurial training participants are subject to the same requirements as other FIP participants, except the Department may grant waivers of certain FIP income and resource policies for 12 months for business start-up or expansion.

FIP policy changes over the last 12 years since these waivers were implemented have made these waivers unnecessary and ineffective for self-employed persons. Very few families request these waivers, and even fewer actually benefit from them.

This amendment does not provide for waiver of eligibility requirements because individuals may request a waiver of eligibility requirements under the Department's general rule on exceptions at rule 441—1.8(17A,217).

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before December 5, 2001.

This amendment is intended to implement Iowa Code section 239B.7.

The following amendment is proposed.

Amend 441—Chapter 48 by adopting the following new rule:

441—48.24(239B) Phase-out of 12-month waiver period. Effective April 1, 2002, the department shall no longer grant a 12-month waiver period to family investment program (FIP) participants who are participating in entrepreneurial training. FIP participants receiving FIP waivers prior to April 1, 2002, will continue under waiver policy until their 12-month waiver period expires.

ARC 1077B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

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

These amendments correct an address and legal references in policy governing the AIDS/HIV Health Insurance Premium Payment Program. These needed corrections were identified by the Department while completing the rule assessment mandated by Executive Order Number 8.

These amendments do not provide for waivers because the amendments are merely technical in nature.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before December 5, 2001.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—75.22(249A), introductory paragraph, as follows:

441—75.22(249A) AIDS/HIV health insurance premium payment program. For the purpose of this rule, "AIDS" and "HIV" are defined in accordance with Iowa Code section ~~141.24~~ *141A.1*.

ITEM 2. Amend subrule 75.22(1), paragraph "c," introductory paragraph, as follows:

c. The person shall not be eligible for Medicaid. The person shall be required to apply for Medicaid benefits when it appears Medicaid eligibility may exist. Persons who are required to meet a spenddown obligation under the medically needy program, as provided in ~~441—Chapter 86~~ *subrule 75.1(35)*, are not considered Medicaid-eligible for the purpose of establishing eligibility under these provisions.

ITEM 3. Amend subrule 75.22(2), paragraph "a," introductory paragraph, as follows:

a. Application. Persons applying for participation in this program shall complete the AIDS/HIV Health Insurance Premium Payment Application, Form 470-2953. The applicant shall be required to provide documentation of income and assets. The application shall be available from and may be filed at any county departmental office or at the Division of Medical Services, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114.

ITEM 4. Amend subrule 75.22(10) as follows:

75.22(10) Confidentiality. The department shall protect the confidentiality of persons participating in the program in accordance with Iowa Code ~~chapter 141~~ *section 141A.9*. When it is necessary for the department to contact a third party to obtain information in order to determine initial or

ongoing eligibility, a Consent to Release or Obtain Information, Form 470-0429, shall be signed by the recipient authorizing the department to make the contact.

ARC 1085B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

This amendment corrects a rule reference related to certification of rehabilitative treatment service providers. This incorrect cross reference was identified by the Department while completing the rule assessment mandated by Executive Order Number 8.

This amendment does not provide for waivers because the amendment merely corrects a cross 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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before December 5, 2001.

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

The following amendment is proposed.

Amend rule 441—77.38(249A) as follows:

441—77.38(249A) Rehabilitative treatment service providers. Rehabilitative treatment service providers are eligible to participate in the Medicaid program if they are certified to be providers pursuant to rules ~~441—185.9(234) to 441—185.10(234)~~ *and 441—185.11(234)*.

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

ARC 1086B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of

HUMAN SERVICES DEPARTMENT[441](cont'd)

Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 80, "Procedure and Method of Payment," appearing in the Iowa Administrative Code.

These amendments allow tribally owned and operated health care facilities that operate under a 638 compact to be providers of medical services to Medicaid-eligible individuals and to be reimbursed at a higher rate as published in the Federal Register, for services provided to Medicaid-eligible American Indians and Alaskan natives. The state can draw down 100 percent federal financial participation for services provided by these facilities.

Indian health service 638 facilities as defined at rule 441—77.45(249A) are paid a special daily base encounter rate for all services rendered to American Indian or Alaskan native persons who are Medicaid-eligible. This rate is updated periodically and published in the Federal Register after being approved by the Office of Management and Budget. To receive this rate, Indian health service 638 facilities may bill only one charge per patient per day for all services provided to American Indians and Alaskan natives.

Services provided to Medicaid recipients who are not American Indians or Alaskan natives are to be billed separately and will be paid at the fee schedule allowed by Iowa Medicaid for the services provided.

These amendments do not provide for waivers in specified situations because they confer a benefit to Indian health service 638 facilities and their patients by allowing the facilities to be Medicaid providers and to be reimbursed at a higher rate in compliance with applicable federal law and regulations.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before December 5, 2001.

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

The following amendments are proposed.

ITEM 1. Amend 441—Chapter 77 by adopting the following **new** rule 441—77.45(249A):

441—77.45(249A) Indian health service 638 facilities. A health care facility owned and operated by American Indian or Alaskan native tribes or tribal organizations with funding authorized by Title I or Title III of the Indian Self-Determination and Education Assistance Act (P.L. 93-638) is eligible to participate in the medical assistance program if the following conditions are met:

77.45(1) Licensure. Services must be rendered by practitioners who meet applicable professional licensure requirements.

77.45(2) Documentation. Medical records must be maintained at the same standards as are required for the applicable licensed medical practitioner.

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

ITEM 2. Amend 441—Chapter 78 by adopting the following **new** rule 441—78.51(249A):

441—78.51(249A) Indian health service 638 facility services. Payment shall be made for all medically necessary services and supplies provided by a licensed practitioner at an Indian health service 638 facility, as defined at rule 441—77.45(249A), within the practitioner's scope of practice and

subject to the limitations and exclusions set forth in subrule 78.1(1).

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

ITEM 3. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(1)** by adopting the following **new** paragraph "**h**":

h. Indian health service 638 facilities. Indian health service 638 facilities as defined at rule 441—77.45(249A) are paid a special daily base encounter rate for all services rendered to American Indian or Alaskan native persons who are Medicaid-eligible. This rate is updated periodically and published in the Federal Register after being approved by the Office of Management and Budget. Indian health service 638 facilities may bill only one charge per patient per day for services provided to American Indians or Alaskan natives, which shall include all services provided on that day.

Services provided to Medicaid recipients who are not American Indians or Alaskan natives will be paid at the fee schedule allowed by Iowa Medicaid for the services provided and will be billed separately by CPT code on the HCFA-1500 Health Insurance Claim Form.

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

Provider category	Basis of reimbursement	Upper limit
Indian health service 638 facilities	1. Base rate as determined by the United States Department of Health and Human Services for outpatient visits for American Indian and Alaskan native recipients. 2. Fee schedule for service provided for all other Medicaid recipients.	1. Department of Health and Human Services rate published in the Federal Register for outpatient visit rate. 2. Fee schedule.

ITEM 4. Amend subrule **79.14(1)**, paragraph "**b**," by adopting the following **new** subparagraph (28):
(28) Indian health service 638 facilities.

ITEM 5. Amend subrule **80.2(2)** by adopting the following **new** paragraph "**as**":

as. Indian health service 638 facilities shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

ARC 1087B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend

HUMAN SERVICES DEPARTMENT[441](cont'd)

Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments remove current restrictions, requirements, and other limitations related to the types of services for which nurse-midwives may claim payment and the circumstances under which they can render services under Iowa Medicaid. The federal Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration, has indicated that the current restrictions are out of compliance with federal statutes and regulations. Specific changes are as follows:

- Policy is clarified that only physician-delegated functions, beyond normal nurse midwifery or advance practice nursing, require a "collaborative practice agreement," as defined under the Board of Nursing's rule 655—7.1(152).

- Policy is revised to provide that either the nurse-midwife or a physician may examine the women served by the nurse-midwife on at least two occasions during the pregnancy to determine if the women are obstetrically low risk and eligible to be served by the nurse-midwife. The time of the second examination has been changed from the last month of the pregnancy to the third trimester of the pregnancy.

- Policy is revised to provide that the nurse-midwife may perform the infant's neonatal examination, rather than referring the infant to a physician for the examination.

- Policy is revised to remove restrictions on where other services may be provided and to provide that birthing services may be provided only in duly licensed birth centers, hospitals, ambulatory surgical centers, or the mother's usual residence.

Consideration was given to retaining the exclusion of home birthing services. This alternative was rejected because CMS has indicated that the exclusion would violate the federal requirement that states include "the services furnished by a nurse-midwife which the nurse-midwife is legally authorized to perform under state law." Related to this federal requirement, Iowa law does not preclude nurse-midwives from providing home birthing services.

- Policy is revised to provide that payment may be made to nurse-midwives directly, without regard to whether the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

These amendments do not provide for waivers in specified situations because the amendments confer a benefit to nurse-midwives and their patients.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before December 5, 2001.

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

Cedar Rapids – December 6, 2001 10:30 a.m.
Cedar Rapids Regional Office
Iowa Building - Seventh Floor Conference Room
411 Third Street S.E.
Cedar Rapids, Iowa 52401

Council Bluffs – December 6, 2001 9 a.m.
Administrative Conference Room
Council Bluffs Regional Office
417 E. Kanessville Boulevard
Council Bluffs, Iowa 51501

Davenport – December 6, 2001 11:30 a.m.
Davenport Area Office
Bicentennial Building – Fifth Floor Conference Room
428 Western
Davenport, Iowa 52801

Des Moines – December 5, 2001 2 p.m.
Des Moines Regional Office
City View Plaza
Conference Room 102
1200 University
Des Moines, Iowa 50314

Mason City – December 6, 2001 10 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa – December 5, 2001 1 p.m.
Ottumwa Area Office
Conference Room 3
120 East Main
Ottumwa, Iowa 52501

Sioux City – December 5, 2001 1:30 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska Street
Sioux City, Iowa 51101

Waterloo – December 7, 2001 10 a.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 420
1407 Independence Avenue
Waterloo, Iowa 50703

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

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

The following amendments are proposed.

ITEM 1. Amend subrule 78.29(1) as follows:

78.29(1) The services provided are within the scope of the practice of nurse midwifery, ~~including advanced nursing and physician-delegated functions under a protocol with a collaborating physician.~~ *Physician-delegated functions, beyond normal nurse midwifery or advance practice nursing, require a "collaborative practice agreement," as defined under rule 655—7.1(152).*

ITEM 2. Amend subrule 78.29(2) as follows:

78.29(2) The women served by a nurse-midwife must be examined by a *nurse-midwife or a physician* on at least two occasions during the pregnancy; an initial screening review ~~of the women to determine the appropriateness for nurse-midwife care and during the last month third trimester of the pregnancy, and be determined to be obstetrically low risk. A joint determination must be made by the nurse-midwife and the physician that the women are obstetrically low-risk and eligible for care by a nurse-midwife.~~

Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced ser-

HUMAN SERVICES DEPARTMENT[441](cont'd)

VICES. (See description of enhanced services at subrule 78.25(3).)

ITEM 3. Amend subrule 78.29(3) as follows:

78.29(3) The nurse-midwife shall provide for referral for may perform the infant's neonatal examination, consistent with Iowa nursing law. The nurse-midwife shall provide for the referral of the child for postnatal pediatric care, as appropriate, consistent with Iowa nursing law.

ITEM 4. Amend subrule 78.29(5) as follows:

78.29(5) ~~The~~ Except for emergencies, payment shall be made for birthing services provided by a nurse-midwife only in duly licensed birth centers as defined under Iowa Code subsection 135G.2(1), hospitals, ambulatory surgical centers, or the mother's usual residence. Other services of a nurse-midwife are may be provided in ~~birth centers, hospitals, or clinics~~ duly licensed birth centers, hospitals, ambulatory surgical centers, the mother's usual residence, or any other location in which the nurse-midwife is legally authorized to provide the services.

ITEM 5. Amend subrule 78.29(8) as follows:

78.29(8) Payment ~~will~~ may be made to nurse-midwives directly ~~only if they are not auxiliary personnel as defined in subrule 78.1(13) or if they are not hospital employees without regard to whether the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.~~

ITEM 6. Amend the implementation clause following rule ~~441—78.29(249A)~~ as follows:

This rule is intended to implement Iowa Code section 249A.4 and 1992 Iowa Acts, ~~Second Extraordinary Session, chapter 1001, section 413.~~

ARC 1110B

INSPECTIONS AND APPEALS
DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 10A.104(8), the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 25, "Iowa Targeted Small Business Certification Program," Iowa Administrative Code.

The proposed amendments provide greater clarity for applicants by defining the term "experience or expertise." Currently, the term is used in several administrative rules, but is not specifically defined in rule 481—25.1(73). The definition being proposed is similar to the definition used by the U.S. Department of Transportation. The amendments also aid in verifying capital contributions, a standard of eligibility. Currently, administrative rules require that independent contributions of capital be made by the applicant, but proof of this contribution is not requested.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. 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. Faxes may be sent to (515) 242-6863; E-mail may be sent to Jennifer.Fiihr@dia.state.ia.us.

A public hearing to receive comments about the proposed amendments will be held on December 7, 2001, at 9 a.m. at the above address in Conference Room 422, Fourth Floor, Lucas State Office Building. Individuals interested in providing comments at the hearing should contact Jennifer Fiihr by 4 p.m. on December 6, 2001, to be placed on the hearing agenda.

These amendments were reviewed and approved by the Director of the Department of Management pursuant to Iowa Code section 10A.104(8).

These amendments are intended to implement Iowa Code section 10A.104(8).

The following amendments are proposed.

ITEM 1. Amend rule ~~481—25.1(73)~~ by adopting the following **new** definition:

"Experience or expertise" means the targeted group owner's or owners' experience or expertise must be:

1. In the areas critical to the operation of the business; and
2. Specific to the type of work the business performs.

ITEM 2. Amend paragraph ~~25.4(5)"b"~~ as follows:

b. Independent contributions of capital, ~~expertise or both~~ are made by the targeted group person owner(s). *Proof of this independent contribution of capital made by the targeted group person owner(s) to acquire interest in the business must accompany the certification application;*

ITEM 3. Amend subrule ~~25.4(5)~~ by adopting **new** paragraph "c" as follows and relettering existing paragraph "c" as "d":

c. Independent contributions of expertise are made by the targeted group person owner(s). The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type of business in which the firm is engaged and in the firm's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business.

ARC 1111B

INSPECTIONS AND APPEALS
DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 71, "Overpayment Recovery Unit," Iowa Administrative Code.

The proposed amendments support Department of Human Services administrative rules and are necessary to fully

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

implement collection efforts when overpayments occur in the Child Care Assistance (CCA) program. The Department of Inspections and Appeals works in collaboration with the Department of Human Services to collect overpayments inappropriately received by both providers and clients of the Child Care Assistance (CCA) program. In addition, these amendments update various form numbers that were incorrectly referenced.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 4, 2001. 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. Faxes may be sent to (515) 242-6863; E-mail may be sent to Jennifer.Fihr@dia.state.ia.us.

These amendments are intended to implement Iowa Code section 10A.105(5).

The following amendments are proposed.

ITEM 1. Amend rule **481—71.1(10A)** as follows:

Amend the following definitions:

“Demand letter for ~~ADC/FIP/RCA Agency Error overissuance~~ ~~Overissuance~~, (Form 470-2616); ~~Demand Letter for FIP/RCA Intentional Program Violation~~, (Form 470-3489); or ~~Demand Letter for FIP/RCA Client Error Overissuance~~, (Form 470-3490)” means the letter sent informing the debtor that an ~~agency error, intentional program violation, or client error~~ overpayment in ~~ADC/FIP Family Investment Program (FIP)~~ or Refugee Cash Assistance (RCA) benefits has occurred. ~~It identifies These letters identify~~ the amount overpaid, the dates of the overpayment, the causes of the overpayment, and the ~~different~~ options the debtor has to repay the overpayment. ~~This form is~~ *These forms are* voluntarily completed by the debtor. Failure to complete and return ~~this the~~ *the* respective form may result in further collection actions.

“Demand letter for ~~overissuance (Form FP-2322-0) Food Stamp Agency Error Overissuance~~, (Form 470-0338); ~~Demand Letter for Food Stamp Intentional Program Violation Overissuance~~, (Form 470-3486); or ~~Demand Letter for Food Stamp Inadvertent Household Error Overissuance~~, (Form 470-3487)” means the letter sent informing the debtor that an ~~agency error, intentional program violation, or inadvertent household error~~ overpayment in food stamp benefits has occurred. ~~It identifies These letters identify~~ the amount overpaid, the dates of the overpayment, the causes of the overpayment, and the ~~different~~ options the debtor has to repay the overpayment. ~~This form is~~ *These forms are* voluntarily completed by the debtor. Failure to complete and return ~~this the~~ *the* respective form may result in further collection actions.

“Offsetting” means the application of a credit against the amount due on a claim in place of a corrective cash payment for ~~ADC/FIP~~ and RCA, or a restoration of lost benefits for food stamps, and the recovery of a Transitional Child Care or PROMISE JOBS overpayment by withholding all or a portion of future payments in the same category as defined in Iowa Administrative Code 441—93.51(249C) and 441—49.13(239).

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

“Demand Letter for Child Care Assistance Provider Error Overissuance, (Form 470-3627); or Demand Letter for Child Care Assistance Client Error Overissuance, (Form 470-3628)” means the letter sent informing the debtor that an overpayment in Child Care Assistance (CCA) benefits has occurred. These letters identify the amount overpaid, the dates of the overpayment, the cause of the overpayment, and

the options the debtor has to repay the overpayment. These forms are voluntarily completed by the debtor. Failure to complete and return the respective form may result in further collection actions.

ITEM 2. Amend subrule 71.5(1) as follows:

Amend the introductory paragraph as follows:

71.5(1) Active cases. When an overpayment is made in the food stamp, ~~ADC/FIP~~, RCA, Medicaid, ~~or SSA or CCA~~ program, a demand letter of overissuance is sent to the debtor. Form 470-3486, 470-3487 or 470-0338 is sent for food stamp overissuances; Form 470-2616, 470-3489, or 470-3490 is sent for ~~ADC/FIP~~ and RCA overissuances; Form 470-2891 is sent for Medicaid and ~~State Supplemental Assistance~~ SSA overissuances; *Form 470-3627 or 470-3628 is sent for CCA overissuances.*

Amend paragraph “a” as follows:

a. An ~~ADC/FIP~~ or RCA overpayment is collected by grant reduction or cash payment. Grant reduction must be used when the case is active unless there is a cash agreement that exceeds the amount that may be collected by grant reduction and the cash payments are actually being made.

Amend paragraph “d,” subparagraph (2), as follows:

(2) When offsetting is not possible or appropriate, the department of inspections and appeals will be notified by the PROMISE JOBS unit to initiate recovery. The method of recovery will be the same as that utilized for the ~~ADC/FIP~~ program, except the FIP grant will not be reduced to effect recovery without the FIP client’s written permission.

Amend paragraph “e,” subparagraph (2), as follows:

(2) When offsetting is not possible or appropriate, the department of inspections and appeals will be notified by the income maintenance worker to initiate recovery. The method of recovery will be the same as that utilized for the ~~ADC/FIP~~ program, except the FIP grant will not be reduced to effect recovery without the client’s written permission should the TCC client reestablish FIP eligibility.

ITEM 3. Amend subrule **71.5(2)**, paragraph “a,” as follows:

a. A demand letter is sent to the debtor; Form 470-3486, 470-3487 or 470-0338 for food stamp overissuances; Form 470-2616, 470-3489 or 470-3490 for ~~ADC/FIP or and~~ RCA overissuances; Form 470-2891 for Medicaid ~~or and~~ ~~State Supplementary Assistance~~ SSA overpayments; *Form 470-3627 or 470-3628 for CCA overpayments.*

ARC 1109B

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 99B.13, the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 100, “Administration,” Iowa Administrative Code.

The proposed amendment, intended to implement Iowa Code section 99B.7, specifies that raffle tickets may be

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

counted when sold, if the discount is applied in a nondiscriminatory manner.

Any interested person may make written comments or suggestions on the proposed amendment on or before December 4, 2001. 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. Faxes may be sent to (515) 242-6863; E-mail may be sent to Jennifer.Fihr@dia.state.ia.us.

A public hearing to receive comments about the proposed amendment will be held on December 7, 2001, at 9:30 a.m. at the above address in Conference Room 422, Fourth Floor, Lucas State Office Building. Individuals interested in providing comments at the hearing should contact Jennifer Fihr by 4 p.m. on December 6, 2001, to be placed on the hearing agenda.

This amendment is intended to implement Iowa Code section 99B.7.

The following amendment is proposed.

Amend rule 481—100.32(99B) by adopting the following **new** subrule:

100.32(3) A licensee may offer raffle tickets for sale at a discounted rate if the discount is applied in a nondiscriminatory manner. The discount must be available to all persons throughout the duration of the raffle and must be posted on all tickets and promotional material.

INSURANCE DIVISION

Notice of Workers' Compensation Rate Filing

Pursuant to the provisions of Iowa Code chapter 515A, the National Council on Compensation Insurance, Inc. (NCCI) submitted a rate filing on August 15, 2001. Notice of the filing was published in the Iowa Administrative Bulletin on September 19, 2001. No request for a hearing on the rate filing was received.

The NCCI rate filing of August 15, 2001, proposes an overall increase in rates of 3.5% and an increase in the expense constant from \$200 to \$220 for a combined premium level increase of 3.6%. This increase is in addition to the approved 1.8% increase reflecting the change to the 5th Edition of the AMA Guidelines effective January 1, 2002. Based on an independent review of the NCCI proposal, the Commissioner finds the proposed manual rates not to be excessive, inadequate, or unfairly discriminatory.

It is ordered that the August 15, 2001, rate filing is approved to be effective January 1, 2002.

ARC 1099B

LABOR SERVICES DIVISION[875]

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 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 4, "Recording and Reporting Occupational Injuries and Illnesses," Iowa Administrative Code.

The proposed amendments adopt by reference new federal occupational safety and health record-keeping regulations. The amendments will be adopted after Notice on an emergency basis with an effective date of January 1, 2002. Adoption confers a benefit, removes a restriction and is required by statute. Language contained within the federal standard implements some changes in record keeping on January 1, 2002, and other changes in record keeping on January 1, 2003.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88 and to protect the safety and health of Iowa's workers. Adoption of these amendments is required by 29 Code of Federal Regulations Subsection 1952.4 and Iowa Code subsection 88.5(1)"a."

A public hearing will be held on December 4, 2001, at 3 p.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

Written data or arguments to be considered in adoption may be submitted no later than December 4, 2001, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209, or faxed to (515)281-7995. Electronic mail may be sent to kathleen.uehling@iwd.state.ia.us.

These amendments will not necessitate additional annual expenditures exceeding \$100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

These amendments are intended to implement Iowa Code section 88.5.

The following amendments are proposed.

ITEM 1. Amend rule 875—4.1(88) as follows:

875—4.1(88) Purpose and scope. These rules provide for record keeping and reporting by employers covered under Iowa Code chapter 88 as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics. *This chapter applies to public and private employers and the use of the word "company" or "companies" in the standard adopted by reference herein shall not limit the scope or application of this chapter to private employers.*

LABOR SERVICES DIVISION[875](cont'd)

ITEM 2. Rescind rules 875—4.2(88) to 875—4.19(88) and adopt the following new rules in lieu thereof:

875—4.2(88) First reports of injury. All employers shall report to the Iowa division of workers' compensation any occupational injury or illness which temporarily disables an employee for more than three days or which results in permanent total disability, permanent partial disability or death. This report shall be made within four days from such event when such injury or illness is alleged by the employee to have been sustained in the course of the employee's employment. First reports of injury are to be filed in the form and manner required by the division of workers' compensation. A report to the division of workers' compensation is considered to be a report to the division of labor services. The division of workers' compensation shall forward all reports to the division of labor services. This rule does not excuse employers from notifying the division of labor services of fatality or multiple hospitalization accidents.

875—4.3(88) Record-keeping regulations. Federal Occupational Safety and Health Administration's regulations of 29 CFR Sections 1904.0 through 1904.46 as published at 66 Fed. Reg. 6122 to 6135 (January 19, 2001) are adopted, except that reporting of fatalities and multiple hospitalization incidents required by 29 CFR 1904.39 must be made to the IOSH Administrator by visiting 1000 E. Grand Avenue, Des Moines, Iowa, or by calling 1-800-JOB-IOWA. The number for reporting fatalities and multiple hospitalization incidents outside of normal business hours is (877)242-6742. Amendments to this federal standard published at the following locations are also adopted: 66 Fed. Reg. 52031-52034 (October 12, 2001)

ITEM 3. Amend 875—Chapter 4, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 17A.3, 84A.1, 84A.2, 88.2, 88.6(3), and 88.18 chapter 88.

ARC 1090B

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Notice of Termination and Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 544B.8 and 544B.13, the Landscape Architectural Examining Board gives Notice of Intended Action to amend Chapter 1, "Description of Organization," and Chapter 2, "Examination and Registration," Iowa Administrative Code.

The Board terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on March 7, 2001, as ARC 0528B. The amendments were not adopted before the Notice expired.

The proposed amendments to Chapter 1 establish a process for sealing and certifying documents prepared by a registered landscape architect and outline the process by which an

applicant for registration as a landscape architect must document the experience necessary for qualification. Proposed amendments to Chapter 2 establish that the national examination for registration is offered at least annually in this state, clarify the renewal process, increase the fees for renewal of biennial registration and outline new examination fees.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before December 4, 2001. Comments should be addressed to Kay Halloran, Professional Licensing and Regulation Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to kay.halloran@comm7.state.ia.us.

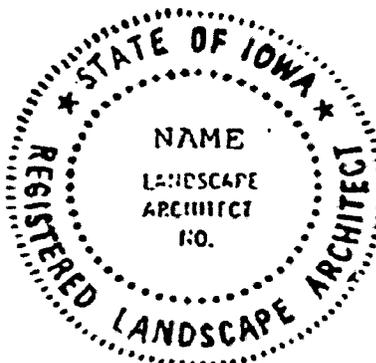
These amendments are intended to implement Iowa Code sections 544B.8 and 544B.13.

The following amendments are proposed.

ITEM 1. Amend rule 193D—1.1(544B,17A) by rescinding the definition of "proposed decision."

ITEM 2. Rescind subrule 1.7(1) and adopt the following new subrule in lieu thereof:

1.7(1) Individual seal and certificate of responsibility. Every registered landscape architect is required by Iowa law to obtain a seal (or stamp) which shall have the registered landscape architect's name, "REGISTERED LANDSCAPE ARCHITECT," "IOWA," and registration number on it. The diameter of the outside circle shall be approximately 1 3/4 inches. A legible rubber stamp or other facsimile of the seal may be used. The seal (stamp) shall substantially conform to the sample shown below:



Following is a sample of the wording of the landscape architect information block that should be used on each technical submission:

SEAL	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered landscape architect under the laws of the state of Iowa.
	_____ Printed or typed name
	_____ Signature
	Registration Expires: Pages or sheets covered by this seal: _____ _____

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

ITEM 3. Amend subrule 2.2(2) as follows:

2.2(2) Evidence Documentary evidence. Each applicant shall submit with the formal application for a certificate of registration documentary evidence that the applicant is clearly eligible under the section of Iowa Code chapter 544B upon which the application is based. All documents shall be 8 1/2" x 11". Evidence submitted shall be ~~exemplary of the experience cited~~ representative of the various aspects of the practice of architecture. The board reserves the right to request additional evidence or information from the applicant. The documentary evidence will be returned to the applicant if a written request is submitted. If a written request is not received within six months of the date of board action on the evidence, the evidence will be destroyed.

ITEM 4. Amend rule 193D—2.4(544B,17A), introductory paragraph, as follows:

193D—2.4(544B,17A) Examination of applicants. Examinations shall be conducted by the board at least once annually.

ITEM 5. Rescind subrule 2.5(4), paragraph "g."

ITEM 6. Amend rule 193D—2.8(544B,17A) as follows:

193D—2.8(544B,17A) Biennial renewal of registration. Original registrations expire June 30 following the date of issuance. Thereafter, the registration period is for two years ending June 30. A renewal notice will be sent in May to each registrant whose registration is about to expire. A complete renewal application, renewal fee, and continuing education report are due in the board office by June 30, ~~or the registration is lapsed but the certificate of registration may be renewed without further penalty if the renewal application, fee and continuing education report are received by the following July 30.~~ The board shall give second notice by restricted certified mail, return receipt requested, to the registrant or licensee who has failed to renew by the ~~July~~ June 30 date. The certificate ~~is shall be~~ renewed without further penalty if the renewal application, renewal fee, and continuing education affidavit are received within 30 days of the date of this second notice. ~~If the renewal application, renewal fee, and continuing education affidavit are not received within 30 days of the date of the second notice, the certificate shall lapse.~~

This rule is intended to implement Iowa Code section 544B.13.

ITEM 7. Amend rule 193D—2.9(544B,17A) as follows:

193D—2.9(544B,17A) Reinstatement of registration. An application for the reinstatement of a lapsed certificate of registration shall include a description of the professional activities of the applicant during the period of nonregistration. The fee for reinstatement ~~will shall~~ be the current renewal fee, a \$100 penalty, plus continuing education required by the board. ~~with a maximum of 36 hours.~~

ITEM 8. Amend rule 193D—2.10(544B,17A) as follows:

193D—2.10(544B,17A) Fee schedule. The appropriate examination fee or examination exemption filing fee shall accompany the application. Filing fees are not refundable.

- Examination fee not to exceed \$550 \$1000
- Initial examination filing fee \$50
- Subsequent examination filing fee \$35
- Proctoring fee \$50
- Examination exemption fee \$300

(This certificate to be effective to the June 30 which is at least 12 months beyond the date of application.)

- Certificate of registration fee \$15/month
- (This certificate of registration to be effective the day of board action until June 30.)
- Biennial registration fee ~~\$275~~ \$350

ARC 1091B

MEDICAL EXAMINERS BOARD[653]

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 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 10, "Resident, Special and Temporary Licensure," Iowa Administrative Code.

The Board approved the proposed amendment to Chapter 10 during its regularly held meeting on October 18, 2001.

The proposed change amends the current chapter to clarify the passing score for TOEFL, the Test of English as a Foreign Language administered by the Educational Testing Service. A passing score on TOEFL is required of international medical graduates who are seeking a special license to serve on the faculty of a college of medicine in Iowa.

Any interested person may present written comments on this proposed amendment not later than December 4, 2001, at 4 p.m. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686 or ann.mowery@ibme.state.ia.us.

There will be a public hearing on December 4, 2001, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

This amendment is intended to implement Iowa Code section 148.11(2)"f."

The following amendment is proposed.

Amend subparagraph 10.4(3)"a"(4) as follows:

(4) Demonstrate proficiency in English by providing a valid ECFMG certificate or verification of a passing score on TOEFL, the Test of English as a Foreign Language administered by the Educational Testing Service. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration) or a minimum overall score of 213 on the computer-administered TOEFL.

ARC 1092B

ARC 1129B

MEDICAL EXAMINERS BOARD[653]

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 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

The Board approved the proposed amendments to Chapter 17 during its regularly held meeting on October 18, 2001.

The proposed amendments clarify the English proficiency test requirements for those acupuncturists who have taken one or both parts of the certifying examination in a language other than English.

Any interested person may present written comments on these proposed amendments not later than December 4, 2001, at 4 p.m. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or ann.mowery@ibme.state.ia.us.

There will be a public hearing on December 4, 2001, at 3:15 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code sections 148E.2 and 147E.7.

The following amendments are proposed.

ITEM 1. Amend rule **653—17.3(148E)** by rescinding the definition of "English proficiency."

ITEM 2. Amend subparagraph **17.4(1)"c"(2)** as follows:

~~(2) The board may, at the recommendation of the committee, choose any of the following examinations to test the English proficiency of any applicant: TOEFL, TOEIC, or TSE. An applicant who passed NCCAOM written or practical examination components in a language other than English shall achieve a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration) or a minimum overall score of 213 on the computer-administered TOEFL.~~

PERSONNEL DEPARTMENT[581]

Notice of Intended Action

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

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

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

Subrules 21.6(4), 21.6(7) and 21.6(8) are amended by deleting provisions relating to the combining of accounts so as to permit flexibility in wage reporting; by requiring, for wage reports filed for the quarter ending March 31, 2002, and thereafter, wage reports using magnetic media; and by adding a provision stating that, for wage reports filed for the quarter ending March 31, 2002, and thereafter, an employer reporting wages for 50 or more members will be assessed a \$50 processing charge for each quarterly wage report filed on paper.

Paragraphs 21.6(9)"b," "c," and "e" are amended to implement the statutory contribution rates for special service members recommended by IPERS' actuary pursuant to Iowa Code sections 97B.49B and 97B.49C.

Subrule 21.8(1), introductory paragraph, is amended to remove limitations relating to the period of time following termination of employment before a refund may be paid to a member. These amendments delete or modify prior provisions that have been superseded by later amendments permitting a refund to be paid to a member as soon as practicable after termination of employment.

Paragraph 21.8(1)"b," introductory paragraph, is also amended to implement a prior statutory change relating to the calculation of a member's share of employer accumulated contributions. The current rule uses 100 quarters in determining the service fraction for protection occupation members. By statute this 100 quarters decreases in steps over time to 88 quarters. By striking the reference to 100 quarters and incorporating the "applicable years of service" in its place, a member receives a larger share of employer accumulated contributions.

Subparagraph 21.8(1)"b"(4) is also amended to deal with the calculation problems caused when the "applicable years of service" number changes between the time that a member's original refund is issued and the date that a supplemental refund is issued. Since a supplemental refund is only caused by delayed wage reporting, the subparagraph is amended to clarify that the "applicable years of service" in effect at the time of the original refund is used for both original and supplemental refund calculations.

Subparagraph 21.24(14)"a"(1) is amended in order to modify the service purchase calculation method used for patient advocates who purchase service credit prior to July 1, 2002, for patient advocate employment, pursuant to legislative directives. The current rule incorrectly uses a more costly method.

The amendment to subrule 21.6(8) will be subject to requests for waivers. No other amendments will be subject to requests for waivers. The amendments to subrules 21.6(4),

PERSONNEL DEPARTMENT[581](cont'd)

21.6(7), 21.8(1) and 21.24(14) confer benefits, and the amendments to subrule 21.6(9) are required by statute.

In conjunction with the Adopted and Filed Emergency also published herein, this filing will give interested persons adequate notice of the changes and an opportunity to respond.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 4, 2001. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515) 281-0089. Comments may also be submitted by fax to (515) 281-0045 or by E-mail to info@ipers.state.ia.us.

There will be a public hearing on December 4, 2001, at 9 a.m. at IPERS, 7401 Register Drive, 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 matter of the proposed amendments.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 1130B**. The content of that submission is incorporated by reference.

ARC 1106B

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

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to rescind Chapter 2, "Petitions for Rule Making," Iowa Administrative Code, and adopt a new Chapter 2 with the same title.

The proposed amendment is intended to implement changes to comply with Executive Order Number 8. The amendment reorganizes the rules in a new chapter to replace references in the rules to the Uniform Rules on Agency Procedure and incorporates the actual language previously referenced. This format should be easier for the public to read. These changes are being made subsequent to a review of the existing rules for clarity, statutory authority and intent, fairness, necessity and cost.

Public comments concerning the proposed amendment will be accepted until 4 p.m. on December 4, 2001. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

This amendment does not mandate additional combined expenditures exceeding \$100,000 by all affected political

subdivisions or agencies and entities which contract with political subdivisions to provide services.

This amendment is intended to implement Iowa Code chapter 17A.

The following amendment is proposed.

Rescind 591—Chapter 2 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 2
PETITIONS FOR RULE MAKING**

591—2.1(17A) Petition for rule making. Any person or board may file a petition for rule making with the board at the following address: Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD

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

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

6. Any request by petitioner for a meeting provided for by rule 2.4(17A).

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

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

591—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

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

591—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266.

591—2.4(17A) Board consideration.

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

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

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

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

ARC 1105B

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

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to rescind Chapter 3, "Declaratory Rulings," and to adopt new Chapter 3, "Declaratory Orders," Iowa Administrative Code.

The proposed amendment is intended to implement changes to comply with Executive Order Number 8. The amendment reorganizes the rules in a new chapter to replace references in the rules to the Uniform Rules on Agency Procedure and incorporate the actual language previously referenced. This format should be easier for the public to read. These changes are being made subsequent to a review of the existing rules for clarity, statutory authority and intent, fairness, necessity and cost.

Public comments concerning the proposed amendment will be accepted until 4 p.m. on December 4, 2001. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

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

This amendment is intended to implement Iowa Code chapter 17A.

The following amendment is proposed.

Rescind 591—Chapter 3 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 3
DECLARATORY ORDERS**

591—3.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa comprehensive petroleum underground storage tank fund board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the following address: Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD

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



PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

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

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

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

591—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

591—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

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

3.3(3) A petition for intervention shall be filed at Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD

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

The petition for intervention must provide the following information:

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

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the interve-

nor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

591—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

591—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266.

591—3.6(17A) Service and filing of petitions and other papers.

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

3.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

3.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 591—17.13(17A).

591—3.7(17A) Consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the administrator to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, by any person.

591—3.8(17A) Action on petition.

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

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 591—17.2(17A).

591—3.9(17A) Refusal to issue order.

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

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.

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

ARC 1101B

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

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to rescind Chapter 4, "Board Procedure for Rule Making," Iowa Administrative Code, and adopt a new Chapter 4 with the same title.

The proposed amendment is intended to implement changes to comply with Executive Order Number 8. This amendment reorganizes the rules in a new chapter to replace references in the rules to the Uniform Rules on Agency Procedure and incorporates the actual language previously referenced. This format should be easier for the public to read. The changes are being made subsequent to a review of the existing rules for clarity, statutory authority and intent, fairness, necessity and cost.

Public comments concerning the proposed amendment will be accepted until 4 p.m. on December 4, 2001. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

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

This amendment is intended to implement Iowa Code chapter 17A.

The following amendment is proposed.

Rescind 591—Chapter 4 and adopt the following new chapter in lieu thereof:

CHAPTER 4

BOARD PROCEDURE FOR RULE MAKING

591—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

591—4.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

591—4.3(17A) Public rule-making docket.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

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

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

591—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

591—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

591—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

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

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

4.3(1) Docket maintained. The board shall maintain a current public rule-making docket.

4.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"a," the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

4.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any board determinations with respect thereto;
- h. Any known timetable for board decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

591—4.4(17A) Notice of proposed rule making.

4.4(1) Contents. At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the board for the resolution of each of those issues.

4.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 4.12(2) of this chapter.

4.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed with the board a written request for either mailing or electronic transmittal of Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

591—4.5(17A) Public participation.

4.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, or the person designated in the Notice of Intended Action.

4.5(2) Oral proceedings. The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, a board, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by a board or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

4.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)"b" or this chapter.

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

b. **Scheduling and notice.** An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. **Presiding officer.** The board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

d. **Conduct of proceeding.** At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the board.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

4.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

4.5(5) Accessibility. The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, in advance to arrange access or other needed services.

591—4.6(17A) Regulatory analysis.

4.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(7).

4.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the board’s small business impact list by making a written application addressed to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

4.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

4.6(4) Qualified requesters for regulatory analysis—economic impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a) after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

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

4.6(5) Qualified requesters for regulatory analysis—business impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b) after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

4.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

4.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

4.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and 17A.4A(5).

4.6(9) Publication of a concise summary. The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

4.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a), unless a written request expressly waives one or more of the items listed in the section.

4.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

591—4.7(17A,25B) Fiscal impact statement.

4.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

4.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

591—4.8(17A) Time and manner of rule adoption.

4.8(1) Time of adoption. The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

4.8(2) Consideration of public comment. Before the adoption of a rule, the board shall consider fully all of the

written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

4.8(3) Reliance on board expertise. Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

591—4.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

4.9(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

4.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

4.9(3) The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

4.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

591—4.10(17A) Exemptions from public rule-making procedures.

4.10(1) Omission of notice and comment. To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.10(2) Public proceedings on rules adopted without them. The board may, at any time, commence a standard

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

rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 4.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a board, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 4.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 4.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

591—4.11(17A) Concise statement of reasons.

4.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

4.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board's reasons for overruling the arguments made against the rule.

4.11(3) Time of issuance. After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

591—4.12(17A) Contents, style, and form of rule.

4.12(1) Contents. Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1)"b," or the board in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1)"b," or the board in its discretion decides to include such reasons; and

g. The effective date of the rule.

4.12(2) Incorporation by reference. The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board-proposed or board-adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

If the board adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

4.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the board shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.12(4) Style and form. In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

591—4.13(17A) Board rule-making record.

4.13(1) Requirement. The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

4.13(2) Contents. The board rule-making record shall contain:

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

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board chairperson, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any board response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

4.13(3) Effect of record. Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

4.13(4) Maintenance of record. The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 4.13(2) "g," "h," "i," or "j."

591—4.14(17A) Filing of rules. The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is is-

sued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

591—4.15(17A) Effectiveness of rules prior to publication.

4.15(1) Grounds. The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.15(2) Special notice. When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 4.15(2).

591—4.16(17A) General statements of policy.

4.16(1) Compilation, indexing, public inspection. The board shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code sections 17A.2(11)"a," "c," "f," "g," "h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

4.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this subsection shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

591—4.17(17A) Review by board of rules.

4.17(1) Any interested person, association, board, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to de-

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

termine whether a new rule should be adopted instead or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

4.17(2) In conducting the formal review, the board shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the board's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the board or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

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

ARC 1102B

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

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to rescind Chapter 11, "Remedial or Insurance Claims," and adopt new Chapter 11, "Claims," Iowa Administrative Code.

The proposed amendment is intended to implement changes to comply with Executive Order Number 8. The amendment reorganizes the rules in the chapter to place rules in a format that should be easier for the public to read. The change is being made subsequent to a review of the existing rules for clarity, statutory authority and intent, fairness, necessity and cost. Several areas were deleted; most were moved to be grouped with related subjects.

Public comments concerning the proposed amendment will be accepted until 4 p.m. on December 4, 2001. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

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

This amendment is intended to implement Iowa Code chapter 455G.

The following amendment is proposed.

Rescind 591—Chapter 11 and adopt the following new chapter in lieu thereof:

CHAPTER 11 CLAIMS

591—11.1(455G) Reserving and payment of claims pursuant to Iowa Code sections 455G.9 and 455G.21.

11.1(1) All claims shall be investigated and overall fund liability estimated. Claims shall be reserved for their estimated exposure to the fund on the specific site. The reserve shall reflect the estimated exposure less copayment or deductible obligations.

11.1(2) Reserves shall reflect estimated total cost to the program, regardless of actual funding provided.

11.1(3) Prioritization pursuant to Iowa Code section 455G.12 shall be accomplished with rules if required and as determined by the board.

11.1(4) An estimated reserve for incurred but not reported claims shall be developed.

11.1(5) Reserves may be changed to reflect changing knowledge on eligible claims.

11.1(6) Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. Failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

11.1(7) Cause of loss and determination of responsible parties shall be ascertained as a part of the investigation process. Independent environmental consultants may be retained to assist in the determination of the cause of the release and for the application of coverage.

591—11.2(455G) Eligible claims. All claims eligible for benefits under Iowa Code sections 455G.9 and 455G.21 will be subject to available funding. In order to be eligible for reimbursement under any claim type, the claimant must prove either that the release was reported by October 26, 1990, or that the release occurred prior to October 26, 1990. Releases that cannot be proven to have occurred prior to October 26, 1990, must be addressed using the owners' or operators' chosen financial responsibility mechanism. Failure to carry an adequate financial responsibility mechanism, such as continuous insurance, is deemed to be self-insurance. The provisions of these rules do not confer a right upon any party.

11.2(1) Financial responsibility required. To be eligible for benefits under Iowa Code sections 455G.9 and 455G.21, any owner or operator applying for such benefits shall demonstrate that such owner or operator had continuous financial responsibility coverage in effect using a method provided for under 567—Chapter 136, beginning no later than October 26, 1990. If an owner or operator is unable to demonstrate financial responsibility coverage, or there is a lapse in the financial responsibility coverage for any period after October 26, 1990, the owner or operator will no longer be eligible for benefits if the site for which benefits are being requested had active tanks during the time the owner or operator was unable to demonstrate financial responsibility or if there is a lapse of financial responsibility coverage subject to the following limitation:

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

a. The financial responsibility coverage requirement shall not be required on temporarily closed tanks consistent with subrule 11.2(3).

b. An owner or operator who has had a lapse of financial responsibility coverage shall be allowed to remain eligible for remedial benefits if the following conditions are met:

(1) The owner or operator applies for reinstatement of remedial benefits and submits a reinstatement fee according to the following table:

<u>Years for Which Financial Responsibility Not Demonstrated</u>	<u>Per-Tank Reinstatement Fee</u>
July 1, 1991, through June 30, 1992	\$330
July 1, 1992, through June 30, 1993	\$415
July 1, 1993, through June 30, 1994	\$495
July 1, 1994, through June 30, 1995	\$575
July 1, 1995, through present	\$450

For each fiscal year in which the owner or operator lacked financial responsibility coverage, such owner or operator shall pay the per-tank reinstatement fee for such fiscal year, as set forth above, for each active tank. The reinstatement fees above are for full years and shall be prorated on a per-month basis for each month or portion of a month for which there was a lapse of financial responsibility coverage. There is a minimum reinstatement fee of \$500 per site per lapse of coverage.

(2) At the time of the application for reinstatement of remedial benefits, all active tanks must be in compliance with all state and federal technical and financial responsibility requirements.

(3) The owner or operator is in compliance with all other requirements of this chapter.

(4) An owner or operator is only eligible for reinstatement of remedial benefits one time per site. The one-time reinstatement may remedy multiple past lapses in financial responsibility. If there is subsequent lapse of financial responsibility coverage on any active tank on site after remedial benefits have been reinstated, the owner or operator will lose eligibility for remedial benefits and will be subject to cost recovery pursuant to Iowa Code section 455G.13.

11.2(2) Impact of insurance on remedial account benefits. If owners or operators have insurance to cover corrective action costs for their underground storage tanks after January 1, 1985, other than pursuant to Iowa Code section 455G.11 or other than pursuant to 40 CFR 280.95, 280.96, 280.99, 280.101, 280.102, and 280.103, the remedial account is available to eligible owners and operators only as follows:

a. The remedial account will pay the deductible amount applicable to such insurance for owners and operators who are eligible for remedial account benefits, subject to the applicable remedial account deductible and copayment provisions.

b. Except for payments made pursuant to 11.2(2)"a," remedial account benefits are secondary to all such insurance.

c. Remedial account benefits shall not be used to reimburse insurance companies for proceeds paid by those companies pursuant to the terms of such insurance.

d. In the event of a dispute between the insurance company and the owner or operator or the board regarding insurance coverage, otherwise eligible owners and operators will receive remedial account benefits upon assigning their interest in such insurance to the board.

11.2(3) Technical requirements. An owner or operator eligible for remedial benefits who complied with 11.2(1) by using program insurance authorized pursuant to Iowa Code section 455G.11 will remain eligible for remedial benefits

even though the insured tanks were not upgraded by December 22, 1998, under the following conditions:

a. The owner or operator temporarily closed the tanks in compliance with the closure requirements of the environmental protection commission 567—subrule 135.9(1) while the tanks were still insured under Iowa Code section 455G.11; and

b. The owner or operator certifies that the tanks continuously had financial responsibility coverage acceptable under 567—Chapter 136 from October 26, 1990, until the temporary closure; and

c. The owner or operator establishes that the tanks were empty and were not used during the entire period of the temporary closure. "Empty" means all materials have been removed from the tanks using commonly approved practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent of weight of the total capacity of the tank system, remain in the tank system; and

d. The owner or operator establishes that, during the entire period of the temporary closure, vent lines were left open and functioning and all other lines, pumps, manways, and ancillary equipment were capped and secured; and

e. The owner or operator certifies that, within one year from the time the tanks were temporarily closed, the tanks were either permanently closed, removed and replaced, or upgraded; and

f. The owner or operator certifies that the upgraded tanks and replacement tanks meet the new tank or upgrade standards of the environmental protection commission rule 567—135.3(455B); and

g. Financial responsibility for the tanks, using a method provided for under 567—Chapter 136, was in effect; and

h. The owner or operator meets all other applicable requirements pertaining to remedial benefits.

An owner or operator receiving remedial account benefits pursuant to this subrule will be subject to cost recovery pursuant to Iowa Code section 455G.13 in the event the owner or operator does not comply with all of the conditions of this subrule, the provisions of the certifications required by this subrule, and applicable statutes and rules of the environmental protection commission and the board.

11.2(4) Compliance with report submittal deadlines. To be eligible for remedial or innocent landowner benefits, claimants must comply with all department of natural resources (DNR) deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements as published in 567—Chapter 135, and must, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later, provide a copy of an executed contract with a certified groundwater professional, which contract must include a timetable that meets DNR deadlines for completion of a Tier 1 and Tier 2 if required.

11.2(5) Tanks and sites not eligible. The following underground storage tanks are not eligible for remedial account benefits:

a. Tanks that were taken out of use prior to January 1, 1974. For purposes of this rule, tanks taken out of use are tanks which have not actually been used by either depositing petroleum in the tanks or by pumping petroleum from the tanks.

b. Underground storage tanks which were removed from the ground prior to July 1, 1985.

c. Underground storage tanks which were closed prior to July 1, 1985.

d. Underground storage tanks which do not contain petroleum. For the purposes of this subrule petroleum means

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

petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60° F and 14.7 pounds per square inch absolute). The following two categories of substances are not petroleum:

(1) Substances which are regulated as hazardous waste under 42 U.S.C. 6921 et seq.

(2) Substances which would be regulated under 42 U.S.C. 9601 et seq. if the substance were to leak from a tank, related piping, other part of the system or from spills or releases into the environment, including lands, waters and air.

11.2(6) Retroactive claims.

a. Retroactive claims are:

(1) Claims which were filed with the board prior to January 31, 1990, for releases reported to the DNR after July 1, 1987, but prior to May 5, 1989; and

(2) If filed by a city or county, claims which were filed with the board prior to September 1, 1990, for releases reported to DNR after July 1, 1987, but prior to May 5, 1989; and

(3) Claims filed with the board prior to September 1, 1990, for releases reported to the DNR after January 1, 1984, but prior to July 1, 1987.

b. Retroactive claims shall be eligible for reimbursement if all of the following criteria are met:

(1) The claim has been verified and all supporting materials have been supplied to the administrator for review; and

(2) A signed and notarized claim form is submitted to the board; and

(3) The claimant is not a person whose method of showing proof of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa environmental protection commission's underground storage tank financial responsibility rules, 567—Chapter 136, is one in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator; and

(4) The claimant satisfies the copayment requirements of Iowa Code section 455G.9(4); and

(5) The claimant has not filed bankruptcy anytime after:

1. July 1, 1987, if the release was reported to DNR prior to May 5, 1989, but after July 1, 1987; or

2. January 1, 1985, if the release was reported to DNR prior to July 1, 1987, but after January 1, 1984.

11.2(7) Remedial claims. Remedial claims are claims filed with the board prior to February 26, 1994, for releases reported to DNR after May 5, 1989, and on or before October 26, 1990. Remedial claims shall be eligible for reimbursement if all of the following criteria are met:

a. A signed and notarized claim form is submitted to the board.

b. All bills and estimates pertinent to the submitted claim are received by the board, along with any contracts, any remedial plans and correspondence for budget approval on the work required by DNR.

c. The work is complete or, if ongoing, is approved by the administrator and in accordance with priority rules.

d. The owner or operator has met all relevant deadlines and DNR's technical requirements for cleanup. To be eligible, corrective action costs must be reasonable and necessary to complete the work required by DNR. The board shall reimburse or pay only those corrective action costs which will cover the work as mandated by Iowa Code sections 455B.471 to 455B.479.

e. The claimant satisfies the copayment requirements of Iowa Code section 455G.9(4).

11.2(8) Innocent landowner claims. Consistent with Iowa Code chapter 455G, the board may reimburse an owner of petroleum-contaminated property, or an owner or operator of an underground storage tank located on such property, who, but for this rule because of the date the release was reported, because of the date the claim was filed, because the tank(s) in question was removed from service prior to January 1, 1974, or because the tank(s) in question was removed or permanently closed prior to July 1, 1985, would not be eligible to receive benefits under Iowa Code section 455G.9. Eligible expenses shall not exceed the benefits such claimant would otherwise receive if such claimant were eligible under Iowa Code section 455G.9(1)"a"(1) to (3). All such reimbursements shall be subject to:

- The copayment requirements of Iowa Code section 455G.9(4),

- The requirements of 11.2(1), and

- The available funding and limitations of the innocent landowner fund created by Iowa Code section 455G.21(2)"a" for corrective action.

In the event the innocent landowner fund lacks sufficient funds to pay all claims submitted, innocent landowner claims shall be subject to the following priority:

a. Late filed retroactive claims. For releases reported to DNR on or after January 1, 1984, but prior to May 5, 1989:

(1) Claims must be filed with the board by February 26, 1994.

(2) All costs incurred on or after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

b. Preregulation claims. For releases from petroleum underground storage tanks (USTs) which are not eligible for remedial account benefits under Iowa Code section 455G.9(1)"a"(1) to (3) only because the USTs were taken out of use prior to January 1, 1974, or permanently closed or removed before July 1, 1985:

(1) Claims must be filed with the board by December 1, 1997.

(2) USTs must not have been operated on the site since the time the tanks were taken out of use or permanently closed.

(3) All costs incurred after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

(4) The owner cannot have claimed bankruptcy on or after the date of the reported release.

c. Late filed remedial claims. For releases reported by owners of petroleum-contaminated property as defined under 455G.9(8) who did not comply with the reporting or filing deadlines identified in this chapter, with priority to those owners who did not have knowledge of the USTs or did not have control over the property.

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to DNR consistent with DNR requirements.

(3) The owner did not have knowledge of the UST or of a release impacting the property prior to acquisition of the property if the property was acquired on or after October 26, 1990, or, if the owner did have such knowledge, the acquisition was necessary to protect a security interest.

(4) All costs incurred on or after July 10, 1996, must be approved by the board to be eligible for reimbursement.

(5) The owner cannot have claimed bankruptcy on or after the date of the reported release.

d. Acquired properties. For releases reported by owners of petroleum-contaminated property as defined under 455G.9(8) who acquired the petroleum contaminated prop-

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

erty after October 26, 1990, and who did not comply with the reporting or filing deadlines identified in this chapter:

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to the DNR consistent with the DNR requirements.

(3) The owner could not have been the owner or operator of the UST system which caused the release prior to acquiring the property after October 26, 1990.

(4) All costs incurred on or after December 1, 1996, must be preapproved by the board to be eligible for reimbursement.

(5) For claims submitted under this paragraph, the pre-corrective action value shall be the purchase price paid by the owner after October 26, 1990.

(6) For claims submitted under this paragraph, the purchase must have been an arm's-length transaction.

(7) The owner cannot have claimed bankruptcy on or after the date of the reported release.

e. Other innocent landowner claims. Claims for releases submitted to the board after December 1, 1997, which would have been eligible for benefits pursuant to paragraphs "a" through "d" of this subrule if filed by December 1, 1997, will be eligible for reimbursement subject to a first-in, first-out priority and the funding limitations of the innocent landowner fund. The owner must demonstrate that the owner has met all other requirements of this subrule in order to receive benefits.

11.2(9) County tax deed claims. The board shall pay 100 percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to Iowa Code chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

11.2(10) Hardship funding claims. The board shall pay 100 percent of corrective action costs and third-party liability not to exceed \$1 million for a release for which the eligible claimant, pursuant to Iowa Code section 455G.9, is subject to financial hardship if all of the following conditions are met:

a. The claimant has completed the claim form, had it notarized, and submitted it to the board on or before December 1, 1996.

b. The claimant is a small business as defined in Iowa Code section 455G.2(18) and has submitted self-certification forms documenting small business status.

c. The claimant does not have a net worth of \$15,000 or greater and has submitted documentation of net worth in accordance with Iowa Code section 455G.10(4) and 591—12.6(455G) or the claimant is an individual who is financially unable to pay copayments associated with the cost of corrective action as determined by using the DNR's evaluation of ability to pay found at 567—135.17(455B).

d. The release for which the claim has been made occurred prior to October 26, 1990.

e. The release for which the claim has been made was reported to DNR on or before December 1, 1996.

f. The site for which the claim is made is in compliance with all technical requirements of 567—Chapters 135 and 136.

g. The site for which the claim is made shall not be deeded or quitclaimed to the state or board in lieu of cleanup.

h. Property taxes shall not be delinquent, unpaid or otherwise overdue.

i. A responsible party with the ability to pay corrective action expenses cannot be found.

j. The release for which the claim is made is one for which the federal Underground Storage Tank Trust Fund or other federal moneys do not provide coverage.

k. The work is complete or, if ongoing, is approved by the administrator or the board pursuant to the cost containment provisions of Iowa Code section 455G.12A.

l. All claims and payments are subject to prioritization guidelines as may be published by the board at the time of payment.

11.2(11) Governmental subdivision claims. The board shall pay 100 percent of the costs of corrective action for a governmental subdivision in connection with a tank, where the release occurred, if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which the governmental subdivision acquired, and does not become a responsible party by sale or transfer of property so acquired.

Also, the board shall pay 100 percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States Department of Housing and Urban Development-approved urban renewal project is eligible for payment of costs under this subrule whether or not the property was acquired on or after May 3, 1991.

11.2(12) Inheritance claims. The board may pay claims for corrective action for the costs of a release if the claimant proves that all of the following conditions are met:

a. The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

b. The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

c. The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

d. The release was reported to the board by October 26, 1991.

11.2(13) Financial institution claims. Reserved.

11.2(14) State agency or department claims. Reserved.

11.2(15) No further action claims. The board shall pay for corrective action in response to a high-risk condition caused by a release from an underground storage tank located on a site for which the department of natural resources, after January 31, 1997, has issued a no further action certificate under Iowa Code section 455B.474. As a condition of

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

receiving benefits under this subrule, the department of natural resources must determine that the condition necessitating the corrective action was not a result of a release that occurred after the issuance of the no further action certificate, and that the site qualified for remedial benefits under Iowa Code section 455G.9 prior to the issuance of the no further action certificate. No more than \$100,000 per site may be used for the costs of a corrective action under this subrule. This subrule does not confer a legal right on an owner or operator of petroleum-contaminated property or on any other person to receive benefits under this subrule.

591—11.3(455G) Eligible costs.

11.3(1) Claims may be paid monthly. Claim payments will include all approved expenses, including tank and piping removal for active systems if the tank and piping removal occurred on or before March 17, 1999, and other costs as provided in Iowa Code chapter 455G. Replacement of excavated materials shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets DNR requirements.

11.3(2) The board shall reimburse or pay eligible expenses only if those expenses have been approved prior to the commencement of work, as required by Iowa Code section 455G.12A. No corrective action costs shall be reimbursed unless reasonable, necessary and approved by the board or its designee.

11.3(3) When practical to do so, the board shall bid any work associated with this chapter with firms that have indicated to the administrator an interest to be on the board's list of firms supplying goods or services. Any firm supplying goods and services including, but not limited to, testing laboratories, cleanup equipment manufacturers and leak detection testing firms may also be included in the vendors list.

11.3(4) Reimbursement to the owner, operator or contractor under this chapter is subject to overall site cleanup report prioritization and classification. Sites which are classified as low risk are eligible for remedial account benefits for monitoring expenses required by Iowa Code section 455B.474(1)"f"(6), unless the tank is removed, upgraded, or replaced.

11.3(5) The board may reimburse expenses associated with tank systems described in paragraphs 11.2(5)"a" to "c" when all of the following conditions have been documented:

a. The release for which benefits are being requested is from tanks operated on a site which is otherwise eligible for benefits under Iowa Code section 455G.9(1); and

b. The release for which benefits are being requested is commingled with an on-site release which is eligible for benefits under Iowa Code chapter 455G; and

c. The site has had active underground storage tanks continuously from the date of the release for which benefits are being requested until the date on which the release for which the site is currently eligible for benefits was reported to DNR; and

d. The claimant certifies that the tanks for which benefits are being requested will be permanently closed within 90 days of notification of eligibility and does permanently close the tanks in compliance with rule 567—135.9(455B) within the 90 days; and

e. All other eligibility requirements have been met.

11.3(6) An owner or operator of a site which is eligible for benefits under Iowa Code section 455G.9 who discovered a tank on the site after October 26, 1990, shall maintain eligibility for benefits even if that tank does not meet the financial responsibility requirements continuous since October 26, 1990, if all of the following conditions have been met:

a. The tank was discovered after October 26, 1990; and
b. The tank has not been operated since the discovery and has never been operated by the claimant; and

c. The tank has been emptied of all product as soon as practicable after it was discovered; and

d. The tank was properly registered with DNR as soon as practicable after it was discovered; and

e. The tank is a regulated tank, pursuant to Iowa Code section 455G.1, which previously contained only petroleum products as defined in this chapter; and

f. The tank is permanently closed within 90 days of discovery or by July 1, 1995, whichever date is later.

11.3(7) Payments for conducting risk-based corrective action (RBCA) analysis on monitor-only sites. When reviewing applications for benefits for the cost of completing an RBCA analysis on a site which has an approved Site Cleanup Report (SCR) requiring monitoring only, or on a site with an SCR submitted between August 15, 1996, and January 31, 1997, the criteria in this rule shall apply when determining payment eligibility.

a. One hundred percent of the costs may be preapproved not to exceed \$10,000 for all activities associated with the completion of the Tier 1, Tier 2, or Tier 3 analysis. Costs which exceed \$10,000 will be subject to the limitations of Iowa Code section 455G.9(1)"f."

b. Sites receiving benefits pursuant to this rule must comply with the other requirements of board rules.

11.3(8) Ineligible costs and copayments.

a. The board shall pay any eligible claims subject to copayment requirements unless the payment of any copayment for the claim is specifically exempted in Iowa Code section 455G.9.

b. The claimant shall pay a copayment equal to the greater of either \$5,000 or 18 percent of the first \$80,000. All approved costs that exceed \$80,000, up to the statutory benefit limit for the claim, will be paid by the board.

c. The first \$20,000 of costs incurred for assessment of a site eligible to receive benefits will be exempted from the copayment requirement. Assessment includes, but is not limited to, risk-based corrective action Tier 1 and Tier 2 reports and site cleanup reports. Assessment does not include excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, cleansing of groundwaters or surface waters, actions taken to address contamination and its possible influence on a receptor or potential receptor or the preparation of a corrective action design report.

11.3(9) The board shall only reimburse eligible claimants for corrective action. "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report or risk-based corrective action tiered report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report.

11.3(10) Expenses of cleanup not required. Any expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of

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

the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required are the responsibility of the person contracting for the excess cleanup.

591—11.4(455B,455G) Tank and piping upgrades and replacements.**11.4(1) Definitions.**

“Administrator” means the Iowa comprehensive petroleum underground storage tank fund board administrator as provided in Iowa Code section 455G.5.

“Automatic in-tank gauging” means a device used for leak detection and inventory control in tanks that meets DNR’s standards as set out in 567—paragraph 135.5(4)“d.”

“Board” or “UST board” means the Iowa comprehensive petroleum underground storage tank fund board as provided for in Iowa Code section 455G.4.

“DNR” means the Iowa department of natural resources.

“Environmentally sensitive site” means, as classified under the Unified Soil Classification System as published by the American Geologic Institute or ASTM designation: D 248785, any site where the native soils outside or under the tank zone are materials where more than half of the material is larger than no. 200 sieve size. As used herein, “tank zone” means the native soils immediately outside the excavation area or nearest native soil under the tank.

The following classifications of soil descriptions are considered environmentally sensitive:

1. Well-graded gravels, gravel-sand mixtures, little or no fines, classified using the group symbol “GW”;
2. Poorly graded gravels, gravel-sand mixtures, little or no fines, classified using the symbol “GP”;
3. Silty gravels, gravel-sand-clay mixtures, classified using the symbol “GM”;
4. Clayey gravels, gravel-sand-clay mixtures, classified using the symbol “GC”;
5. Well-graded sands, gravelly sands, little or no fines, classified using the symbol “SW”;
6. Poorly graded sands, gravelly sands, little or no fines, classified using the symbol “SP”;
7. Silty sands, sand-silt mixtures, classified using the symbol “SM”.

In addition, environmentally sensitive sites include any site which is within 100 feet of a public or private well, other than a monitoring well on a site, and any site where the tank is installed in fractured bedrock or “Karst” formations. Any one of the above-specified conditions shall constitute an environmentally sensitive site under this rule.

A site shall be classified as environmentally sensitive when:

Fifty percent or more of the soils from a boring or a monitoring well are logged and classified as one or more of the areas noted in paragraphs “1” through “7” above and 50 percent of the total wells located on or immediately next to the property show the same or similar conditions. If no testing of the site has occurred and the soil condition as classified under the Unified Soil Classification System in or under the tank zone is one of the conditions as classified, the site shall be considered to be environmentally sensitive. Reports previously prepared on the site and available from DNR may be used to make the soil classification. At least three borings/wells must have been completed. If fewer than three have been completed, an additional well which triangulates the tank zone shall be completed to determine the types of soils present.

For the purposes of this definition, fractured bedrock or “Karst” formations appearing in the tank zone or piping run,

or within a 25-foot diameter around the tank zone or piping run, or within 25 feet of the bottom of the tank excavation area shall be classified environmentally sensitive. Generally available data, including that available from local utilities, may be used when specific drilling has not determined that conditions specified in this definition have not been identified on the site. If the site shows any surface condition which is fractured bedrock or “Karst,” then the site shall be classified as being environmentally sensitive.

For the purposes of this definition, wells are those which are in use and the water is being used for human consumption. The well as developed shall generate a volume of two gallons per minute, unless a holding device or cistern is used for water pumped. An abandoned well, or a well being used for some other purpose, shall not be included in the definition, unless the end use may be for human consumption.

“Piping replacement” means any modernization or modification of piping at a site which includes the removal of the existing piping and the installation of new piping.

“Piping upgrade” means any modernization or modification of piping at a site which does not include the removal of the existing piping and the installation of new piping.

“System upgrade” or “upgrading” means the modernization or modification of underground storage tank system installations through tank and piping upgrades to comply with the rules of DNR under 567—subrule 135.3(2).

“Tank replacement” means any modernization or modification of a tank at a site which includes the removal of the existing tank and the installation of a new tank.

“Tank upgrade” means any modernization or modification of a tank at a site which does not include the removal of the existing tank and the installation of a new tank.

“Upgrade benefit” means the cost of board-approved systems specified in subrule 11.4(6). If the installation includes a board-approved secondary containment system, the upgrade benefit relates specifically to the cost difference attributable to the board-approved system specified in subrule 11.4(6). The upgrade benefit includes the following:

1. Cost of double walled tanks and pipes minus the cost of single wall tanks and piping, or
2. Cost of double walled steel tanks minus the cost of single wall steel tanks, or
3. Cost of nonmetallic double walled tanks minus the cost of nonmetallic single wall tanks.

In addition, the upgrade benefit shall include the cost of the additional labor, if any, to install the board-approved system which is in excess of the cost to install a single wall system. The upgrade benefit also includes the cost of automatic in-tank gauging equipment when installed in conjunction with secondary containment, but such costs shall be limited to the lowest expense for the system best suited to provide a reasonable degree of protection.

If the system does not include the approved secondary containment, no upgrade benefit is payable. Secondary containment as defined in subrule 11.4(6) is mandatory after March 25, 1992.

11.4(2) The maximum upgrade benefit payable from the remedial fund on any tank or system installed since January 1, 1985, to meet upgrading requirements shall be \$10,000 for any one site, subject to applicable copayment requirements as specified in Iowa Code section 455G.9. Benefits payable under subrule 11.4(6) cover the additional cost of the tank system upgrade or replacement as set forth in the definition of upgrade benefits. Prior to installation, budgets shall be provided to the administrator outlining the cost and scope of work proposed and the cost differences between a single wall

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

system and the board-approved system which is proposed. The cost of the original upgraded or new system without board-approved secondary containment as defined herein is not subject to these fund upgrade benefits for tank system upgrades or replacements.

11.4(3) The cost for system upgrading or replacement shall be separated from all other corrective action costs incurred on an individual site classified as high risk or low risk by DNR. The upgrade benefits are not payable on any site classified by DNR as a No Action Required site.

11.4(4) Upgrade benefit payments under subrule 11.4(6) shall be made upon evidence that the upgrade met standards in 567—Chapter 135 and DNR registration Form 148 has been completed and mailed to DNR and the administrator. These upgrade benefits shall be paid only if all requirements of 591—Chapter 15 have been met. If a site does not comply with the applicable provisions of 591—Chapter 15, the site is not eligible for these upgrade benefits unless installation or upgrade occurred prior to October 26, 1990. In that event, the individual reimbursement request will be reviewed to determine if other information is necessary before upgrade benefit payment can be made. In addition, the completed work must be within the budget previously approved by the administrator pursuant to Iowa Code section 455G.12A.

11.4(5) Upgrades and replacements allowed at contaminated sites. Iowa Code section 455B.474(1)“f”(8) provides that the replacement or upgrade of tank systems on high- or low-risk sites must be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board-approved methodology. The following are the upgrade and replacement options which are board approved for purposes of Iowa Code section 455B.474(1)“f”(8):

a. Tank upgrades. The following options are allowed for tank upgrades on any contaminated site:

- (1) The tank meets DNR's new tank standards set forth in 567—paragraph 135.3(1)“a”; or
- (2) The tank meets DNR's upgrade standards set forth in 567—paragraphs 135.3(2)“b” and “d.”

b. Tank replacements. The following options are allowed for tank replacements:

- (1) On any contaminated site, a double walled tank or a tank equipped with a secondary containment system meeting DNR's new tank standards set forth in 567—subrule 135.3(1) and with monitoring of the space between the primary and secondary containment structures in accordance with DNR's standards set forth in 567—paragraph 135.5(4)“g.”

(2) On any contaminated site which is not environmentally sensitive the following additional options are allowed:

1. Tanks meeting DNR's new tank standards set forth in 567—paragraph 135.3(1)“a” with automatic in-tank gauging acceptable under 567—subrule 135.5(4).
2. Tanks meeting DNR's new tank standards set forth in 567—paragraph 135.3(1)“a” with an electronic tank level monitor used in conjunction with a DNR-approved statistical reconciliation method acceptable under 567—subrule 135.5(4). The owner must have monthly records on premises which show that all requirements for statistical reconciliation have been met.

c. Piping upgrades. The following options are allowed for piping upgrades at any contaminated site:

- (1) Double walled piping.
- (2) Single walled piping installed in a barrier providing secondary containment between soil and the piping.

(3) Single wall piping meeting DNR's upgrade standards set forth in 567—paragraph 135.3(2)“c” and leak detection standards set forth in 567—paragraph 135.5(2)“b.”

d. Piping replacements. The following options are allowed for piping replacements:

- (1) For any contaminated site:
 1. Double walled piping.
 2. Single walled piping installed in a barrier providing secondary containment between soil and the piping.
 3. On suction systems, single wall piping when only one check valve is on the line directly under the pump.

(2) For sites which are not environmentally sensitive, suction systems with single wall piping meeting DNR's upgrade standards set forth in 567—subrule 135.3(2) on pipes with leak detection are allowed if there is no more than one valve on the piping. All suction systems shall be installed with the slope of the pipe back to the tank and shall have only one check valve located directly under the suction pump.

e. Spill and overflow protection, cathodic protection, and leak detection. Nothing in this rule alters DNR's upgrade requirements for spill and overflow protection, cathodic protection, and leak detection.

11.4(6) Tank and piping upgrades and replacements eligible for upgrade benefits.

a. The following tank and piping upgrades or replacements are eligible for upgrade benefits if completed on or before March 17, 1999:

- (1) Double walled tanks.
- (2) Single walled tanks meeting DNR's requirements as specified in 567—paragraph 135.5(4)“g,” the tank zone providing an impermeable barrier between native soils and the tank, thus providing secondary containment.

(3) Double walled piping.

(4) Single wall piping installed in a barrier system, providing secondary containment between the soil and the piping. Nothing in this rule alters upgrade requirements for spill/overflow protection, cathodic protection and leak detection.

b. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurred on or after March 25, 1992, and on or before March 17, 1999, on sites which are classified as being environmentally sensitive:

(1) Pressurized systems: Tanks and piping shall comply with one of the tank and piping options specified in 11.4(6)“a.”

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system pipes shall have the check valve located at the suction pump. These systems shall meet one of the options specified in 11.4(6)“a,” except that piping may be single wall when one check valve is on the line, under the pump.

c. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurred on or after March 25, 1992, and on or before March 17, 1999, on sites which are not classified as being environmentally sensitive:

(1) Pressurized systems: Piping shall comply with one of the pipe options specified in 11.4(6)“a.” Tanks installed must be either one of the options specified in 11.4(6)“a” or be a DNR-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4) or, in lieu of automatic in-tank gauging, be a DNR-approved electronic tank level monitor in conjunction with a DNR-approved UST statistical inventory reconciliation method pursuant to 567—subrule

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

135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system piping shall have the check valve located at the suction pump. These systems must be either one of the options specified in 11.4(6)"a" or:

1. Pipes: Single wall pipes meeting DNR's upgrade standards on the pipes with leak detection pursuant to 567—subrule 135.3(2). If more than one valve is on the pipe, this option is not available.

2. Tanks: Must be either one of the options specified in 11.4(6)"a" or be a DNR-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4) or, in lieu of automatic in-tank gauging, be a DNR-approved electronic tank level monitor in conjunction with a DNR-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

11.4(7) Any system upgrade or replacement installed prior to March 25, 1992, which complies with the provisions of this rule shall be eligible for upgrade benefits if the system has been fully upgraded or replaced in accordance with 567—Chapter 135.

11.4(8) The board reserves the right to establish cost controls on the purchase and installation of underground storage tank equipment and systems. Upgrade benefits are not equipment and capital improvements for purposes of Iowa Code section 455G.9(6).

11.4(9) Evidence of insurance or self-insurance shall be provided to DNR upon completion of the upgrade or replacement unless the Iowa UST program provides insurance coverage. If the Iowa UST program provides coverage, the administrator will notify DNR.

11.4(10) Failure to obtain approval or qualify for upgrade benefits may be appealed as provided in 591—Chapter 17.

This rule is intended to implement Iowa Code sections 455B.474(1)"f"(8) and 455G.9(1)"a"(5).

591—11.5(455G) Cost recovery and containment. The board, in addition to measures described to preapprove all costs, may take other actions to ensure costs are reasonable and to recover moneys spent at sites that become ineligible. Subrogation and cost recovery opportunities shall be pursued against any responsible party, as deemed appropriate by the board to do so.

11.5(1) Definitions. For purposes of this rule, the following terms shall have the meanings set forth below:

"Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified. Entities which have one or more officers or directors in common, whether simultaneously or otherwise, shall be rebuttably presumed to be affiliates.

"Control," "controlling," "controlled by" and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the man-

agement and policies or day-to-day activities of a person, whether through ownership, by contract, or otherwise.

"Predecessor" means a person the major portion of whose business and assets another person acquired in a single succession or in a series of related successions in which the acquiring person acquired the major portion of the business and assets of the acquired person.

11.5(2) Liens on tank sites.

a. The board shall have a lien upon real property where an underground storage tank, which was the subject of corrective action, was or is situated and the board has incurred expenses related to the property.

b. The board's lien shall be in the amount the owner or operator of the underground storage tank is liable to the fund.

c. The liability of an owner or operator shall be no less than the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in Iowa Code section 455G.13(1), if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of DNR or the fund or with Iowa Code chapter 455G.

d. The liability of an owner or operator eligible for assistance under the remedial account shall be no less than the amount of any unpaid portion of the deductible or copayment.

e. A lien shall attach at the later of the following: the date the fund incurs an expense related to the property or the date the board mails a certified letter, return receipt requested, to the last-known address of the owner or operator demanding payment for fund expenses.

f. Liens under this rule shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions.

g. In order to preserve a lien against subsequent mortgages, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the board shall file with the recorder of the county in which the property is located a notice of the lien. The county recorder of each county shall record such liens in the index of income tax liens. The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the notice, and shall immediately index the notice in the index book and record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of indexing.

h. The board shall pay a recording fee as provided in Iowa Code section 331.604 for the recording of the lien, or for its satisfaction.

i. Upon the payment of the lien as to which the board has filed notice with a county recorder, the board shall file with the recorder a satisfaction of the lien and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

11.5(3) Fraud disqualification of contractors. No contractor or subcontractor shall be eligible for payment with UST program funds, nor shall any owner or operator be reimbursed for payments to any contractor or subcontractor, nor shall any contract between an owner or operator and a contractor or subcontractor be approved if the administrator determines that such contractor or subcontractor or any of its

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

predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10 percent or more of such contractor or subcontractor:

a. Has, within the preceding five years, pleaded guilty to, been convicted of, or received a suspended or deferred judgment for theft, fraud, or any other felony or misdemeanor involving deceit, attempted deceit, or falsification or alteration of documents;

b. Is subject to an order, judgment, or decree of a court of competent jurisdiction (including probation) or an administrative order of any state or federal administrative agency entered within the previous five years, which order, judgment, decree, or administrative order temporarily, preliminarily, or permanently enjoins or restrains the contractor or subcontractor from engaging in or continuing the performance of any services relating to underground storage tanks or the assessment or remediation of petroleum contamination as a consequence of the contractor's or subcontractor's own misconduct, negligence, or misfeasance; or

c. Has, within the previous five years, obtained, or attempted to obtain, UST fund benefits:

(1) By means of any intentional or reckless misrepresentation;

(2) By means of any falsified or altered document;

(3) For services which were not performed; or

(4) By other improper means.

11.5(4) Waiver or modification of disqualification. The administrator may, at the administrator's discretion, to avoid undue hardship to tank owners or operators, to the UST program, or to contractors or subcontractors, waive any disqualification under this rule as to work performed or to be performed for any or for specified owners or operators. The administrator may also condition or qualify the eligibility of a person or entity that is subject to disqualification hereunder to be paid with UST program funds upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program. A disqualification under this rule shall cease to exist if:

a. The basis for the disqualification has been removed by the legislative body, court, or administrative agency creating it;

b. The court or administrative agency with primary jurisdiction over the disqualifying event issues a written waiver of the disqualification;

c. The court or administrative agency with primary jurisdiction over the disqualifying event declines in writing to enforce the disqualification; or

d. More than five years have elapsed since the occurrence of the disqualifying event.

11.5(5) Notice of disqualification; reinstatement. Following a determination that a contractor or subcontractor is disqualified pursuant to this rule, the administrator shall notify the contractor or subcontractor in writing that it is no longer eligible to be compensated with fund moneys. The administrator shall also, unless the disqualification has been waived as to existing clients of the contractor or subcontractor, notify in writing all known clients of the disqualified contractor or subcontractor who are participating in UST fund programs of the disqualification. A disqualified contractor or subcontractor may apply to the administrator for reinstatement of eligibility. If the disqualification has ceased to exist, the administrator, upon receiving such an application, shall reinstate the eligibility of the contractor or subcontractor to be compensated with fund moneys. If the disqualification has not ceased to exist, the administrator may, in the

administrator's discretion, reinstate the eligibility of the contractor or subcontractor. The administrator shall notify the contractor or subcontractor who has applied for reinstatement of the administrator's decision within 45 days. The administrator may condition or qualify the reinstatement of a contractor's or subcontractor's eligibility to be compensated with UST fund moneys upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program.

11.5(6) Verification of eligibility. For purposes of implementing this rule, the administrator may require that, prior to the approval by the board of any contract or budget for assessment or remedial work, the contractor specified in such contract or budget, and all subcontractors to perform work thereunder, certify that the contractor or subcontractor is not subject to disqualification for any of the reasons specified in subrule 11.10(1). The administrator may develop, and revise as necessary, a form by which contractors and subcontractors may make such certification.

These rules are intended to implement Iowa Code section 455B.474 and chapter 455G.

ARC 1103B

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

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to rescind Chapter 12, "Guaranteed Loan Program," Iowa Administrative Code, and to adopt a new Chapter 12 with the same title.

The proposed amendment is intended to implement changes to comply with Executive Order Number 8 from the Governor. The rules in new Chapter 12 are organized in a format that should be easier for the public to read. This change is being made subsequent to a review of the existing rules for clarity, statutory authority and intent, fairness, necessity and cost. The new chapter reflects the current status of the Loan Guarantee Program, which is no longer accepting applications.

Public comments concerning the proposed amendment will be accepted until 4 p.m. on December 4, 2001. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

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

This amendment is intended to implement Iowa Code chapter 455G.

The following amendment is proposed.

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

Rescind 591—Chapter 12 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 12
GUARANTEED LOAN PROGRAM**

591—12.1(455G) General policies and loan terms. The following general policy issues and terms shall apply to guaranteed loans:

12.1(1) Amount of loan. There is no maximum amount of a loan subject to the UST fund's guaranty.

12.1(2) Loan maturities. The loan guaranty shall automatically terminate at loan maturity, unless the loan is in default or bankruptcy at that time, or on the date that the loan is paid in full, whichever occurs first.

12.1(3) Variable rate or fixed rate loan. Loans may have either a variable or fixed rate of interest that shall be mutually determined by the lender and borrower. Variable rate loans shall be adjusted according to the terms of the loan agreement and promissory note. However, variable rate loans shall not be adjusted upward more than 100 basis points per year or the maximum rate defined in subrule 12.1(4), whichever is lower.

12.1(4) Interest rate structure. The following interest rate structure represents the maximum allowable rate for all guaranteed loans:

- a. 90% loan guaranty Local prime + 100 basis points
- b. 80% loan guaranty Local prime + 125 basis points
- c. 70% loan guaranty Local prime + 150 basis points
- d. 60% loan guaranty Local prime + 175 basis points
- e. 50% loan guaranty Local prime + 200 basis points

Local prime is defined as the interest rate charged the lender's most creditworthy customers. In no instance shall the local prime interest rate exceed the national prime interest rate, as published in the Wall Street Journal on the date that the guaranteed loan is approved, by more than 100 basis points.

Lenders charging interest rates in excess of this structure on any loan may have the loan guaranty terminated.

12.1(5) Guaranty charges. Guaranty charges are not permitted on loans guaranteed by the UST fund.

12.1(6) Prepayment penalties. Prepayment penalties are not permitted on loans guaranteed by the UST fund.

12.1(7) Late penalty fees. Additional penalty fees not to exceed 1.5 percent of the delinquent installment(s) may be charged monthly.

12.1(8) Sale or participation of guaranteed loans. Sale of loans guaranteed by the UST fund is not permitted.

12.1(9) Collateral release. The lender shall not release any collateral securing the loan without written permission from the UST fund administrator.

12.1(10) Collateral subordination. The lender shall not subordinate any collateral securing the loan without written permission from the UST fund administrator.

12.1(11) Causes for termination of loan guaranty. The loan guaranty may be canceled at any time for the following causes:

- a. Failure to exercise due diligence in disbursing guaranteed loan proceeds per subrule 12.2(2).
- b. Charging interest rates in excess of the maximum allowable per subrule 12.1(4).
- c. Failure to notify the UST fund administrator in writing that a loan is in default per the loan default definition in 12.4(2)"b."
- d. Failure to perform with due diligence in complying with any applicable loan closing requirements.

e. Failure to perform with due diligence in complying with the loan servicing responsibilities of rule 12.3(455G).

f. Fraud or misrepresentation by the lender regarding the policies, procedures, and forms of this program.

If the UST fund administrator has cause to terminate the loan guaranty, written notification outlining the cause of termination shall be given to the lender. The lender shall then have ten business days to respond to the termination notification. Should such response outline an acceptable resolution to the condition causing termination, the administrator shall notify the lender of the administrator's approval of the plan to resolve the condition. Should the response, in the view of the administrator, not adequately address the condition, the guaranty shall be terminated. If no written response is received in ten business days, the guaranty is terminated. If the lender finds that the termination is unwarranted, the lender may pursue any administrative remedy as outlined in Iowa Code chapter 17A.

12.1(12) Loan assumption. Loans guaranteed by the UST fund shall not be assumed without prior written approval of the UST fund administrator.

591—12.2(455G) Eligibility requirements. Loan guarantees may be offered only for the following purposes:

1. To reimburse all or a portion of the expenses incurred by the applicant for its share of corrective action.
2. To pay for tank and monitoring equipment improvements necessary to satisfy federal and state standards to become insurable.
3. Capital improvements made on a tank site.
4. Purchase of a leaking underground storage tank site.

Determination that the lender has failed to exercise due diligence in disbursing the guaranteed loan proceeds may result in termination of the loan guaranty. Examples of satisfying the due diligence standards include, but are not limited to, loan proceeds issued jointly in the name of an owner or operator and the contractor or installer performing underground storage system upgrade services; or loan proceeds issued jointly in the name of the owner or operator and the environmental consulting firm or underground leak response contractor performing corrective action activities.

591—12.3(455G) Servicing responsibilities after loan funding. The following is a listing of servicing responsibilities and procedures that the lender must comply with after the loan is funded in order to maintain the guaranty:

12.3(1) Monitor monthly loan payments.

12.3(2) Provide written notification to the UST fund administrator of all loans that are 60 days delinquent.

12.3(3) If the loan is in default status, follow all procedures set out in rule 12.4(455G) of this loan policy.

12.3(4) Establish and maintain a basic loan file on each loan.

12.3(5) Establish procedures to ensure notification of UCC refiling dates, insurance expiration dates, financial statement due dates and similar events.

12.3(6) Obtain and review income tax returns of the borrowers and guarantors annually.

12.3(7) Obtain and review annual financial statements on all borrowers and guarantors. These statements must be available no later than 90 days after the borrower's fiscal year end. Copies of these statements are to be sent to the UST fund administrator upon receipt from the borrower/guarantor. Unusual items or trends on the financial statements or tax returns shall be analyzed and a determination made if the items should have an adverse financial impact on

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

the borrower. Documentation shall be placed in the loan file to support conclusions.

12.3(8) Annual field visits shall be made to the borrower's place of business. A record of the visit shall be maintained in the loan file. A record of telephone contacts with the borrower or visits by the borrower to the lender's office shall be maintained in the loan file.

591—12.4(455G) Loan default definition and procedures.

12.4(1) "Loan default" means a loan guaranteed by the UST fund for which the loan payment(s) is delinquent 90 days or more.

12.4(2) Lenders that have UST fund guaranteed loans shall follow these specified procedures to ensure that the UST fund guaranty remains in effect:

a. Notify the UST fund administrator in writing when the loan payment(s) is delinquent 60 days.

b. Notify the UST fund administrator in writing when the loan payment(s) is delinquent 90 days. At this time the loan shall be deemed to be in default and the Defaulted Loan Status Report must be completed and sent to the UST fund administrator.

c. After the loan is deemed to be in default, a period of 30 days will be given to cure the default. "Cure" is defined for purposes of this chapter as bringing all delinquent payments current. The lender is responsible for delivering the notice to cure to the borrower.

d. If the loan is still in default after the cure period, the lender shall submit within the next ten business days in writing to the UST fund administrator an action plan on how the lender intends to handle the loan default. The action plan shall include procedures to either restructure the loan or move toward judgment and collection of the loan. The action plan shall be reviewed and approved by the UST fund administrator within ten business days of receipt of the plan. Action plans not approved by the UST fund administrator shall be returned to the lender submitting the plan, and a new action plan will be jointly developed by the lender and the UST fund administrator. If the lender and the UST fund administrator cannot develop and agree on a new action plan, the guaranty is terminated.

e. If in any case the lender feels such termination is unwarranted, the lender may pursue any administrative remedy as outlined in Iowa Code chapter 17A or as approved by the UST board.

f. The lender shall follow the procedures outlined in the approved action plan and inform the UST fund administrator in writing by the end of each calendar quarter of the status of the defaulted loan until such time as the loan is no longer deemed in default. A loan will be deemed to no longer be in default at that point in time when the loan is restructured according to the approved action plan or terminated.

g. At such time as the loan has been reduced to judgment and a UST fund lien has been filed or, alternatively, when the borrower files for reorganization under Chapter 11, 12 or 13 of the Bankruptcy Code, the lender shall submit to the UST fund administrator an estimated report of loss. The UST fund administrator will pay the lender the estimated loss on the guaranteed portion of the loan from the UST fund. Estimated loss payments must first be applied to the principal portion of the debt and then to the interest. Interest will continue to accrue on the unpaid guaranteed principal until such date of final settlement, provided that the lender proceeds expeditiously with the approved action plan. The lender is responsible for protecting the guaranteed loan debt and all

collateral securing the loan in judgment and bankruptcy proceedings.

h. The property shall be sold to satisfy the judgment or bankruptcy order as expeditiously as possible.

i. Upon complete performance of an approved action plan for collection of the loan, the lender shall complete a final report of loss. Within 30 days of receipt of the final report of loss from the lender, the UST fund will pay to the lender any remaining balance of the loan guaranty and the third-party costs as outlined in 12.4(2)"i."

j. Third-party costs incurred by the lender in collecting on guaranteed loans in default will be reimbursed to the lender on a percentage basis of the UST loan guaranty with a maximum cap of 10 percent of the principal loan guaranty. The reimbursement scale shall be as follows:

- (1) 90% guaranty 90% third-party cost reimbursement*
- (2) 80% guaranty 80% third-party cost reimbursement*
- (3) 70% guaranty 70% third-party cost reimbursement*
- (4) 60% guaranty 60% third-party cost reimbursement*
- (5) 50% guaranty 50% third-party cost reimbursement*

*Not to exceed 10 percent of the principal loan guaranty.

k. After a loan has been liquidated and a final loss has been paid by the UST fund, any future funds which may be recovered by the lender shall be prorated between the UST fund and the lender in proportion to the guaranty percentage per the loan guaranty agreement.

591—12.5(455G) Participating lender program.

12.5(1) The participating lender program has been established to stimulate additional private capital for loans to qualifying borrowers under the UST fund guaranteed loan program. Participating lenders will receive assistance in the following areas relative to underground storage tanks that they currently own:

a. UST fund payment up to 100 percent of the site clean-up.

b. UST fund payment up to 100 percent of the third-party liability expenses.

12.5(2) The following outlines the criteria necessary to qualify as a participating lender:

a. The lender shall at the time of application to become a participating lender be the owner of record of at least one underground storage tank site that requires a cleanup.

b. The lender agrees at no cost to the UST fund to assist the UST fund in marketing sites that the UST fund cleans up and takes possession of if the site is located in the lender's trade territory as defined by the lender's Community Reinvestment Act (CRA) statement.

12.5(3) The following options are available to participating lenders:

a. The UST fund will pay \$1 of the financial institution's cleanup costs and third-party liability expenses in cleaning up a site for which the financial institution is the owner of record for each \$4 in nonguaranteed loans made to owners/operators that qualify for the guaranteed loan program. Termination of the loan by the lender could only be made in the event of default by the borrower or other breach of the loan agreement by the borrower. Termination for any other reason by the lender shall result in repayment of the funds advanced to the lender plus interest at a rate of 10 percent per annum from the date the funds were advanced to cover the lender's cleanup and third-party liability costs.

b. The UST fund will pay \$1 of the financial institution's cleanup costs and third-party liability expenses in cleaning up a site for which the financial institution is the owner of

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

record for each \$8 in guaranteed loans made to owners/operators that qualify for the guaranteed loan program.

591—12.6(455G) Guaranteed loan program—general provisions.

12.6(1) Calculation of the net worth requirement shall include all the assets and liabilities of the business entity and all equity of other assets of the owner(s) and shall be calculated using the fair market value of the tank site(s) and all equity of other net assets of the owner(s).

a. "Fair market value" is defined as the price at which an asset passes from a willing seller to a willing buyer through an arm's-length transaction. It is assumed that both the seller and the buyer are rational and have a reasonable knowledge of relevant facts.

b. When determining net worth, the fair market value of a site eligible for benefits pursuant to Iowa Code section 455G.9 shall include an adjustment for anticipated benefits pursuant to that section.

12.6(2) Financial institutions are prohibited from selling UST fund guaranteed loans to other financial institutions.

These rules are intended to implement Iowa Code chapter 455G.

ARC 1088B**PRESERVES, STATE ADVISORY BOARD FOR[575]****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 465C.8, the State Advisory Board for Preserves hereby gives Notice of Intended Action to amend Chapter 2, "Management of State Preserves," Iowa Administrative Code.

This Notice is filed simultaneously with agency action (Adopted and Filed Emergency, published herein as **ARC 1089B**) rescinding an amendment to subrule 2.2(2) before it becomes effective. This Notice proposes an alternative amendment clarifying the intent of the rule.

The rescinded subrule provided that a management plan shall be prepared for each preserve and kept on file at the Wallace State Office Building. It further provided that the management plan shall identify compatible and incompatible uses. The intent of the amendment has been questioned and clarification is desirable.

The subrule proposed in this notice explains in more detail the management plan process for new and existing preserves and clarifies the process for approval of a management plan.

Any interested person may make written or oral suggestions or comments on this proposed amendment on or before December 6, 2001. Such written material should be directed to the State Preserves Program, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034, fax (515)281-6794. Persons who wish to convey their views orally should contact the Preserves staff at (515)281-8524 or at the office on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on December 6, 2001, at 11 a.m. in the Fourth Floor West 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 amendment.

This amendment is intended to implement Iowa Code section 465C.8.

The following amendment is proposed.

Rescind subrule 2.2(2) and adopt in lieu thereof the following **new** subrule:

2.2(2) Management plan. For each preserve, an authorized representative of the owner shall prepare a management plan in consultation with the department staff assigned to the board. The management plan shall be consistent with the articles of dedication and shall include identification of uses of the preserve that are compatible and incompatible with its dedication as a preserve. The management plan shall be amended from time to time as appropriate in response to new information. The management plan and amendments shall be submitted to the board for approval. The department shall keep a copy of the current management plan. A management plan for a new preserve shall be submitted for approval by the board in conjunction with approval of dedication of the preserve. Management plans for existing preserves shall be prepared and submitted for approval as resources are available. If the director and board disagree concerning the plan for a department-managed preserve, the disagreement shall be resolved by obtaining commission approval of a management plan.

ARC 1078B**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(14), the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 5, "Track and Excursion Boat Licensees' Responsibilities," Iowa Administrative Code.

This amendment proposes a subrule requiring that race-tracks provide purse information to the Commission at the close of each racing meet.

Any person may make written suggestions or comments on the proposed amendment on or before December 4, 2001. 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 December 4, 2001, 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.

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

This amendment is intended to implement Iowa Code chapter 99D.

The following amendment is proposed.

Amend rule 491—5.5(99D) by adopting the following **new** subrule:

5.5(10) Purse information. Each licensee shall provide to the commission at the close of each racing meet the following purse information:

a. The identity of ownership interest in racing animals that have won purses at the facility, to include name, residential or business addresses and amounts won by each individual or corporate owner, including the underlying individual owners of the corporation or other business entity. The data should be assembled separately for Iowa resident owners and for non-Iowa resident owners, and aggregates should be presented in descending order of magnitude.

b. The identity of ownership interest in Iowa-bred animals that win purses at the facility, to include name, residential or business addresses and amounts won by each individual with regard to supplemental funds received because of ownership of Iowa-bred animals. The data should be assembled separately for Iowa resident owners and for non-Iowa resident owners, and aggregates should be presented in descending order of magnitude.

ARC 1126B**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 15, "Determination of a Sale and Sale Price," and Chapter 17, "Exempt Sales," Iowa Administrative Code.

Item 1 amends 701—15.13(422,423) to implement 2001 Iowa Acts, House File 705, section 1, which provides that delivery charges for delivery of electricity or natural gas are exempt from tax to the extent that the gross receipts from the sale, furnishing, or service of electricity or natural gas are exempt from sales or use tax under Iowa Code chapters 422 and 423.

Item 2 amends 701—Chapter 17 to add a new rule which implements 2001 Iowa Acts, House File 705, section 2, which provides for a 1 percent phase-out per year of state sales tax on metered natural gas, electricity and the sale of fuel to residential customers for use as energy in residential dwellings.

In compliance with Iowa Code chapter 25B, the proposed amendments may necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions. The potential expenditures are expected to be de minimus.

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 section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 17, 2001, 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 December 14, 2001. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 7, 2001.

These amendments are intended to implement Iowa Code section 422.45 as amended by 2001 Iowa Acts, House Files 1 and 705.

The following amendments are proposed.

ITEM 1. Amend rule **701—15.13(422,423)** as follows:

Adopt the following **new** third unnumbered paragraph:

Effective July 1, 2001, gross receipts from charges for delivery of electricity or natural gas are exempt from tax to the extent that the gross receipts from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapters 422 and 423.

Amend Example 6 as follows:

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. *In addition, utility DEF charges manufacturer EFG \$9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of \$9.95 is also exempt from tax.*

Amend the implementation clause as follows:

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~~ 422.45 as amended by 2001 Iowa Acts, House File 705.

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

ITEM 2. Amend 701—Chapter 17 by adopting the following new rule:

701—17.38(422,423) State sales tax phase-out on energies. Beginning January 1, 2002, the state sales tax is phased out at the rate of 1 percent per year on the gross receipts from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings, apartment units, and condominiums for human occupancy.

Local option taxes are not included in the phase-out of the state sales tax.

This phase-out of tax does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

17.38(1) Definitions. The following definitions are applicable to this rule:

“Energy” means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

“Fuel” means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. “Fuel” includes propane, heating fuel, and kerosene. However, “fuel” does not include blended kerosene used as motor fuel or special fuel.

“Metered gas” means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

“Residential dwelling” means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a residential dwelling and that is used strictly for residential purposes will fall within the phase-out provisions. A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

17.38(2) Schedule for phase-out of tax. State sales tax will be phased out at the rate of 1 percent per year based on the following schedule:

a. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2002, through December 31, 2002, the rate of state tax is 4 percent of the gross receipts.

b. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2003, through December 31, 2003, the rate of state tax is 3 percent of the gross receipts.

c. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004,

through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2004, through December 31, 2004, the rate of state tax is 2 percent of the gross receipts.

d. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2005, through December 31, 2005, the rate of state tax is 1 percent of the gross receipts.

e. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2006, the rate of state tax is 0 percent of the gross receipts.

17.38(3) Determination of tax rate. Determination of the rate of state tax to be imposed on a transaction depends on the type of energy that is being purchased.

a. Electricity or metered natural gas. If the energy being purchased is either electricity or natural gas, then the rate of tax is governed by either the billing date or meter reading date. For example, ABC natural gas company sends out bills with a billing date of December 31, 2002, to qualifying residential customers. However, the bills to these qualifying customers are not placed in the United States mail until January 2, 2003. Based on the foregoing facts, the state sales tax to be imposed on the bills is 4 percent. Four percent is the tax rate imposed at the time of the billing date on the gas bills sent to the customers.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for the phase-out provisions of metered gas or electricity. For example, a utility company issues a billing for metered gas on December 28, 2001, to a customer and the customer loses the billing. The customer calls the utility company on January 10, 2002, to report the lost billing and to request a new billing. The utility company issues a new billing with a billing date of January 12, 2002, to the customer. The original billing date issued to the customer is determinative for the tax rate to be imposed. As a result, a 5 percent state tax rate should be imposed on the billing because the original billing date was prior to January 1, 2002.

b. Fuel and heating oil. The proper rate of tax to be imposed for the sale, furnishing or service of fuel including propane is governed by the date of delivery of the fuel to the customer. Consequently, if a farmer purchases propane for home heating by executing and paying for the propane in October 2002 but the propane is not delivered to the farmer until January 2003, the rate of state sales tax that should be imposed on the transaction is 3 percent.

17.38(4) Qualifying and nonqualifying usage. Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the pur-

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

chaser. See 701—subrules 15.3(4) and 15.3(5) for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. See 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the gross receipts including the usage of the security lights are not subject to the phase-out of state sales tax and are subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

17.38(5) Reporting over the phase-out period. Sales/use tax returns will be filed on the same basis as they are currently filed. During each phase-out period, the entire gross receipts from sales should be reported on the return. The appropriate state sales tax rate for the tax period will be applied by claiming the phased-out portion of the tax rate as a deduction on the return.

Gross receipts for local option taxes are also to be reported in their entirety and computed by applying the appropriate local option tax rate.

The following are examples regarding how state sales and local option taxes should be reported:

EXAMPLE 1. Reporting of tax by an energy provider:

Gross receipts for a tax period in 2002	\$100,000
Phase-out (20,000 for the first year, 40,000 for the second year, etc.)	<u>20,000</u>
Taxable sales	80,000
State tax at 5% (to compute state sales tax due)	4,000
Gross receipts to be reported for local option	100,000
Local option tax rate (assuming a 1% local option tax rate)	<u>× 1%</u>
Local option tax due	1,000
Total tax due (local option and state sales tax)	\$5,000

EXAMPLE 2. Reporting of tax on an individual billing:

Monthly charge during a billing or delivery period in 2002	\$400
State tax rate	<u>× 4%</u>
State tax due	16
Gross receipts for local option tax	400
Local option tax rate	<u>× 1%</u>
Local option tax due	4
Total tax (local option and state sales tax)	\$20

This rule is intended to implement Iowa Code section 422.45 as amended by 2001 Iowa Acts, House Files 1 and 705.

ARC 1107B

REVENUE AND FINANCE
DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14, 421.17(19), 421B.11, 425.8, 425.37, 426A.7, 437A.25, and 453A.25, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 71, "Assessment Practices and Equalization," Chapter 72, "Examination and Certification of Assessors and Deputy Assessors," Chapter 73, "Property Tax Credit and Rent Reimbursement," Chapter 74, "Mobile, Modular, and Manufactured Home Tax," Chapter 75, "Property Tax Administration," Chapter 78, "Property Tax Exemptions," Chapter 80, "Property Tax Credits and Exemptions," Chapter 81, "Administration," Chapter 82, "Cigarette Tax," Chapter 84, "Unfair Cigarette Sales," Chapter 122, "Administration," and Chapter 125, "Review of Agency Action," Iowa Administrative Code.

Items 1 through 48 set forth amendments that clarify existing rules, remove obsolete rules or rule provisions, correct Iowa Code citations in the rules and implementation clauses, add implementation clauses, and correct references to Departmental organization. These amendments are the result of survey responses received by the Department pursuant to the Governor's executive orders. Responses were received primarily from City and County Assessors and County Auditors, Recorders and Treasurers. An in-depth review of rules was also performed by Department employees.

The following is a summary of the amendments set forth in this Notice:

Items 1 and 2 add buildings on leased land and property with a value of not more than \$5,000 to the list of property types that Department appraisers are not to appraise for purposes of the sales ratio study because they would be considered abnormal sales.

Item 3 corrects an inaccurate cross reference to a rule.

Item 4 adds an implementation clause.

Item 5 corrects an inaccurate Iowa Code citation within an implementation clause.

Items 6 and 10 correct outdated Departmental organization references brought about by reorganization.

Items 7 and 8 delete obsolete date references.

Items 9 and 10 correct inaccurate references to a continuing education committee name.

Items 11 through 15 correct Iowa Code citations within implementation clauses that resulted from the renumbering of Iowa Code sections.

Item 16 clarifies that a person cannot receive a rent reimbursement for a rented homestead if the person qualifies for a property tax credit on an owned homestead.

Item 17 clarifies that only the income of the husband or the income of the wife is to be used in calculating the husband's or wife's rent reimbursement or property tax credit if the husband and wife maintain separate homesteads.

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

Items 18 through 24 add Iowa Code citations to implementation clauses or correct citations that resulted from the renumbering of Iowa Code sections.

Item 25 adds Iowa Code chapter 437A as one to which the confidentiality rule applies and shortens to 20 days the number of days the taxpayer has to substantiate a claim of confidentiality.

Item 26 adds Iowa Code sections to the implementation clause which applies to the rule.

Item 27 clarifies that a person may claim the disabled veteran homestead property tax credit on any home acquired during the veteran's lifetime.

Item 28 corrects an Iowa Code reference in the rule.

Items 29 and 30 correct Iowa Code references in the rule and in the implementation clause.

Item 31 corrects an Iowa Code reference in the rule.

Item 32 corrects an Iowa Code citation in the implementation clause.

Item 33 adds an Iowa Code chapter to the parenthetical implementation for the rule.

Items 34 and 35 correct Iowa Code references in the rules.

Item 36 corrects a cross reference in the rule.

Items 37 through 45 clarify that cigarette distributors are required to obtain a permit rather than a license.

Item 46 corrects an Iowa Code reference in the rule.

Item 47 corrects a Departmental reference resulting from reorganization.

Item 48 clarifies what members are to be appointed by the director to the assessor education grievance committee.

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 section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 17, 2001, 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 December 14, 2001. 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 December 7, 2001.

These amendments are intended to implement Iowa Code chapters 421B, 425, 427, 427C, 428, 433, 434, 435, 437, 437A, 438, 441, and 453A and Executive Order Number 8.

The following amendments are proposed.

ITEM 1. Amend numbered paragraph 71.12(2)"c"(3)"2" as follows:

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building
Current year sale
Partial assessment
Prior equalization appraisal
Tax-exempt

Only one portion of a total property unit (example— a parking lot of a grocery store)

Value established by court action
Value is not more than \$5,000
Building on leased land

ITEM 2. Amend numbered paragraph 71.12(3)"c"(3)"2" as follows:

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building
Current year sale
Partial assessment
Prior equalization appraisal
Tax-exempt

Only one portion of a total property unit (example— a parking lot of a grocery store)

Value established by court action
Value is not more than \$5,000
Building on leased land

ITEM 3. Amend rule 701—71.13(441) as follows:

701—71.13(441) Tentative equalization notices. Prior to the issuance of the final equalization order to each county auditor, a tentative equalization notice providing for proposed percentage adjustments to the aggregate valuations of classes of property as set forth in rule 701—~~17.12~~ 71.12(441) shall be mailed to the county auditor whose valuations are proposed to be adjusted. The tentative equalization notice constitutes the ten days' notice required by Iowa Code section 441.48.

This rule is intended to implement Iowa Code sections 441.47 and 441.48.

ITEM 4. Amend rule 701—71.18(441) by adopting the following new implementation clause:

This rule is intended to implement Iowa Code sections 441.17 and 441.35.

ITEM 5. Amend rule 701—71.19(441), implementation clause, as follows:

This rule is intended to implement Iowa Code ~~sections 441.31 to 441.37~~ section 441.2.

ITEM 6. Amend subrule 72.2(6) as follows:

72.2(6) Review of examination. Persons who have taken the examination may, after presenting proper identification, review their examinations in the office of the department's property tax ~~division~~ *section* within 60 days after the date the examination has been administered. The review shall consist only of examining the person's own answer sheet indicating the questions answered incorrectly and the question book. Persons reviewing their examinations shall not be permitted to take notes or otherwise transcribe information during this review, nor shall they have access to the answers to

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

questions contained in the examination. Persons who review their examinations shall be permitted to do so only once, and shall not be eligible to take an examination for the position of assessor or deputy assessor for a period of at least 30 days following the date of the review of the examinations.

ITEM 7. Amend rule 701—72.12(441), introductory paragraph, as follows:

701—72.12(441) Register of eligible candidates. Following the administration and grading of an examination for assessor or deputy assessor, the director shall establish updated registers containing the names, in alphabetical order, and addresses of all persons eligible for appointment. The registers shall not contain test scores, but the scores shall be given to the city or county conference board upon request. Eligible candidates shall remain on the register for two years following the date of certification by the director after which time the person must successfully retake the examination to be placed on the register. However, assessors and deputy assessors ~~in office on or after May 12, 1988,~~ with six years of consecutive service, shall be placed on the register permanently without further testing being required. "Consecutive service" means service in which there was not more than 30 days' break-in-service. Assessor and deputy assessor service cannot be combined to meet the six-year consecutive service requirement.

ITEM 8. Amend subrule 72.14(1) as follows:

72.14(1) Membership. Each voting unit of the conference board shall appoint a member of the examining board. Members of the examining board shall not be members of the conference board, a body which selects a member of the conference board, or the local board of review (1960 O.A.G. 226). ~~Beginning July 1, 1988, a A person must be a resident of the assessing jurisdiction served to qualify for appointment as a member of the examining board. Nonresidents of the assessing jurisdiction appointed to the board prior to July 1, 1988, may continue to serve as a member of the board until expiration of the member's current term of office. Also, a A member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.~~

ITEM 9. Amend subrule 72.16(2) as follows:

72.16(2) Continuing education. A conference board shall not reappoint an incumbent assessor if the board has not received from the assessor education ~~commission~~ *advisory committee* certification that the incumbent assessor has satisfied all continuing education requirements.

ITEM 10. Amend subrules 72.18(5) and 72.18(8) as follows:

72.18(5) Violations. Any person who intentionally violates any of the provisions of subrule 72.18(2), 72.18(3), or 72.18(4) shall be subject to the penalties specified in this subrule. If an infraction of subrule 72.18(2), 72.18(3), or 72.18(4) occurs and is detected and confirmed during the examination, the examination of the person committing the infraction shall be confiscated by the instructor and shall not be scored. If the infraction is detected and confirmed after the examination of the person committing the infraction has been scored, the score resulting from that examination shall be reduced to a failing grade and the director shall notify the assessor education ~~commission~~ *advisory committee* of the action taken. If the infraction is detected and confirmed during the course, the instructor shall expel the student from the classroom, and the student shall not be permitted to take the examination for the course.

72.18(8) Review of examination. Persons who have taken a course examination may, after presenting proper identification, review their examination in the office of the department's property tax ~~division~~ *section* within 60 days after the date the examination has been administered. The review shall consist only of examining the person's own answer sheet and the question book. Persons reviewing their examinations shall not be permitted to take notes or otherwise transcribe information during this review, nor shall they have access to the answers to questions contained in the examination. Persons who review their examinations shall be permitted to do so only once, and shall not be eligible to take the same examination for a period of at least 30 days following the date of the review of the examinations.

ITEM 11. Amend rule 701—73.2(425), implementation clause, as follows:

This rule is intended to implement Iowa Code section 425.17(5) (4).

ITEM 12. Amend rule 701—73.4(425), implementation clause, as follows:

This rule is intended to implement Iowa Code section 425.17(9) (8).

ITEM 13. Amend rule 701—73.5(425), implementation clause, as follows:

This rule is intended to implement Iowa Code section 425.17(9) (8).

ITEM 14. Amend rule 701—73.7(425), implementation clause, as follows:

This rule is intended to implement Iowa Code section 425.17(9) (8).

ITEM 15. Amend rule 701—73.9(425), implementation clause, as follows:

This rule is intended to implement Iowa Code section 425.17(4).

ITEM 16. Amend rule 701—73.13(425) as follows:

701—73.13(425) Nursing homes. A claimant whose homestead is a nursing home is eligible to file a reimbursement claim for rent constituting property tax paid *unless the person is eligible for a property tax credit on an owned homestead.*

This rule is intended to implement Iowa Code section 425.17(3) (4) ~~as amended by 1994 Iowa Acts, chapter 1125.~~

ITEM 17. Amend rule 701—73.18(425) as follows:

701—73.18(425) Separate homestead—husband and wife rent reimbursements. If a husband and wife are both qualified claimants renting separate and distinct homesteads, and rent is paid by each ~~or a member of their respective households,~~ each is eligible to file an individual reimbursement claim for rent constituting property tax paid.

This rule is intended to implement Iowa Code subsection 425.17(7) (4).

ITEM 18. Amend rule 701—73.20(425), implementation clause, as follows:

This rule is intended to implement Iowa Code subsection 425.17(5) (4).

ITEM 19. Amend rule 701—73.23(425), implementation clause, as follows:

This rule is intended to implement Iowa Code section 425.17(8) ~~and section 425.26(8) as amended by 1994 Iowa Acts, chapter 1165.~~

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

ITEM 20. Amend rule **701—73.24(425)**, implementation clause, as follows:

This rule is intended to implement Iowa Code subsection 425.17(3) (6).

ITEM 21. Amend rule **701—73.28(425)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 425.16 to 425.39 40.

ITEM 22. Amend rule **701—73.31(425)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code section 425.20.

ITEM 23. Amend rule **701—74.2(435)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 435.22 435.24.

ITEM 24. Amend rule **701—74.3(435)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 435.22 435.24.

ITEM 25. Amend rule 701—75.5(428,433,434,437,438) as follows:

701—75.5(428,433,434,437,437A,438) Central assessment confidentiality. The release of information contained in any reports filed under Iowa Code chapters 428, 433, 434, 437, 437A, and 438, or obtained by the department in the administration of those chapters, is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in those chapters. Any request for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 30 20 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code chapters 428, 433, 434, 437, 437A, and 438.

ITEM 26. Amend rule **701—78.6(427,441)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 427.1(1), and 427.1(2), 427.2, 427.18, and 427.19.

ITEM 27. Amend subrule 80.1(3) as follows:

80.1(3) Disabled veteran's homestead tax credit. The disabled veteran's homestead tax credit may be claimed by any person who acquired homestead property under 38 U.S.C. Sections 21.801 and 21.802 provided the veteran's annual income and that of the veteran's spouse does do not exceed \$25,000. The amount of the credit is equal to the entire amount of tax payable on the homestead. Even though this financial assistance is available to disabled veterans on only one homestead during their lifetime, the credit may be claimed upon the acquisition of other homesteads for which no financial assistance is available providing all qualifications have been met.

ITEM 28. Amend subrule **80.2(2)**, paragraphs "e" and "g," as follows:

e. As used in Iowa Code subsection 426A.12(3) 427.4(3) as amended by 1999 Iowa Acts, chapter 151, the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 426A.12 427.4 as amended by 1999 Iowa Acts, chapter 151. (1942 O.A.G. 140)

ITEM 29. Amend subrule 80.3(6) as follows:

80.3(6) The sale, transfer, or lease of property does not affect its eligibility for exemption as long as the requirements of Iowa Code subsection 427.1(32) (19) and rule 701—80.3(427), Iowa Administrative Code, are satisfied.

ITEM 30. Amend rule **701—80.3(427)**, implementation clause, as follows:

This rule is intended to implement Iowa Code subsection 427.1(32) (19) as amended by 1993 Iowa Acts, chapter 159.

ITEM 31. Amend subrule 80.5(1) as follows:

80.5(1) Authority of city council and board of supervisors. A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction, reconstruction or renovation of speculative shell buildings owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code section 427.1(41) (27) for definitions. The percentage of exemption and period of time over which the exemption may be allowed are established by the council or board in the ordinance authorizing the exemption and the same exemption applies to all qualifying property within that jurisdiction.

ITEM 32. Amend rule **701—80.5(427)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 427.1(41) (27) as amended by 1995 Iowa Acts, House File 556.

ITEM 33. Amend rule 701—80.9(161,441), parenthetical implementation, as follows:

701—80.9(161 427C,441) Forest and fruit-tree reservations.

ITEM 34. Amend subrule **80.11(1)**, paragraph "a," subparagraph (1), as follows:

(1) The tract of land must be an "eligible tract of agricultural land" as defined in Iowa Code subsection 425A.2(4) (5). This means the tract must be ten acres or more or contiguous to a tract of more than ten acres and used in good faith for agricultural or horticultural purposes. More than half of the acres in the tract must be devoted to the production of crops or livestock by a designated person. Contiguous tracts under the same legal ownership and located within the same county are considered one tract. Only tracts of land that are classified as agricultural real estate qualify for the credit.

ITEM 35. Amend subrule **80.11(1)**, paragraph "a," subparagraph (2), numbered paragraph "4," as follows:

4. An authorized farm corporation as defined in Iowa Code subsection 9H.1(9) (3).

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

ITEM 36. Amend subrule 81.13(3), introductory paragraph, as follows:

81.13(3) Revocation of a permit. The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.6 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

ITEM 37. Amend rule 701—81.16(453A), introductory paragraph, as follows:

701—81.16(453A) Inventory tax. All persons required to be ~~licensed~~ obtain a permit under Iowa Code section 453A.13 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette tax stamps and unused metered imprints in their possession at the close of business on the day preceding the effective date of an increase in the tax rate.

ITEM 38. Amend subrule 82.1(1) as follows:

82.1(1) Distributor's permit. Every person acting as a distributor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributor is any person who obtains unstamped cigarettes within or without this state by manufacture, production, import or by any means for the purpose of making the first intrastate sale or distribution or the first use or consumption in Iowa. Every distributor holding a distributor's permit will cause to be affixed, within or without Iowa, all cigarette tax stamps or meter impressions as set forth in rule 82.8(453A) and Iowa Code section 453A.10. The distributor permit expires annually on June 30, and costs \$100. A distributor must obtain a duplicate permit for each place of business owned or operated by the distributor from which distributor activities are carried on. Duplicate distributor permits may be obtained from the department at an annual cost of \$5 for each duplicate permit. A distributor may act as a wholesaler without obtaining a wholesaler's ~~license~~ permit, but a wholesaler's ~~license~~ permit may be obtained upon meeting all of the requirements for the issuance of a wholesaler's ~~license~~ permit. If a distributor performs any other function which requires a ~~license~~ permit, a separate ~~license~~ permit must be obtained. If a person is not performing the functions of a distributor, a permit will not be issued.

ITEM 39. Amend subrule 82.1(2), second unnumbered paragraph, as follows:

The XYZ Grocery Chain has a warehouse in Des Moines where stamped cigarettes are stored. The stamped cigarettes are purchased from a ~~licensed~~ permitted distributor. XYZ transfers the cigarettes to its retail outlets across the state for the purpose of making retail sales, and makes no other sales. The storage of stamped cigarettes and the retail sale of ciga-

rettes are not functions of a wholesaler, and XYZ would not be eligible for a wholesaler's permit.

ITEM 40. Amend rule 701—82.8(453A) as follows:

701—82.8(453A) Affixing stamps. Every package of cigarettes received in this state by a ~~licensed~~ permitted distributor or for distribution within or without the state of Iowa must be stamped within 48 hours of ~~their~~ its receipt, unless the distributor is also ~~licensed~~ permitted as and is acting as a distributing agent. The cigarettes held by a person acting as a distributor and those held by the same person who is also acting as a distributing agent must be kept separate, and if not, the entire inventory will be subject to the 48-hour limitation. The 48-hour period shall be exclusive of Sundays and legal holidays. (See 1958 O.A.G. 25.)

This rule is intended to implement Iowa Code sections 453A.10 and 453A.17.

ITEM 41. Amend rule 701—82.9(453A), introductory paragraph, as follows:

701—82.9(453A) Reports. Every person ~~licensed~~ permitted as a cigarette distributor or manufacturer, or any other person as deemed necessary by the director, must file a monthly report on or before the tenth day of the month following the month for which the report is made. The report must be complete and certified by the person responsible for filling out the report. The failure to file a report or the filing of a false or incomplete report shall subject the person to a penalty as set forth in Iowa Code section 453A.31 ~~as amended by 1999 Iowa Acts, chapter 151, section 81.~~ (See rule 701—10.76(453A).) The report must be so certified or the report shall be considered incomplete. Whenever "cigarette" is used in this rule, it shall also include taxable "little cigars."

ITEM 42. Amend subrule 82.10(1), paragraph "b," as follows:

b. Be sent to a ~~licensed~~ permitted distributor.

ITEM 43. Amend subrule 82.10(2), introductory paragraph, as follows:

82.10(2) Remittance of tax and acknowledgment of payment. Iowa Code section 453A.39 provides that the tax will be paid by a ~~licensed~~ permitted distributor. The payment of tax should accompany the distributor's affidavit (Form 70-033).

The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the following information:

IOWA STATE TAX PAID

Distributor's name

License Permit number

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone or telegraph and follow up with the affidavit acknowledgment at a later date.

In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor who actually remitted the tax to the department. The refund will be made in the same manner as for regular cigarettes by the distributor filing the appropriate forms with the department.

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

ITEM 44. Amend paragraph **82.10(3)“a,”** Example, as follows:

EXAMPLE. A manufacturer ships packs of 20, free of charge, to a ~~licensed~~ *permitted* distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes the retailers instructions and display materials for the retail distribution of the cigarettes. This method of distribution would be proper.

ITEM 45. Amend subrule 82.11(2) as follows:

82.11(2) Return of used stamps. Refunds shall be issued for stamps which have been affixed to cigarettes which have become unfit for use or consumption or unsaleable. This refund is available to any ~~licensed~~ *permitted* distributor or manufacturer upon proof that the cigarettes were returned to the person who manufactured the cigarettes. The proof required shall be an affidavit from the distributor setting forth to whom the cigarettes were returned and verifying that cigarette stamps had been affixed thereto. There must also be included therewith an affidavit from the manufacturer to whom the cigarettes were returned verifying the information.

ITEM 46. Amend rule **701—84.2(421B)**, first unnumbered paragraph, as follows:

Any wholesaler or retailer who desires to prove that the wholesaler's or retailer's cost is less than the statutory presumptive cost computed according to the Iowa unfair cigarette sales Act, Iowa Code chapter 421B, shall submit a petition for approval of a lower cost along with actual cost data to the department of revenue and finance. The statutory presumptive cost must be used in determining minimum price until approval has been granted by the department. If the requester continues to sell cigarettes at less than the presumptive cost, the department may revoke the requester's permit or seek an injunction pursuant to Iowa Code section ~~427B.10~~ **421B.10** to prevent such action.

ITEM 47. Amend rule 701—122.2(441) as follows:

701—122.2(441) General operation. Chairperson of the committee shall be the director. Appointed by the director to the committee is a representative of the ~~local government services division~~ *property tax section* of the department of revenue and finance, and two assessor representatives, ~~and the state training administrator~~. The committee will meet at least once each year.

This rule is intended to implement Iowa Code section 441.8.

ITEM 48. Amend rule **701—125.2(441)**, second unnumbered paragraph, as follows:

The director shall appoint a grievance committee comprised of three members of the *assessor education advisory committee* to review petitions and grievances, meet with the affected parties if necessary, and recommend in writing to the director a proposed resolution of the matter. The director will consider the recommendation of the grievance committee at its next meeting and inform the affected parties of the decision in writing within ten days. The date of the written reply by the director shall constitute final agency action for purposes of appeal.

ARC 1084B

TRANSPORTATION
DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 321.52, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 405, "Salvage," rescind Chapter 453, "Weight Equalizing Hitch and Sway Control Devices for Trailers," and amend Chapter 454, "Towing Wrecked or Disabled Vehicles," Iowa Administrative Code.

The amendments to Chapter 405 delete an obsolete form number, delete unnecessary language, delete language that repeats the statute, correct office names and addresses and simplify the process for obtaining a permit to drive the vehicle to and from the examination location.

Chapter 453 is being rescinded because the Department of Transportation no longer has statutory authority to promulgate these rules. 1997 Iowa Acts, chapter 108, section 24, amended Iowa Code section 321.430 to remove the DOT Director's authority to approve these devices.

Chapter 454 makes the distinction between tow trucks and flatbed vehicles used to transport wrecked or disabled vehicles by requiring all or some of the wheels of the wrecked or disabled vehicle to be on the roadway. Many wrecker services use flatbeds as well as conventional wreckers. The proposed amendments allow flatbeds to transport wrecked or disabled vehicles. Other changes are made for clarification.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than December 4, 2001.

A meeting to hear requested oral presentations is scheduled for Thursday, December 6, 2001, at 8 a.m. in the DOT Conference Room, which is located on the lower level of Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be received by the Director's Staff Division at the address listed in this Notice no later

TRANSPORTATION DEPARTMENT[761](cont'd)

than 32 days after publication of this Notice in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Amend rule 761—405.2(321), definition of “junking certificate,” as follows:

“Junking certificate” means an Iowa junking certificate, Form 411123.

ITEM 2. Amend rule 761—405.3(321), introductory paragraph, as follows:

761—405.3(321) Salvage title. The following applies to an Iowa salvage certificate of title.

ITEM 3. Amend subrule 405.3(2) as follows:

405.3(2) Assignment. *A salvage title may be assigned only as provided in Iowa Code subsection 321.52(4).*

a. ~~A salvage title may be assigned to:~~

(1) ~~An educational institution.~~

(2) ~~A new motor vehicle dealer.~~

(3) ~~A person engaged in the business of purchasing bodies, parts of bodies, frames or component parts of vehicles for sale as scrap metal.~~

(4) ~~A salvage pool.~~

(5) ~~An authorized vehicle recycler.~~

b. ~~Only a new motor vehicle dealer or an authorized vehicle recycler may assign a salvage title to any person.~~

c. Upon assignment, the transferee shall apply for a new salvage title within 30 days after the date of assignment unless, within this time period, application for a regular title is made or a junking certificate is obtained.

ITEM 4. Amend paragraph 405.6(1)“b” as follows:

b. Fair market value is the average retail value found in the “National Automobile Dealers Association (NADA) Official Used Car Guide.” If there is no value available, the office of vehicle registration services in Des Moines shall determine the fair market value upon request. *The Des Moines address is: Office of Vehicle Services, Department of Transportation, Park Fair Mall, 100 Euclid Avenue, P.O. Box 9278, Des Moines, Iowa 50306-9278; telephone (515) 237-3148.*

ITEM 5. Amend subparagraph 405.15(1)“a”(1) as follows:

(1) To arrange for a salvage theft examination by an investigator from the department of transportation, the applicant shall contact ~~the local county treasurer’s auto department, the district enforcement office, or the office of motor vehicle enforcement in Des Moines.~~ The Des Moines address is: Office of Motor Vehicle Enforcement, Iowa Department of Transportation, Park Fair Mall, 100 Euclid Avenue, P.O. Box 10382 10473, Des Moines, Iowa 50306-0382 50306-0473; telephone (515)237-3247 237-3214.

ITEM 6. Amend paragraph 405.15(1)“b,” introductory paragraph, as follows:

b. The owner of the vehicle may obtain a permit to drive the vehicle to and from the examination location by submitting an affidavit of salvage vehicle repairs to the agency performing the examination ~~completing the permit section located on the affidavit of salvage vehicle repairs form.~~

ITEM 7. Amend subparagraph 405.15(1)“b”(2) as follows:

(2) To be valid, the permit to drive the vehicle to and from the examination location must be signed by an authorized of-

~~ficer of the agency conducting the examination~~ the owner or owner’s authorized agent.

ITEM 8. Amend paragraph 405.15(1)“e” as follows:

e. A \$30 fee paid by check or money order made payable to the agency conducting the salvage theft examination shall be collected. The agency shall retain \$20 and forward \$10 to the office of motor vehicle enforcement services at the Des Moines address. The department shall deposit the \$10 into the funds specified by law.

ITEM 9. Amend subparagraph 405.15(1)“f”(1) as follows:

(1) The white copy shall be mailed with the \$10 to the office of motor vehicle enforcement services at the Des Moines address.

ITEM 10. Amend paragraph 405.15(1)“h” as follows:

h. The peace officer shall return the salvage title or the certified copy of the salvage title, the permit to drive section, if applicable, on the affidavit of salvage vehicle repairs, and the bills of sale to the owner or the owner’s representative.

ITEM 11. Amend subrule 405.15(2) as follows:

405.15(2) Permit Affidavit of salvage vehicle repairs form and salvage theft examination certificate.

a. ~~The permit affidavit of salvage vehicle repairs form may be obtained from the office of motor vehicle enforcement at the Des Moines address, any local enforcement agency with officers certified to conduct salvage theft examinations or any local county treasurer’s office and salvage theft examination certificate shall be controlled forms furnished by the department.~~

b. ~~The salvage theft examination certificate shall be a controlled form and furnished by the department.~~

b c. The owner of the vehicle may obtain a duplicate copy of the salvage theft examination certificate upon written request and payment of a \$10 fee to the office of motor vehicle enforcement at the Des Moines address.

e d. The salvage theft examination certificate is not transferable.

ITEM 12. Rescind and reserve 761—Chapter 453.

ITEM 13. Amend rule 761—454.1(321) as follows:

761—454.1(321) Definitions. For the purpose of Iowa Code section 321.463, the following definitions are established:

“Tow” means the transportation by a vehicle designed to tow or transport wrecked or disabled vehicles directly from the scene of an accident a crash, disablement, or impoundment to any place of repair, storage, or safekeeping.

1. ~~The wrecked or disabled vehicle must be towed with all or some of its wheels on the roadway unless supported during movement by a dolly or other special device designed for use when a vehicle cannot roll on its own wheels.~~

2. ~~Movement of wrecked or disabled vehicles on vans, flatbeds, carryalls, or other freight vehicles does not constitute towing under this rule.~~

“Vehicle designed to tow” means a vehicle that has been designed or materially altered to enable the transportation of a wrecked or disabled vehicle by lifting all or some of the wrecked or disabled vehicle off the roadway.

“Wrecked or disabled vehicle” means a vehicle upon a highway involved in an accident a crash or having mechanical failure, broken parts, or other defects, any of which prevent the vehicle from moving safely under its own power, or

TRANSPORTATION DEPARTMENT[761](cont'd)

any vehicle impounded by the order of a ~~police authority~~ *peace officer*.

This rule is intended to implement Iowa Code section 321.463.

ARC 1095B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 321E.15, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

2001 Iowa Acts, House File 324, section 26, increases the width allowed under the annual oversize/overweight permit to 13 feet 5 inches. Item 2 makes this change in the rules. 2001 Iowa Acts, House File 324, section 27, strikes Iowa Code language concerning annual permits. Items 1 and 3 rescind subrules concerning annual permits and all-system permits. These permit provisions are covered under other permits that are less restrictive.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than December 4, 2001.

A meeting to hear requested oral presentations is scheduled for Thursday, December 6, 2001, at 10 a.m. in the conference room of the Motor Vehicle Division, which is located on the upper level of Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

These amendments are intended to implement Iowa Code chapter 321E as amended by 2001 Iowa Acts, House File 324.

Proposed rule-making actions:

ITEM 1. Rescind and reserve subrule **511.7(4)**.

ITEM 2. Amend paragraph **511.8(1)"a"** as follows:
a. Width. ~~12 feet 5 inches~~ *13 feet 5 inches*.

ITEM 3. Rescind and reserve subrule **511.9(4)**.

ARC 1096B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

The Code of Federal Regulations was updated in October 2000, and the Department needs to cite the current version in these rules. No changes to the federal regulations have occurred; however, Part 369 is excluded. This part was eliminated in 1997. Also, an Internet address is added as a source for reviewing a copy of the regulations.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than December 4, 2001.

A meeting to hear requested oral presentations is scheduled for Thursday, December 6, 2001, at 1 p.m. in the conference room of the Motor Vehicle Division, which is located on the upper level of Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

This amendment is intended to implement Iowa Code chapter 327B.

Proposed rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts ~~365-379~~ *365-368 and 370-379*, dated October 1, ~~1999~~ *2000*, for regulating interstate for-hire carriers.

TRANSPORTATION DEPARTMENT[761](cont'd)

Copies of this publication are available from the state library or through the Internet at <http://www.fmcsa.dot.gov>.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Holmes Foster, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for November is 6.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be

paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 3, 2001, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 1.80%
- 32-89 days Minimum 1.80%
- 90-179 days Minimum 1.80%
- 180-364 days Minimum 1.80%
- One year to 397 days Minimum 1.90%
- More than 397 days Minimum 2.40%

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

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

ARC 1081B**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 adopts amendments to Chapter 7, "Iowa Jobs Training Program," Iowa Administrative Code.

The amendments implement legislation that authorizes community colleges to use moneys in their respective job training fund allocations to conduct entrepreneurial development and support activities. The amendments provide information about the application process and outline the criteria that will be used for scoring entrepreneurial training applications.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 5, 2001, as **ARC 0915B**.

A public hearing to receive comments about the amendments was held on September 26, 2001. No comments concerning the proposed amendments were received. Written comments concerning wording on the application were received from Northeast Iowa Community College and changes were made to the application in response to these comments. The amendments are identical to those published under Notice.

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 October 22, 2001. These amendments confer a benefit on the public by providing access to entrepreneurial training funds. Some community colleges have already entered into Notice of Intent agreements with businesses so that entrepreneurial training applications can be submitted when these amendments become effective.

The Department 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, and having copies available wherever requests for information about the program are likely to be made.

The Iowa Department of Economic Development Board adopted these amendments on October 18, 2001.

These amendments became effective October 22, 2001.

These amendments are intended to implement Iowa Code section 260F.6 as amended by 2001 Iowa Acts, House File 718, section 24.

The following amendments are adopted.

ITEM 1. Renumber rules **261—7.17(260F)** to **261—7.32(260F)** as **261—7.18(260F)** to **261—7.33(260F)**.

ITEM 2. Adopt **new** rule **261—7.17(260F)** as follows:

261—7.17(260F) Entrepreneurial training. Community colleges may use moneys in their respective job training fund allocations to conduct entrepreneurial development and support activities for individuals who currently operate or intend to operate any entrepreneurial venture.

ITEM 3. Amend renumbered subrules **7.18(1)** and **7.18(2)** as follows:

7.18(1) A college and a business or, apprenticeship sponsor or *entrepreneurial training provider* may, but are not required to, enter into an agreement of intent.

7.18(2) A college and a business or *entrepreneurial training provider* which enter into an agreement of intent shall use Agreement of Intent, Form 260F-2. A college and an apprenticeship sponsor which enter into an agreement of intent, shall use Apprenticeship Agreement Intent, Form 260F-2A.

ITEM 4. Amend renumbered rule **261—7.21(260F)** by adopting the following **new** subrule **7.21(4)**:

7.21(4) The criteria used for scoring a community college entrepreneurial training application and the points for each criterion are as follows:

a. The knowledge attained by the individuals who attend this training will increase their ability to successfully maintain or establish a small business enterprise in the state, 23 points.

b. The state of Iowa will realize economic benefits as a result of providing this training, 23 points.

c. The businesses that are maintained or established will increase employment opportunities for the state's workforce, 22 points.

d. The higher the percentage of businesses or potential businesses participating in training that can be classified as information technology, advanced manufacturing or life sciences, the more points will be awarded, up to a maximum of 22 points.

e. The average wages that are or will be paid by the businesses participating in this training are or will be above the state average wage rates, 5 points.

f. The cost of this training does not exceed comparable costs for such training at a state of Iowa community college or university, 5 points.

To be funded, applications must receive a minimum score of 65 out of 100 points and meet all other applicable eligibility criteria.

[Filed Emergency After Notice 10/22/01, effective 10/22/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1121B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 455B.105, 455B.291 to 455B.299, and 466.7, the Environmental Protection Commission hereby amends Chapter 44, "Drinking Water Revolving Fund," Chapter 92, "State Revolving Fund Loans for Wastewater Treatment," and Chapter 93, "Onsite Wastewater Treatment Assistance Program," Iowa Administrative Code.

The amendments for the drinking water and wastewater revolving loan funds (Chapters 44 and 92) provide for a lower, uniform interest rate versus the existing rate formula, increase the annual loan servicing fee, revise loan repayment criteria, provide more flexibility in loan repayment schedules (e.g., allow for shorter term loans), amend parity requirements with respect to other obligations outstanding, and specify detailed revenue pledge coverage requirements. Other changes to these chapters include the following:

- No water supply system project may receive funding for more than five years in succession.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- The amount of funding available for private, for-profit water supply systems in a single year is restricted to 5 percent of the amount of the particular bond issues in any given year.

- Definitions for “applicable interest rate” and for “debt service coverage ratio” are eliminated, as the terms are no longer needed with the new uniform interest rate.

- The project initiation conference requirement, previously required for water supply system funding, is now optional at the Department’s discretion.

- The wastewater revolving loan fund rules recognize the relationship to the onsite wastewater assistance fund established in Chapter 93, as a portion of the annual wastewater capitalization grant from the Environmental Protection Agency will be used to capitalize the onsite program fund.

- Terminology and other updates are made for overall rule consistency.

The amendment to Chapter 93 replaces language stating that the Department will assume the risk for loans made under the onsite wastewater assistance program with language stating that neither the Department nor the state will assume the risk for loans.

The changes to Chapters 44 and 92 are needed to implement provisions reflecting a restructuring of the drinking water and wastewater revolving loan program as recommended by the Iowa Finance Authority. This restructuring will allow lower and more uniform interest rates as well as provide loan recipients with more flexibility. The change to Chapter 93 was necessitated by a conflict with the Iowa Constitution. Under Article VII, Section 1 of the Iowa Constitution, the “credit of the state” cannot be given or loaned to any individual, association, or corporation. Informal advice from the Attorney General’s office indicated the previous language (i.e., the Department would assume the risk) was in direct conflict with this provision.

Pursuant to Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impractical because of the need to secure and commit available loan funds in a timely manner. The Department applies for annual federal grant funds that are used to capitalize the revolving loan funds. Prior to submitting the grant applications, the Department must prepare Intended Use Plans detailing the projects that will receive loans for the coming year. As the adopted rules provide for lower and more uniform interest rates than available under previous rules, many municipalities and water systems might have otherwise delayed applying for loans until such time as new rules were adopted. Without a firm commitment for loans as expressed in the Intended Use Plan (IUP), the state would not receive its full 2002 grant award. The adopted changes must coincide with the restructuring of the revolving loan funds. In addition, funds from the wastewater revolving loan capitalization grant are being used to capitalize the onsite revolving loan fund and must be reflected in the IUP, so it is essential the existing constitutional conflict be removed as soon as possible to implement this new program. Therefore, it is in the interest of municipalities, water systems, and individual homeowners for the Commission to adopt the amendments as soon as possible.

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, as they confer a benefit upon municipalities, water systems, and rural homeowners.

These amendments are also published herein under Notice of Intended Action as **ARC 1122B** to allow public comment.

These amendments are intended to implement Iowa Code sections 455B.291 to 455B.299.

These amendments became effective October 26, 2001.

The following amendments are adopted.

ITEM 1. Amend rule 567—44.1(455B) as follows:

567—44.1(455B) Statutory authority. The authority for the Iowa department of natural resources to provide loans to eligible applicants to assist in the construction of drinking water treatment facilities is provided by ~~1997 Iowa Acts, chapter 4~~ *Iowa Code sections 455B.291 to 455B.299.*

ITEM 2. Amend rule 567—44.2(455B) as follows:

567—44.2(455B) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate, and control pollution. As a part of that general responsibility, the department and the Iowa finance authority (“authority”) are jointly designated to conduct the administration of the *drinking water state revolving fund (SRF) (DWSRF)* loan program to assist in the financing of infrastructure projects pursuant to the Safe Drinking Water Act. A project must comply with this chapter to be eligible for an ~~an~~ *SRF a DWSRF* loan. This chapter provides for the background, the general rules of practice for the department’s administration of the program, including the criteria for loan eligibility, and the general project and program administration rules.

ITEM 3. Amend rule 567—44.3(455B) as follows:

567—44.3(455B) Purpose. ~~The state revolving fund program~~ *DWSRF* provides financial assistance to eligible public drinking water supplies for the design and construction of facilities to ensure public health and the provision of safe and adequate drinking water. The program reserves a certain percentage of money each year for administrative purposes, to improve and protect source water quality, and to provide technical assistance to smaller drinking water systems. The program is administered by the Iowa department of natural resources (“department”), with assistance from the authority. The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E. ~~The Iowa department of natural resources~~ establishes priorities for the use of the ~~state revolving loan fund~~ *DWSRF* and publishes them each year in its intended use plan (IUP). Published IUPs may include loan funding applications (capitalization grant applications, submitted by the department to the United States Environmental Protection Agency (EPA) regional administrator) for either single or for multiple years, depending on the department’s preference and resource utilization plans, as long as the fund account or set-aside account remains in operation. The IUP will identify all proposed uses of available funds ~~and how each will be managed.~~ All potentially funded projects must be approved by the ~~Iowa department of natural resources~~ before they can be considered for certification to the ~~Iowa finance~~ authority.

The EPA provides capitalization grants for this program to the ~~state of Iowa~~ *department*. Financial assistance projects must be in conformance with the requirements of the Public Health Service Act (42 U.S.C. 300f et seq.), United States Code, Title XIV, Section 1452, Part E.

ITEM 4. Amend rule **567—44.4(455B)** as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Amend the following definitions:

"Drinking water state revolving fund (SRF) (DWSRF)" means a state-administered fund intended to ~~develop~~ provide drinking water revolving loans to help finance drinking water infrastructure improvements, source water protection, system technical assistance, and other activities intended to encourage and facilitate public water supply system rule compliance and public health protection established by 1997 Iowa Acts, chapter 4 Iowa Code sections 455B.291 to 455B.299.

"Eligible cost" means the cost of all labor, material, machinery, equipment, loan initiation and loan service fees, design and construction engineering services, legal fees and expenses directly related to the project, capitalized interest during construction of the project, and all other expansion, construction, and rehabilitation of all or part of a project incurred after the date of approval of an intended use plan (IUP) which contains the project on a list of projects which are approved for SRF DWSRF loan assistance.

"Intended use plan (IUP)" means a plan identifying the intended uses of funds available for loans in the SRF DWSRF for each fiscal year as described in Section 1452 of the Safe Drinking Water Act.

"Project priority list" means the list of projects in priority order that may qualify for SRF DWSRF loan assistance contained in the IUP document prepared pursuant to rule 44.8(455B). The priority list shall identify all projects eligible for funding and the points assigned to each project pursuant to subrule 44.7(8).

"SRF DWSRF funds" means the combination of a particular fiscal year's federal capitalization grant appropriation less the 20 percent state of Iowa match.

Rescind the following definitions:

~~"Applicable interest rate" means the interest rate applied to each individual loan as determined by the director and in accordance with any agreement with the Iowa finance authority.~~

~~"Debt service coverage ratio" means the sum of net income plus interest expense plus depreciation, divided by the sum of debt service, principal plus interest, and repayments.~~

Adopt the following new definition in alphabetical order:

"Commission" means the environmental protection commission of the state of Iowa.

ITEM 5. Amend subrule 44.5(1) as follows:

44.5(1) Administration expense set-aside. These set-aside funds are to be used to administer the ~~state revolving loan fund (SRF) DWSRF~~. This includes loan portfolio management, debt issuance, SRF DWSRF program startup and other administrative costs, financial, management, and legal consulting fees, and related support services. This set-aside allows a maximum of 4 percent of the total available federal capitalization grant and state match funds in a particular year.

ITEM 6. Amend subrule 44.5(3) as follows:

44.5(3) Source water protection implementation set-aside. These set-aside funds will be used to delineate and assess source water protection areas, and may be used to establish and implement source water and wellhead protection programs. This set-aside allows a maximum of 15 percent of the total available federal capitalization grant and state match funds in a particular year. Up to 10 percent of the total funds (67 percent of this set-aside) will be used by the department in the first two years of the SRF DWSRF to delineate and assess source water protection areas; some of these funds may be subcontracted to third parties to perform as-

pects of this work. Source water (quality partnership) petition programs (made by individual or consortiums of public water systems) established under Section 1454 of the SDWA Amendments amendments will be eligible for money under this set-aside. Applications for third-party source water petition proposals must be submitted and will be accepted and evaluated pursuant to subrules 44.7(2) through 44.7(8) prior to publication of the IUP in a given year.

ITEM 7. Amend subrule 44.6(1), introductory paragraph, as follows:

44.6(1) The following systems are eligible to receive funds from the ~~Iowa drinking water revolving loan fund DWSRF~~, for health improvements as listed and defined in the Safe Drinking Water Act, as amended in 1996.

ITEM 8. Amend subrule 44.6(2), paragraph "d," as follows:

d. Projects and activities deemed ineligible for participation in the ~~drinking water SRF DWSRF~~ program by the U.S. Environmental Protection Agency's February 28, 1997, guidelines, or by the department.

ITEM 9. Amend subrule 44.7(1) as follows:

44.7(1) The director shall develop and maintain a project priority list of public water systems that have a need for either a new or an upgraded drinking water system (including individual subcomponents). The term "public water system projects" may also include separate segments or phases of a segmented or phased project. The project priority list may include projects which are not ready to proceed (e.g., it may include projects by their nature planned and implemented for a longer term than one year or those unable to be implemented within one calendar year), but letters of intent for such projects must be received by the department for the projects to proceed within 5 five years of the submitted letter of intent, or they shall not receive funding. Projects may be construed as not ready to proceed due to lack of fiscal capability (of either the loan applicant or of the state), due to emergencies experienced by the applicant (or the state), *due to failure to complete a loan agreement within one year of a project's being listed on the approved IUP*, or due to construction or other scheduling constraints. Projects ~~may will~~ continue to be eligible for loan funding when funded for the first year of a multiyear project effort. ~~However, the project applicant must resubmit the project for priority ranking each subsequent year during the life of a project. No project may receive funding for more than five years in succession.~~

ITEM 10. Amend subrules 44.7(3) and 44.7(4) as follows:

44.7(3) At least once each year, or more often as necessary, the department may amend the project priority list to add eligible projects. List adjustment can be done to ensure that the department uses at least 15 percent of all funds credited to the SRF DWSRF account to provide loan assistance to systems serving fewer than 10,000 persons (allowable under Section 1452(a)(2) of the Act), to the extent that there are a sufficient number of eligible projects to fund. List adjustment can also be made to maintain the fiscal integrity of the bond fund, pursuant to rule 44.8(455B) and the annual published IUP's short-term and long-term goals.

44.7(4) To be eligible for placement on the project priority list, the water system must have a preliminary engineering study of potential system needs (e.g., a "planning" study) approved by the department, and must submit a written application for placement on the list to the director. The application must include:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

1 a. A description of the type of project for which financial assistance is being requested,

2 b. The amount of financial assistance being requested, and

3 c. A proposed preliminary project construction schedule.

Application shall be made on an ~~an SRF~~ *a DWSRF* application package form provided by the department; the applicant may include additional information in the application. Applicants must reapply each year to be placed on the project priority list. Forms can be obtained from the Environmental Protection Division, Iowa Department of Natural Resources, ~~Henry A. Wallace Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034~~ *Drinking Water Section, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309.*

ITEM 11. Amend subrule 44.7(7) as follows:

44.7(7) A construction project's priority points shall be the total number of points assigned by the department pursuant to the department's scoring system, delineated in subrule 44.7(8). All projects shall be listed in descending order on the published project priority list according to the number of total priority points assigned each project. When two or more projects have the same priority point total, the project sponsored by a system in the process of consolidation shall receive the higher priority. A private system in the process of forming and becoming a PWS shall have the next highest priority (if the system is determined by U.S. EPA regulations or guidance to be eligible for ~~SRF~~ *DWSRF* funding), and the entity with the smallest served population shall receive the next highest priority. The most current official census population shall be used for all municipalities *which serve only the population within their incorporated boundaries and which apply for these loan funds. For all other municipalities and other community public water supply systems and for nontransient nontransient noncommunity systems, population will be counted based on either the actual population verifiable by the department or population as calculated by multiplying by an occupancy factor of 2.5 persons per service connection. New systems will be counted based on either census data, an occupancy factor of 2.5 persons per service connection, an occupancy factor of 2.5 persons per identifiable occupied building, or other means acceptable to the department. Funding shall be offered to the projects with highest rank on the project priority list, subject to the project's readiness to proceed, and shall proceed from highest project downward subject to availability of funds. No project is eligible for more than 50 percent of the total available funds in any single calendar year. No project is eligible for a loan of less than \$50,000 \$20,000. Projects comprising for-profit water systems may make up no more than 10.5 percent of the project priority list particular bond issue in any given year. Private water companies are eligible to receive loans from the funds generated by the sale of state tax exempt bonds. The EPC commission may adjust these maximum and minimum loan figures in a given year pursuant to their the commission's final approval of the fiscal year's IUP. The published project priority list shall also be included in the department's annual intended use plan (IUP), pursuant to rule 44.8(455B). Projects involving a multiyear, staged effort may carry over their original priority point total from the previous year's application providing the project owner re-applies for funding each year.*

ITEM 12. Amend subrule 44.8(2) as follows:

44.8(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year and will in-

clude:

a. A list of projects from the state project priority list (defined in rule 44.7(455B)) that are eligible for ~~SRF~~ *DWSRF* loans and any proposed activities eligible for assistance under set-aside authority of the SDWA. The list will include the name of the eligible recipient, applicable PWS permit number, the projected amount of loan assistance, and a schedule of estimated disbursement of funds. The department's list will consider the following in developing the list of eligible recipients for the intended use plan:

(1) Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds;

(2) Whether the project addresses the need upon which the system's priority is based;

(3) Applicant's financial capability to service the loan, provide operation and maintenance, and provide replacement and debt service reserves;

(4) Applicant's statement of willingness to accept all loan terms and conditions.

b. Discussion of the long-term and the short-term goals of the ~~SRF~~ *DWSRF*.

c. Information on the types of activities to be supported by the ~~SRF~~ *DWSRF*.

d. The method by which the IUP may be amended.

e. Assurances on how the state intends to meet environmental review requirements of the Act.

ITEM 13. Amend subrule 44.9(1) as follows:

44.9(1) Project/loan initiation conference. *The department may require the loan recipient or the loan recipient's representative to meet at a location designated by the department. Each eligible loan recipient shall schedule a project/loan initiation conference with the department. The eligible recipient's official representative will meet with the department to discuss the following items and other items relevant to the project/loan as necessary:*

~~a. SRF loan program policies, procedures and guidelines;~~

~~b. Allowable costs;~~

~~c. Treatment technologies;~~

~~d. Environmental impacts and review considerations;~~

~~e. Public participation;~~

~~f. Scheduling;~~

~~g. Other information as needed.~~

ITEM 14. Amend subrule **44.9(2)**, paragraphs "f" and "h," as follows:

f. Those portions of projects not meeting eligibility requirements may be excluded from the funded project, but included in the submitted plans and specifications if the applicant chooses to keep the loan-ineligible part of the project as part of the overall system improvement. Ineligible portions of projects include but are not limited to dams, water rights, monitoring costs, operation and maintenance expenses, projects designed primarily in anticipation of future or speculative growth, and projects needed primarily for fire protection.

h. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial, and financial capability to complete the project. Legal, institutional, managerial, and financial capability includes the requirement that the applicant show the ability to collect the amount of money sufficient to repay the ~~SRF~~ *DWSRF* loan.

ITEM 15. Amend subrule 44.9(3), introductory paragraph, as follows:

44.9(3) An applicant seeking financial assistance from the ~~state revolving fund~~ *DWSRF* for any project appearing

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

on the project priority list must submit information as required under subrule 44.7(6) on forms provided by and acceptable to the department. Departmental review requirements shall consist of the following:

ITEM 16. Amend rule 567—44.12(455B) as follows:

567—44.12(455B) General administrative requirements.

44.12(1) Loan agreement conditions. The director, in coordination with the authority, will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the SDWA and applicable state rules for ~~SRF~~ DWSRF funding. The loan agreements to be executed by the applicant and the department shall be a binding obligation under Iowa law, shall include conditions and terms to be effective for the loan period, and shall be accompanied by evidence of such security, legality, and enforceability as shall be satisfactory to the director. Each borrower's loan agreement terms may differ due to differences in legal structure and creditworthiness of eligible borrowers. The expected loan agreement terms will be discussed with the applicant at the project initiation conference described in rule 44.9(455B). *A copy of the current form of loan agreement shall be provided to the recipient at the time of application.*

44.12(2) Allowable costs shall be limited to those costs deemed necessary, reasonable, and directly related to the efficient completion of the project. The director will determine project costs eligible for state assistance in accordance with rule 44.6(455B). Land purchase, easement, or rights-of-way costs are ineligible with the exception of land which is integral to a project that is needed to meet or maintain public health protection, and needed to locate eligible treatment or distribution works. Source water protection easements are considered to be integral to a project. (The acquisition of land or easements has to be from a willing seller.) In addition to those costs identified in this chapter, unallowable costs include the following:

- a. Cost of planning and applying for ~~an SRF~~ a DWSRF loan.
- b. Costs of service lines and in-house plumbing.
- c. Administrative costs of the loan recipient.
- d. Vehicles and tools.

44.12(3) The recipients shall maintain adequate records that document all costs associated with the project. Moneys from the ~~SRF~~ DWSRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform with generally accepted government accounting principles, and auditing procedures will be in accordance with the U.S. General Accounting Office (GAO) publication, "Government Auditing Standards," dated June 1994. All records shall be preserved and made available to the department, the authority, the state auditor, and the Office of the Inspector General (OIG) of the EPA for at least three years from the date of the final loan repayment.

44.12(4) The recipient shall provide access at all times for the department, the authority, the state auditor and the OIG at EPA to all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment. The same access to the project site(s) shall be provided for inspection purposes.

44.12(5) Other federal and state statutes and programs may affect ~~an SRF~~ a DWSRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements. Federal "cross-cutters" which will affect ~~SRF~~ DWSRF projects include 13 environmental authorities, four economic and miscellaneous

authorities, and nine social policy authorities. Each of these specific cross-cutters is delineated in Appendix 1. *Additions or deletions to this list may be made by the department as needed to comply with applicable EPA regulations and program guidance.*

44.12(6) The recipient must submit a construction draw-down schedule to the department prior to the award of contracts.

44.12(7) Loan agreements will be binding commitments based on estimated eligible costs prior to construction. A final adjustment to a loan amount may be made upon completion of construction. Loans will be made to eligible recipients as soon as possible after money is available. The ~~SRF~~ DWSRF will be managed such that contingency money is available in loans to allow for final adjustments in allowable costs as approved by the director. If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request considering available money in the fund as well as the financial risk to determine the appropriate action, including renegotiation of the loan. Should costs be less than the loan amount, the loan shall be adjusted. Any project identified in the intended use plan for funding in a fiscal year that has not signed a binding commitment by August 31 of the *next applicable federal* fiscal year may be bypassed by projects of a lower priority that are in a state of readiness.

44.12(8) The director shall have the right to terminate any loan when terms of the agreement have been violated or project activities are not progressing in a satisfactory manner. Loans will be terminated if construction has not begun within one year of the execution of a loan agreement. The director in coordination with the authority will establish a repayment schedule for funds already loaned to the recipient. All terminations must be in writing.

ITEM 17. Amend subrule **44.13(2)**, paragraph "b," as follows:

b. If the loan recipient is unable to certify the project is operating as planned and designed, the recipient must submit a corrective action report to the director for review and approval. The corrective action report must contain an analysis of the project's failure to operate as ~~planned and~~ designed; a discussion of the nature, scope, and cost of the action needed to correct the failure; and a schedule for completing the corrective work, acceptable to the department.

ITEM 18. Amend rule 567—44.14(455B) as follows:

567—44.14(455B) Loan agreements and repayment policy for loans. Loan agreements shall be entered into for each separate project, with the director and an authorized representative of the applicant signing the agreement. ~~For each investment pool there shall be a single interest rate applicable to all loans~~ Loans made to recipients shall bear interest at a fixed rate of 3 percent per annum from the date of origination of the loan. ~~The interest rate set at the time of origination of a loan will not change. Loans shall bear interest for the entire life of the loan at a rate set by the authority. The interest rate will be based on the true interest cost method and may be rounded to the nearest one-hundredth of one percent. The interest rate shall be equal to A/B times (C - X), to which there shall be added, but only if available funds from one or more SRF accounts relating to prior bond issues ("existing SRF funds") will be used to fund a portion of the loans made to the pool, D times E/B; where A is the total amount of the loans being funded by proceeds of bonds issued for that pool; where B is the total of all loans to be made to that pool; where C is the true interest cost of the bonds issued for that pool;~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

where D is the loan rate used for the original pool of loans from which bond issue the existing SRF funds were derived; where E is the amount of the existing SRF funds used for loans to the pool; and where X is the lesser of (0.3 times C) or 2.0 percent. If the existing SRF funds used for the pool are derived from more than one previous bond issue, then a factor of D times E/B shall be calculated for each bond issue from which the loan funds are derived and shall be added to the foregoing amount so as to produce a weighted average of interest for that pool. Notwithstanding the foregoing, the interest rate for a loan shall never exceed the yield on the bonds used to fund that loan. In the event the aforementioned bonds bear interest at a variable or floating rate of interest, C shall be equal to the rate set forth in the 20 G.O. Bond Buyer Index in effect on the date that the bonds are delivered.

Loans shall be for a period of up to 20 years. *The length of the loan period will be determined by the department. It shall not be set for a period shorter than five years.* Fees for servicing the loans may also be set by the authority. It is the intent of the department to charge a loan initiation fee of 1.0 percent of the amount of the loan, payable on the date the loan agreement is entered. It is the intent of the department to charge an annual loan servicing fee of 0.05 to 0.25 percent of the loan principal, due at the time of each annual loan repayment. The department reserves the right to charge higher credit-based fees to nongovernmental recipients (with the exception of nonprofit rural water districts). Loan agreements shall include but shall not be limited to provisions whereby the recipient ensures water system viability will be maintained, ensures compliance with the Act will be maintained, and ensures a certified operator in charge of the system in question will be maintained, all for the length of the loan agreement.

All principal and interest shall be repaid in accordance with the terms and conditions of the executed loan agreement, generally on a level debt service schedule. *Adjustments of maturities may be granted to enable a recipient to conform its loan terms to its existing debt obligations, but the average life of the principal installments to be made under the combined repayment schedules shall not be longer than it would be if the total principal amount to be outstanding was repaid on a level debt service basis over the same period. Repayments of principal shall begin no later than two years after receipt of the first loan disbursement.* Borrowers must begin repayment of the loan (both principal and interest) no later than one year after completion of construction of the project. *The maximum repayment period is 20 years. Principal repayments will start not later than one year after project completion.* Principal payments will be made annually and interest payments will be made semiannually on a schedule determined by the director which is consistent with these rules and financing requirements applicable to the SRF DWSRF. *Repayment of the loan shall not exceed a 20-year repayment period as agreed upon in the loan agreement. Prepayment of the principal in whole or in part may be made, in accordance with the terms and conditions of the executed loan agreement. Prepayment may not be made within the first ten years of the loan term, other than those repayments resulting from a loan agreement adjustment based on final costs. Exceptions may be made for loans which have deliberately been limited to less than ten years.*

The dedicated source of repayment is expected to be the net revenues of the public water supply system, with the loan being secured by a first lien on said net revenues. Loans may rank on a parity basis with other outstanding obligations or, with the approval of the director and the authority, may be subordinate in right of payment to other outstanding revenue

obligations of the recipient. Subordinate loans shall be approved only if the net revenues of the system are expected to be at least 105 percent of the amount of the combined maximum annual debt service on the outstanding obligations and subordinate loan. Loans also may be secured by a general obligation of the recipient providing for a levy of debt service taxes to repay the loan. Recipients shall not be required to maintain any debt service reserve fund or improvement fund with respect to their loans.

The recipient shall use the proceeds of the SRF DWSRF loan solely for the purpose of funding the project. Timely disbursement from the loan by the borrower shall be made to contractors.

All costs must be documented to the satisfaction of the director before proceeds can be disbursed. Records shall be maintained in accordance with subrule 44.12(3).

The recipient shall agree to comply with all applicable laws, rules, and regulations of the department, the authority, or other federal, state, and local jurisdictions concerning the financing, construction, operation, maintenance, and use of the water facilities.

ITEM 19. Amend rule 567—44.16(455B) as follows:

567—44.16(455B) Disputes. A person or entity who disagrees with the project rankings, department funding decisions, or the withholding of project funding pursuant to rules 44.7(455B), 44.8(455B), and 44.12(455B) may request a formal review of the action. A request for review must be submitted in writing to the director by the person or entity within 45 days of the date of notification of the final decision made by the department or department staff. A decision by the director in a formal review case may be further appealed to the environmental protection commission (EPC).

ITEM 20. Amend rule 567—92.2(455B) as follows:

567—92.2(455B) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate and control pollution. As a part of that general responsibility, the department and the authority are jointly delegated the administration of (1) the state sewage treatment works revolving fund (SRF) (CWSRF) loan program to assist in water pollution abatement projects pursuant to the Clean Water Act and (2) the drinking water treatment revolving loan fund described in 567—Chapter 44. A project must comply with this chapter to be eligible for an SRF a CWSRF loan. This chapter provides for the general rules of practice for the department's administration of the CWSRF program, including the criteria for loan eligibility, and the general project and program administration rules.

In addition to loans to municipalities, Section 603(c) of Title VI of the Clean Water Act allows the use of Title VI capitalization grant funds to assist the state in implementation of a nonpoint source pollution management plan as provided for in Section 319 of the Clean Water Act. Iowa's nonpoint source management plan identifies the rehabilitation and improvement of onsite wastewater treatment systems as an area of need. It is the intent of the commission that a portion of the Title VI capitalization grant funds be used to establish a program for the purpose of making low-interest loans available for rural homeowners who need to rehabilitate or improve existing onsite wastewater treatment systems. 567—Chapter 93 provides for the general administration of the onsite wastewater assistance fund.

ITEM 21. Amend rule 567—92.3(455B) as follows:
Amend the following definitions:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“Authority” means the Iowa finance authority (IFA) as established by Iowa Code chapter 220 16.

“Eligible cost” means the cost of all labor, material, machinery, equipment, loan initiation and service fees, design and construction engineering services, legal fees and expenses related to the project, capitalized interest during construction of the project, and all other expansion, construction and rehabilitation of all or part of a project incurred after the date of approval of an intended use plan which contains the project on a list approved for SRF CWSRF assistance.

“Eligible recipient” means a municipality (as defined below) that meets the following criteria:

1. Appears on the state project priority list.
2. Has submitted a complete application for a project with eligible costs.
3. Will be in a state of readiness to proceed to construction and use loan payments timely.
4. Has been included on the state’s intended use plan as a proposed loan recipient *or is otherwise an eligible recipient as described in rule 567—93.4(455B, 79GA, SF479)*.

“Intended use plan (IUP)” means a plan identifying the intended uses of funds available for loans in the SRF CWSRF for each fiscal year as described in Section 606(c) of the Clean Water Act.

“Municipality” means a city, county, sanitary district, state agency, or other governmental corporation or body empowered to provide sewage collection and treatment services, or any combination of the two or more of such governmental bodies, or corporations acting jointly, in connection with a project.

“State project priority list (PPL)” means the list of projects in priority order that may qualify for SRF CWSRF loan assistance. The list is developed in accordance with 567—Chapter 91.

Rescind the following definition:

~~“Applicable interest rate” means the interest rate applied to each individual loan as determined by the director and in accordance with any agreement with the Iowa finance authority.~~

Adopt the following **new** definition:

“CWSRF” means the sewage treatment works financing program described in this chapter.

ITEM 22. Amend subrule 92.4(1) as follows:

92.4(1) Administration. The department, in conjunction with the authority, has been delegated the responsibility of administering the SRF CWSRF program *and the DWSRF program described in 567—Chapter 44*. The director will coordinate with the authority under the terms of an inter-agency agreement entered into pursuant to Iowa Code chapter 28E.

ITEM 23. Amend subrule 92.4(2), paragraph “a,” introductory paragraph, as follows:

a. Departmental staff decisions in administering the SRF CWSRF loan program shall conform to generally accepted principles and standards of good practice. Guidance shall include, but not be limited to:

ITEM 24. Amend subrule 92.4(4) as follows:

92.4(4) Minimum/maximum loans. The minimum loan amount which will be considered is \$50,000. The maximum amount loaned to any municipality shall not exceed 60 percent of the available loan funds in the SRF CWSRF attributable to any fiscal year.

ITEM 25. Amend subrules 92.4(6) and 92.4(7) as follows:

92.4(6) Eligible recipient determination. Municipalities projected to be able to qualify for SRF CWSRF assistance will be identified in an annual intended use plan. Only those projects on the current fiscal year state project priority list developed pursuant to 567—Chapter 91 may be considered as an eligible recipient. SRF CWSRF assistance will be available to projects in priority order.

92.4(7) State capitalization grant. The Clean Water Act authorizes the Environmental Protection Agency (EPA) to offer capitalization grants to states for use in a revolving fund loan program. A portion of the capitalization grant, as allowed by Title VI of the Clean Water Act, will be used to administer the SRF CWSRF program.

ITEM 26. Amend subrule 92.4(9) as follows:

92.4(9) Loan adjustments. Loans will be made to eligible recipients as soon as possible after moneys are available. The SRF CWSRF will be managed such that contingency moneys are available in loans to allow for final adjustments in allowable costs as approved by the director. If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request considering available moneys in the fund as well as the financial risk to determine the appropriate action, including renegotiation of the loan. Should costs be less than the loan amount, the loan shall be adjusted.

ITEM 27. Amend subrules 92.5(1) and 92.5(2) as follows:

92.5(1) Forms. The department will provide an application package to apply for SRF CWSRF loan assistance and to provide documentation in the program. Forms can be obtained from the Environmental Protection Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034.

92.5(2) General requirements. The following items in addition to the requirements of subrule 92.5(1) must be included in a complete SRF CWSRF loan application:

- a. Two copies of the facility plan certified by a professional engineer licensed to practice in Iowa;
- b. A schedule for submission of plans and specifications for the project;
- c. A user charge system;
- d. A project construction schedule and cash flow projection including the acquisition of necessary land;
- e. A summary of all financial arrangements necessary to fund the project; and
- f. A description of a dedicated revenue source for loan repayments.

ITEM 28. Amend subrule 92.6(2) as follows:

92.6(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include the following:

a. A list of projects from the state project priority list that are eligible for SRF CWSRF loans and any proposed activities eligible for assistance under Sections 319 and 320 of the Clean Water Act. The list will include the name of the eligible recipient, any applicable NPDES permit number, the projected amount of loan assistance, schedule of estimated disbursement of funds and preliminary identification of projects that may undergo an environmental impact statement. The department will consider the following in developing the list of eligible recipients for the intended use plan:

- (1) Rescinded IAB 5/20/98, effective 6/24/98.
- (2) Applications on file.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(3) Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds.

(4) Whether the proposed project addresses the need upon which the municipality's priority is based.

(5) Applicant's financial capability to service the loan, provide operation and maintenance, provide replacement and debt service reserves.

(6) Applicant's statement of willingness to accept all loan terms and conditions.

(7) *Funds available, project priorities and the administrative capacity of the department.*

b. Discussion of the long- and short-term goals of the SRF CWSRF.

c. Information on the types of activities to be supported by the SRF CWSRF. *The IUP will identify any funds to be directed to the onsite wastewater assistance fund (OSWAF) described in rules 567—93.3(455B, 79GA, SF479) and 567—93.10(455B, 79GA, SF479) to implement Iowa's nonpoint source management plan.*

d. Assurances and specific proposals on how the state intends to meet requirements of the following sections of the Clean Water Act:

(1) 602(a) Environmental reviews.

(2) 602(b)(3) The state will agree to enter binding commitments equal to at least 120 percent of each quarterly federal capitalization grant payment within one year after receipt.

(3) 602(b)(4) Certify that expenditure of all funds in the SRF CWSRF will be done in an expeditious and timely manner.

(4) Rescinded IAB 5/20/98, effective 6/24/98.

(5) Rescinded IAB 5/20/98, effective 6/24/98.

(6) Contingency list. The IUP will list those projects that are fundable in a fiscal year. In addition, a contingency list will also be included. These projects could become fundable in accordance with the procedures found in subrule 92.8(7) should a fundable project not proceed in a timely manner.

e. The method by which the IUP may be amended.

ITEM 29. Amend subrule 92.8(1) as follows:

92.8(1) Loan agreement conditions. The director in coordination with the authority will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the Clean Water Act and applicable state rules for SRF CWSRF funding. The loan agreement to be executed by the applicant and the department shall be a binding commitment under Iowa law, shall include conditions and terms to be effective for the loan period, and shall be accompanied by evidence of legality and tax-exempt status satisfactory to the director. *A copy of the current form of loan agreement shall be provided to the recipient at the time of application.*

ITEM 30. Amend subrule 92.9(1), paragraph "c," as follows:

c. Overpayment. Any funds paid to the recipient that are not expended after the project is complete shall be repaid to the SRF CWSRF after the loan is adjusted.

ITEM 31. Amend rule 567—92.10(455B), introductory paragraph, as follows:

567—92.10(455B) Project requirements. The following requirements of this rule apply to all wastewater treatment projects defined in Section 212 of the Clean Water Act receiving assistance from the SRF CWSRF that entered a binding loan commitment or initiated construction prior to October 1, 1994. They are identified here with references to sections of the Clean Water Act and federal regulations, where

appropriate. All wastewater treatment projects receiving assistance from the SRF CWSRF which entered a binding loan commitment on October 1, 1994, or after and did not initiate construction of the loan project in whole or in part prior to October 1, 1994, need only meet the requirements of paragraphs 92.10(1)"a," 92.10(1)"h," 92.10(2)"b," 92.10(2)"c," 92.10(2)"f" to 92.10(2)"i," and subrule 92.10(3).

ITEM 32. Amend subrule 92.10(2), paragraph "f," introductory paragraph, as follows:

f. Minority business enterprise/women's business enterprise (MBE/WBE). The recipient must comply with requirements of MBE/WBE participation as found in 40 CFR 31.36(e), March 11, 1988. The director will negotiate with the EPA regional administrator to determine the overall "fair share" objective for SRF CWSRF loan-assisted projects. The recipient shall take the following affirmative steps to ensure that small, minority, and women's business enterprises are utilized where possible as sources of supplies, construction, and services:

ITEM 33. Amend subrule 92.10(3), introductory paragraph, as follows:

92.10(3) Qualifying requirements. Other information not identified in any particular phase of a project but which includes basic qualifying factors necessary to qualify any project for SRF CWSRF assistance must be provided.

ITEM 34. Amend subrule 92.10(3), paragraph "d," as follows:

d. NPDES compliance. To qualify for an SRF CWSRF loan, a recipient must demonstrate to the satisfaction of the director that the project receiving loan assistance is a part of the recipient's overall plan that addresses all wastewater treatment needs and that describes how compliance with NPDES permit limitations will be achieved and maintained.

ITEM 35. Amend subrule 92.11(2), paragraphs "c," "d," "e" and "g," as follows:

c. Applicable interest rate. ~~For each pool there shall be a single below market interest rate applicable to all loans made to recipients. The applicable interest rate shall be equal to A/B times (C - X), to which there shall be added, but only if available funds from one or more SRF accounts relating to prior bond issues ("existing SRF funds") will be used to fund a portion of the loans made to the pool, D times E/B; where A is the total amount of the loans being funded by proceeds of bonds issued for that pool; where B is the total of all loans to be made to the pool; where C is the true interest cost of the bonds issued for that pool; where D is the loan rate used for the original pool of loans from which bond issue the existing SRF funds were derived; where E is the amount of the existing SRF funds used for loans to the pool; and where X is the lesser of (0.3 times C) or 2 percent. If the existing SRF funds used for the pool are derived from more than one previous bond issue, then a factor of D times E/B shall be calculated for each bond issue from which the loan funds are derived and shall be added to the foregoing amount so as to produce a weighted average of interest for that pool. Notwithstanding the foregoing, the interest rate for a loan shall never exceed the yield on the bonds used to fund that loan. The interest rate will be based on the true interest cost method and may be rounded to the nearest one-hundredth of 1 percent. In the event the aforementioned bonds bear interest at a variable or floating rate of interest, C shall be equal to the rate set forth in the 20 G.O. Bond Buyer Index in effect on the date the bonds are delivered. Loans made to recipients shall bear~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

interest at a fixed rate of 3 percent per annum from the date of origination of the loan.

d. Repayment. The maximum repayment period allowed is 20 years. Principal repayments will commence not later than one year after project completion, generally on a level debt service schedule. Adjustments of maturities may be granted to enable a recipient to conform its loan terms to its existing debt obligations, but the average principal maturity of the loan shall not be longer than the average principal maturity of the loan would be if it were determined on a level debt service basis. Principal payments will be made annually and interest payments will be made semiannually on a schedule determined by the director which is consistent with these rules and financing requirements applicable to the SRF life of the principal installments to be made under the combined repayment schedules shall not be longer than it would be if the total principal amount to be outstanding was repaid on a level debt service basis over the same period. No prepayment of the loan principal may be made within the first ten years of the loan term, other than those repayments resulting from a loan agreement adjustment based on final costs.

e. Security. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations.

The dedicated source of repayment is expected to be the net revenues of the municipal sewage utility plant and the system of the recipient, but may also include a general obligation secured by the levy of debt service taxes or its equivalent with the loan being secured by a first lien on said net revenues. Revenue-secured loans may rank on a parity basis with other outstanding obligations or, with the approval of the director and the authority, may be subordinate in right of payment to other outstanding revenue obligations of the recipient. Subordinate loans shall be approved only if the revenues of the recipient's utility system are expected to be at least 105 percent of the amount of the combined maximum annual debt service on the outstanding obligations and subordinate loan. Loans also may be secured by a general obligation of the recipient providing for a levy of taxes to repay the loan. Recipients shall not be required to maintain any debt service reserve fund or improvement fund with respect to their loans.

g. Annual loan servicing fee. A fee of 0.05 0.25 percent of the loan principal will be due at the time of each annual loan repayment.

ITEM 36. Amend subrule 92.11(3), paragraphs "c" and "d," as follows:

c. Audit. The authority or an independent firm acceptable to the authority may conduct an audit on all projects assisted by SRF CWSRF loan funds to establish conformance with loan terms and conditions and the requirements of the Clean Water Act. Audit authority includes access to all files and documents associated with the project.

d. ~~Increase revenues~~ Revenue pledge. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year. In case of loan default, the state shall have authority to require revenue adjustment to collect delinquent loan payments.

ITEM 37. Amend subrule 93.5(1), paragraph "b," as follows:

b. ~~Assume the risk for loans made under the program, including loan delinquency of greater than 90 days. Once a loan is declared in default, the director shall cause legal action to be taken to collect amounts past due. The state and the department are not liable to an eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible borrower.~~

[Filed Emergency 10/26/01, effective 10/26/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1100B

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby amends Chapter 35, "Accident and Health Insurance," Chapter 71, "Small Group Health Benefit Plans," and Chapter 75, "Iowa Individual Health Benefit Plans," Iowa Administrative Code.

The purpose of the amendments is to add a reference to a recently approved method of contraception for which coverage must be made available.

Pursuant to Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary and impractical. The approval of the product by the FDA is the prerequisite for inclusion in the rule and coverage for consumers. This new method needs to be added to the rule to complete the list of covered drugs and devices.

The Division 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 become effective on October 26, 2001, the date of approval of the product for use by prescription only. Delay would cause public confusion and might result in denial or delay of payment of eligible claims.

These amendments are intended to implement Iowa Code section 514C.19.

These amendments became effective October 26, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule 35.39(1) by adopting the following new paragraph "h":

h. NuvaRing.

ITEM 2. Amend subrule 71.24(1) by adopting the following new paragraph "h":

h. NuvaRing.

ITEM 3. Amend subrule 75.18(1) by adopting the following new paragraph "h":

h. NuvaRing.

[Filed Emergency 10/26/01, effective 10/26/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1130B

PERSONNEL DEPARTMENT[581]

Adopted and Filed Emergency

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

Subrules 21.6(4), 21.6(7) and 21.6(8) are amended by deleting provisions relating to the combining of accounts so as to permit flexibility in wage reporting; by requiring, for wage reports filed for the quarter ending March 31, 2001, and thereafter, wage reports using magnetic media; and by adding a provision stating that, for wage reports filed for the quarter ending March 31, 2001, and thereafter, an employer reporting wages for 50 or more members will be assessed a \$50 processing charge for each quarterly wage report filed on paper.

Paragraphs 21.6(9)"b," "c," and "e" are amended to implement the statutory contribution rates for special service members recommended by IPERS' actuary pursuant to Iowa Code sections 97B.49B and 97B.49C.

Subrule 21.8(1), introductory paragraph, is amended to remove limitations relating to the period of time following termination of employment before a refund may be paid to a member. These amendments delete or modify prior provisions that have been superseded by later amendments permitting a refund to be paid to a member as soon as practicable after termination of employment.

Paragraph 21.8(1)"b," introductory paragraph, is also amended to implement a prior statutory change relating to the calculation of a member's share of employer accumulated contributions. The current rule uses 100 quarters in determining the service fraction for protection occupation members. By statute this 100 quarters decreases in steps over time to 88 quarters. By striking the reference to 100 quarters and incorporating the "applicable years of service" in its place, a member receives a larger share of employer accumulated contributions.

Subparagraph 21.8(1)"b"(4) is also amended to deal with the calculation problems caused when the "applicable years of service" number changes between the time that a member's original refund is issued and the date that a supplemental refund is issued. Since a supplemental refund is only caused by delayed wage reporting, the subparagraph is amended to clarify that the "applicable years of service" in effect at the time of the original refund is used for both original and supplemental refund calculations.

Subparagraph 21.24(14)"a"(1) is amended in order to modify the service purchase calculation method used for patient advocates who purchase service credit prior to July 1, 2002, for patient advocate employment, pursuant to the legislative directives. The current rule incorrectly uses a more costly method.

In compliance with Iowa Code section 17A.4(2), the Department finds that, because these amendments are beneficial to members and necessary to the current and ongoing administration of the system, additional notice and public participation prior to implementation are impracticable, unnecessary, and contrary to the public interest, and that this amendment should be implemented immediately.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b," that the normal effective date of these amendments should be waived and these amendments be made ef-

fective upon filing with the Administrative Rules Coordinator on October 26, 2001, because they confer benefits, or are required to implement the system's governing statutes, or both. In conjunction with the Notice of Intended Action also published herein, this filing will give interested persons adequate notice of the changes and an opportunity to respond.

The amendment to subrule 21.6(8) will be subject to requests for waivers. No other amendments will be subject to requests for waivers. The amendments to subrules 21.6(4), 21.6(7), 21.8(1) and 21.24(14) confer benefits, and the amendments to subrule 21.6(9) are required by statute.

The Department adopted these amendments on October 25, 2001.

These amendments are also published herein under Notice of Intended Action as **ARC 1129B** to allow public comment.

These amendments became effective October 26, 2001.

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

The following amendments are adopted.

ITEM 1. Amend subrule 21.6(4) as follows:

21.6(4) For employers filing quarterly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the calendar quarter in which the wages were paid.

For employers filing monthly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the month in which wages were paid.

Any employer filing monthly or quarterly employer remittance advice forms for two or more entities shall attach to each remittance form the checks covering the contributions due on that form. ~~The combining of contributions due for payment from two or more entities into one check or multiple checks will not be accepted.~~ Improperly paid contributions are considered as unpaid. ~~Upon the request of the employer, IPERS may grant a waiver of the requirement which prohibits the combining of contributions. A single entity which has several accounts will be required to report all wages under one main account effective January 1, 1995.~~

ITEM 2. Amend subrule 21.6(7) as follows:

21.6(7) Substitute forms may be used if they meet all the IPERS reporting requirements ~~and the employing unit receives advance approval from IPERS.~~

ITEM 3. Amend subrule 21.6(8) as follows:

21.6(8) ~~Magnetic tape reporting may be used by an employer after submitting a written request to IPERS. When the request is received, IPERS will send the employer a copy of the specifications for this type of reporting. Employers reporting wages for 50 or more members in a quarter must submit these wages via magnetic media (tape, floppy diskette or cartridge). Noncompliance will result in an administrative charge of \$50 issued as a debit to the employer's account for each quarter of noncompliance.~~

ITEM 4. Amend paragraphs **21.6(9)"b," "c," and "e"** as follows:

b. Sheriffs, deputy sheriffs, and airport firefighters, effective ~~July 1, 2000~~ July 1, 2001.

(1) Member's rate—~~5.59%~~ 5.50%.

(2) Employer's rate—~~8.39%~~ 8.25%.

c. Members employed in a protection occupation, effective ~~July 1, 2000~~ July 1, 2001.

(1) Member's rate—~~5.90%~~ 6.20%.

PERSONNEL DEPARTMENT[581](cont'd)

(2) Employer's rate—~~8.86%~~ 9.29%.

e. Prior special rates are as follows:

Effective July 1, 1999 July 1, 2000, through June 30, 2000 June 30, 2001:

(1) Sheriffs, deputy sheriffs, and airport firefighters—member's rate—~~5.69%~~ 5.59%; employer's rate—~~8.54%~~ 8.39%.

(2) Protection occupation—member's rate—~~5.58%~~ 5.90%; employer's rate—~~8.38%~~ 8.86%.

ITEM 5. Amend subrule 21.8(1), introductory paragraph, as follows:

21.8(1) Refund formula. A member is eligible for a refund of the employee accumulated contributions ~~30 days after the member's last paycheck is issued from which IPERS contributions will be deducted as soon as practicable after the last date the member is considered an employee, provided that the employee has filed the required forms and has not returned to covered employment before the date the refund is paid.~~ Effective July 1, 1999, a vested member's refund shall also include a portion of the employer accumulated contributions. Refund amounts are determined as follows:

ITEM 6. Amend paragraph **21.8(1)“b,”** introductory paragraph, as follows:

b. Employer accumulated contributions. Effective July 1, 1999, IPERS shall also pay to vested members, in addition to the employee accumulated contributions, a refund of a portion of the employer accumulated contributions. The refundable portion shall be calculated by multiplying the employer accumulated contributions by the “service factor.” The “service factor” is a fraction, the numerator of which is the member's quarters of service and the denominator of which is the “applicable quarters.” The “applicable quarters” shall be 120 for regular members, ~~100~~ the “applicable years of service” under Iowa Code section 97B.49B(1)“b,” multiplied by four, for protection occupation members, and 88 for sheriffs, deputy sheriffs and airport firefighters. All quarters of service credit shall be included in the numerator of the service factor. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

ITEM 7. Adopt new subparagraph **21.8(1)“b”(4)** as follows:

(4) If the applicable quarters under paragraph 21.8(1)“b” for a member employed in a protection occupation change between the date a refund is calculated and the date of any supplemental refund to such a member, the supplemental refund shall be calculated using the applicable quarters in effect at the time the amount of the original refund was calculated.

ITEM 8. Amend paragraphs **21.8(4)“b”** and “e” as follows:

b. The last pay date the member is considered an employee and the date of the last paycheck from which IPERS will be deducted must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year. ~~The employee's “termination date” is the last date on which the employee was paid and certified by the employer on the IPERS refund application.~~ The applicant's signature must be notarized. Terminated employees must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered.

e. ~~Effective July 1, 2000, an employee is no longer required to be out of covered employment for 30 days before a refund application can be processed. However, an An employee must sever all covered employment for four months and cannot file an application after returning to covered employment, even if more than four months have elapsed since the original termination. If the employee returns to covered employment before four months have passed, the refund will be revoked and the amounts paid plus interest must be repaid to the system.~~

ITEM 9. Amend subparagraph **21.24(14)“a”(1)** as follows:

(1) For purchases completed prior to July 1, 2002, the cost for each quarter will be calculated using the methods set forth in paragraphs 21.24(2)“b” through “e.” of membership service made prior to July 1, 2002, the cost for each quarter shall be the total of all employer and employee contributions on the covered wages that would have been reported to the department under Iowa Code chapter 97B for the applicable period of service, divided by the total quarters covered by such period of service. No interest shall be charged in determining said amounts.

[Filed Emergency 10/26/01, effective 10/26/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1089B

PRESERVES, STATE ADVISORY BOARD FOR[575]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 465C.8, the State Preserves Advisory Board hereby amends Chapter 2, “Management of State Preserves,” Iowa Administrative Code.

This amendment rescinds the amendment of subrule 2.2(2) adopted August 31, 2001, published in the Iowa Administrative Bulletin on September 19, 2001, as **ARC 0942B**, and scheduled to become effective October 24, 2001, which was intended simply to revise an existing rule to conform to existing administrative practices. There were no public comments in response to the Notice of Intended Action published in the Iowa Administrative Bulletin on May 30, 2001, as **ARC 0712B**. However, since its adoption, the intent of the amendment has been questioned and the Board finds that clarification would be desirable. This action rescinding the amendment and restoring the prior language is accompanied by simultaneous Notice of Intended Action proposing a new subrule.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation before rescission of the amendment is unnecessary and would be impracticable and contrary to the public interest. Rescission of the amendment before its effective date will simply preserve the status quo until the public has had notice and an opportunity to comment on the simultaneous Notice of Intended Action published herein as **ARC 1088B**.

In compliance with Iowa Code section 17A.5(2)“b”(2), the Board finds that a benefit will be conferred on the public by making rescission of the amendment immediately effective.

PRESERVES, STATE ADVISORY BOARD FOR[575](cont'd)

tive upon filing with the Administrative Rules Coordinator because it will prevent the amendment from becoming effective before the Board has an opportunity to clarify the intent of the rule through a public rule-making process.

This amendment is intended to implement Iowa Code section 465C.8.

This amendment became effective October 23, 2001.

The following amendment is adopted.

Rescind subrule 2.2(2) and adopt in lieu thereof the following subrule:

2.2(2) Management and use. All rules for the management and use of a preserve shall be included in the articles of dedication. A specific management plan shall be attached to and made a part of the articles of dedication.

[Filed Emergency 10/23/01, effective 10/23/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1108B

ACCOUNTANCY EXAMINING
BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542C.3, the Accountancy Examining Board hereby adopts new Chapter 19, "Transitional Rules," Iowa Administrative Code.

These rules are adopted in 2001 to aid transitional planning for those persons holding certified public accountant (CPA) certificates, accounting practitioner (AP) licenses, or permits to practice issued in Iowa prior to July 1, 2002. Comprehensive new rules fully implementing the Iowa Accountancy Act of 2001 will be adopted in 2002.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

The Board adopted this chapter on October 24, 2001.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 19, 2001, as **ARC 0955B**. Since publication of the Notice, numerous nonsubstantive, corrective changes have been made. These revisions are intended to respond to concerns and comments received by the Board from constituent groups and the public.

This amendment is intended to implement Iowa Code chapter 542C and 2001 Iowa Acts, House File 451.

This amendment will become effective December 19, 2001.

The following new chapter is adopted.

CHAPTER 19
TRANSITIONAL RULES

193A—19.1(542C,79GA,HF451) Purpose. The Iowa Accountancy Act of 2001, 2001 Iowa Acts, House File 451, becomes effective July 1, 2002. Iowa Code chapter 542C is repealed effective July 1, 2002. These rules are intended to aid transitional planning for those persons holding CPA certificates, AP licenses, or permits to practice issued in Iowa prior to July 1, 2002. Comprehensive new rules fully implementing the Iowa Accountancy Act of 2001 will be adopted in 2002.

193A—19.2(542C,79GA,HF451) CPA certificates and permits to practice. 2001 Iowa Acts, House File 451, eliminates the distinction between CPA certificates and permits to practice. As of July 1, 2002, all persons holding CPA certificates may use the title "CPA" without the need for a separate individual permit to practice. CPAs wishing to perform attest services or use the title "CPA" in a firm name, however, may do so only within a CPA firm which holds a firm permit to practice.

19.2(1) Certificate holders deemed qualified. Persons holding CPA certificates issued in Iowa prior to July 1, 2002, are deemed to have satisfied the education, examination and experience qualifications for a CPA certificate under the Iowa Accountancy Act of 2001.

19.2(2) Certificates remain valid. CPA certificates issued prior to July 1, 2002, remain valid on and after July 1, 2002, if properly renewed and in good standing.

19.2(3) Biennial renewal. CPA certificates issued prior to July 1, 2002, will continue to be renewed on a biennial schedule:

a. CPA certificates held by persons whose last names begin with A-K expire on June 30, 2002, if not renewed on or

prior to June 30, 2002. The biennial renewal fee for the period between July 1, 2002, and June 30, 2004, is \$100.

b. CPA certificates held by persons whose last names begin with L-Z expire on June 30, 2003, if not renewed on or prior to June 30, 2003. The biennial renewal fee for the period between July 1, 2003, and June 30, 2005, is \$100.

19.2(4) Reinstating lapsed certificates. A CPA certificate which has lapsed may be restored to effective status at any time prior to July 1, 2002, upon the board's receipt of a proper application accompanied by a reinstatement fee of \$100 and a renewal fee of \$25 (persons whose last names begin with A-K) or \$50 (persons whose last names begin with L-Z). A person who fails to reinstate a lapsed CPA certificate prior to July 1, 2002, may reinstate on or after July 1, 2002, but in addition to payment of applicable renewal fees and a \$100 reinstatement fee, the applicant must satisfy continuing education requirements as described in subrule 19.4(3).

19.2(5) Continuing education. Commencing July 1, 2002, all CPA certificate holders who do not qualify for "inactive status," as defined in 2001 Iowa Acts, House File 451, section 6(3), are required to complete continuing education as a condition of certificate renewal. Continuing education requirements are described in rule 19.4(542C,79GA,HF451).

19.2(6) Peer review. Commencing July 1, 2002, CPA certificate holders who issue compilation reports other than through a CPA or LPA firm which holds a firm permit to practice are required to complete compilation peer review as a condition of certificate renewal. Peer review requirements are described in rule 19.5(542C,79GA,HF451).

19.2(7) Permits to practice phased out. As of July 1, 2002, the board will no longer issue or renew individual permits to practice as a CPA. Permits to practice will continue to be issued to CPA firms as described in subrule 19.2(9).

19.2(8) Attest services. CPA certificate holders who are responsible for supervising attest services or who sign or authorize someone to sign the accountant's attest report on the financial statements on behalf of a CPA firm must be qualified to perform attest services. The board is in the process of developing experience and competency standards for attest services. While additional methods of attaining proper qualification may accordingly be developed, CPAs holding an individual permit to practice will qualify as follows:

a. A person holding or having held an individual permit to practice as a CPA issued prior to July 1, 2002, will be deemed to qualify to perform attest services on and after July 1, 2002, in a CPA firm holding a firm permit to practice provided that appropriate continuing education is maintained as provided in subrule 19.4(4).

b. CPA certificate holders who are in the process of attaining the two years of full-time, supervised experience as required to hold an individual permit to practice will be deemed qualified to perform attest services if they fully satisfy the requirements outlined in 193A—9.8(542C) and thereafter maintain appropriate continuing education. Such experience must be attained in a CPA firm holding a firm permit to practice and under the supervision of a CPA in the following areas of practice:

(1) Application of a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records;

(2) Preparation of audit working papers covering the examination of the accounts usually found in accounting records;

(3) Planning of the program of audit work including the selection of the procedures to be followed;

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

(4) Preparation of written explanations and comments on the findings of the examinations and on the content of accounting records; and

(5) Preparation and analysis of financial statements together with explanations and notes thereon.

19.2(9) Firm permits to practice. Firm permits to practice are renewed annually and expire June 30, 2002. All firms must file an initial application for a firm permit to practice for the period beginning July 1, 2002.

a. Initial firm permits to practice will be issued for the period beginning July 1, 2002, and ending June 30, 2003.

b. Applications for initial firm permits to practice will be deemed timely if hand delivered or postmarked by July 31, 2002, and, if granted, be effective as of July 1, 2002. New application forms for firm permits to practice will be available by May 15, 2002, and may be filed prior to enactment of the new law.

c. CPA firms holding or having held firm permits to practice issued prior to July 1, 2002, are deemed to qualify for a firm permit to practice under the Iowa Accountancy Act of 2001.

d. Firm permits to practice will be renewed annually on a fiscal year ending June 30. The initial application fee will be \$50. The annual renewal fee will be \$50.

193A—19.3(542C,79GA,HF451) AP licenses and permits to practice. 2001 Iowa Acts, House File 451, creates a new license of licensed public accountant (LPA) to replace the current license of accounting practitioner (AP). Persons holding a license as an LPA may practice nonattest public accounting using the title "LPA" without the need for a separate individual permit to practice. LPAs wishing to use the title "LPA" in a firm name, however, may do so only within an LPA firm which holds a firm permit to practice.

19.3(1) AP license holders deemed qualified. Persons holding AP licenses in full force and effect on July 1, 2002, are deemed qualified to hold LPA licenses under the Iowa Accountancy Act of 2001.

19.3(2) Licenses remain valid. AP licenses issued prior to July 1, 2002, remain valid on and after July 1, 2002, if properly renewed and in good standing. Such licenses shall be treated for all purposes as LPA licenses and shall be renewed as LPA licenses. The board shall issue at no charge a replacement license reflecting the new LPA title and retaining the previously issued license number.

19.3(3) Biennial renewal. AP licenses issued prior to July 1, 2002, will be renewed as LPA licenses on a biennial schedule:

a. Licenses held by persons whose last names begin with A-K expire on June 30, 2002, if not renewed on or prior to June 30, 2002. The biennial renewal fee for the period between July 1, 2002, and June 30, 2004, is \$100.

b. Licenses held by persons whose last names begin with L-Z expire on June 30, 2003, if not renewed on or prior to June 30, 2003. The biennial renewal fee for the period between July 1, 2003, and June 30, 2005, is \$100.

19.3(4) Reinstating lapsed licenses. An AP license which has lapsed may be restored to effective status at any time prior to July 1, 2002, upon the board's receipt of a proper application accompanied by a reinstatement fee of \$100, prorated renewal fee, and evidence of completion of satisfactory continuing education. Persons who fail to reinstate a lapsed AP license prior to July 1, 2002, must reapply for an LPA license, pay applicable application and reinstatement fees, and satisfy continuing education requirements, but they will be deemed to be qualified for an LPA license.

19.3(5) Continuing education. Continuing education requirements applicable to a person holding an AP license shall remain applicable to a person holding an LPA license, unless the licensee qualifies for "inactive status" as defined in 2001 Iowa Acts, House File 451, section 8. In addition, LPAs who issue compilation reports shall complete compilation continuing education as provided in subrule 19.4(2).

19.3(6) Peer review. Commencing July 1, 2002, LPA license holders who issue compilation reports other than through a CPA firm or LPA firm which holds a firm permit to practice are required to complete compilation peer review as a condition of license renewal. Peer review requirements are described in rule 19.5(542C,79GA,HF451).

19.3(7) Permits to practice phased out. As of July 1, 2002, the board will no longer issue or renew individual permits to practice. Permits to practice will continue to be issued to LPA firms as described in subrule 19.3(8).

19.3(8) Firm permits to practice. Firm permits to practice are renewed annually and expire June 30, 2002. All firms must file an initial application for a firm permit to practice for the period beginning July 1, 2002.

a. Initial firm permits to practice will be issued for the period beginning July 1, 2002, and ending June 30, 2003.

b. Applications for initial firm permits to practice will be deemed timely if hand delivered or postmarked by July 31, 2002, and, if granted, be effective as of July 1, 2002. New application forms for firm permits to practice will be available by May 15, 2002, and may be filed prior to enactment of the new law.

c. LPA firms holding or having held firm permits to practice issued prior to July 1, 2002, are deemed to qualify for a firm permit to practice under the Iowa Accountancy Act of 2001.

d. Firm permits to practice will be renewed annually on a fiscal year ending June 30. The initial application fee will be \$50. The annual renewal fee will be \$50.

193A—19.4(542C,79GA,HF451) Continuing education. Commencing July 1, 2002, all persons holding CPA certificates or LPA licenses must complete, as a condition of certificate or license renewal, 120 hours of qualifying continuing education as outlined in rule 193A—10.5(542C) within the three-year period ending on the December 31 preceding the application for certificate or license renewal. This requirement mirrors the continuing education required as a condition to renew an individual CPA or AP permit to practice.

19.4(1) Transition period for persons holding CPA certificates. A substantial number of persons holding CPA certificates have not previously been subject to continuing education requirements because they have not held a permit to practice. In light of that circumstance, CPA certificate holders will be deemed to be in compliance with continuing education requirements if they have completed qualifying continuing education in the amounts and within the time periods stated in the following chart:

Biennial renewal period ending on:	Last names begin with:	Time period within which continuing education shall be completed:	Required number of qualifying hours:
6/30/03	L-Z	1/1/01-12/31/02	40
6/30/04	A-K	1/1/01-12/31/03	80
6/30/05	L-Z	1/1/02-12/31/04	120
6/30/06	A-K	1/1/03-12/31/05	120

19.4(2) Commencing with the biennial renewal period ending June 30, 2003, in each biennial period in which com-

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

pilation reports are issued, all CPA certificate holders or LPA license holders who are responsible for supervising compilation services or who sign or authorize someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of seven hours of continuing education devoted to statements on standards for accounting and review services (SSARS). When required, the SSARS continuing education shall be completed within the two-year period ending on the December 31 preceding the application for certificate or license renewal.

19.4(3) Lapsed certificates or licenses. In addition to any other applicable requirement, a person filing an application between July 1, 2002, and June 30, 2004, to reinstate a CPA certificate which was initially issued prior to July 1, 2002, shall complete qualifying continuing education as follows: The applicant must have completed either 120 hours of qualifying education in the three years preceding the date of the application, 80 hours of qualifying education in the two years preceding the date of the application, or 40 hours of qualifying education in the one year preceding the date of the application. After the application is granted, continuing education will be required as a condition of biennial renewal on the schedule outlined in subrule 19.4(1).

19.4(4) Special caution for CPAs performing attest services. CPAs performing attest services are cautioned that the minimum requirements for qualifying continuing education under this rule may or may not satisfy other standards applicable to the performance of attest services, such as "yellow book" standards applicable to government audits.

193A—19.5(542C,79GA,HF451) Peer review. Under the Iowa Accountancy Act of 2001, peer review is required as a condition of renewal for a CPA or LPA who issues compilation reports other than through a CPA firm or LPA firm which holds a permit to practice and as a condition of firm permit renewal for LPA firms which issue compilation reports and CPA firms which provide attest services or issue compilation reports.

19.5(1) Because of the expanded peer review requirements and the need for peer review programs to accommodate increased demand, persons or firms subject to peer review for the first time when the law changes on July 1, 2002, shall have until June 30, 2004, to complete their first peer review program.

19.5(2) Persons or firms which have already been subject to peer review prior to July 1, 2002, shall continue with the schedule outlined in 193A—Chapter 17.

19.5(3) Persons or firms which are initially issued a certificate, license or permit on or after July 1, 2002, or which become subject to peer review for the first time after June 30, 2002, due to changes in their practice shall complete peer review within 18 months of the initial engagement, as described in rule 193A—17.9(542C), or by June 30, 2004, whichever date is later.

19.5(4) Satisfactory completion of existing peer review programs for compilation services administered by the Iowa Society of Certified Public Accountants, the National Society of Accountants, or substantially similar peer review programs in Iowa or other states will satisfy the compilation peer review requirement.

193A—19.6(542C,79GA,HF451) "Safe harbor" language. Persons who do not hold a CPA certificate or LPA license and firms which do not hold a CPA or LPA firm permit to practice shall not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by CPAs or LPAs in reports on financial statements.

Pursuant to the Iowa Accountancy Act of 2001, 2001 Iowa Acts, House File 451, section 13(8), such persons or firms may use the following "safe harbor" language:

"I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

These rules are intended to implement Iowa Code chapter 542C and 2001 Iowa Acts, House File 451.

[Filed 10/26/01, effective 12/19/01]
[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1082B**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 11, "Certified School to Career Program," Iowa Administrative Code.

The amendments incorporate recent legislative revisions. The amendments add consortiums as an acceptable business/employer participant, eliminate the contribution requirement to a postsecondary fund for employer consortiums currently paying a participant's tuition as part of a stipend, expand allowable reimbursement expenses for consortium participation, and eliminate student participants' two-year postsecondary employment obligation. The amendments also designate how claims shall be submitted and allow for proration of refunds based upon availability of funds.

Notice of Intended Action was published in the Iowa Administrative Code on September 5, 2001, as **ARC 0916B**.

A public hearing to receive comments about the amendments was held on October 2, 2001. No comments concerning the proposed amendments were received. The implementation sentence has been amended.

The Iowa Department of Economic Development Board adopted these amendments on October 18, 2001.

These amendments will become effective on December 19, 2001.

These amendments are intended to implement Iowa Code sections 15.362, 15.364 and 15.365 as amended by 2001 Iowa Acts, House File 695.

The following amendments are adopted.

ITEM 1. Amend rule **261—11.2(15)** by amending the definition of "employer" and adopting a new definition of "employer's expenditures" as follows:

"Employer" means the person or organization *or a consortium of two or more employers* that agrees to provide the paid internship; provide a mentor for the on-the-job training component of the education program; participate in curriculum development that identifies knowledge, skills and behaviors needed in the workplace; oversee the trust account

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

and payroll expenditure fund; and employ the participant for a minimum of two years after completion of the participant's postsecondary education.

"Employer's expenditures" means 20 percent of the employer's costs for nonpaid participant experience expenses provided for in the certified program agreement which may include instructor expenses, instructional materials, up to one \$150,000 of training facility costs per program, and project coordination.

ITEM 2. Amend subrule 11.3(8) as follows:

11.3(8) Additional amount to be held in trust for postsecondary tuition.

a. In addition to the base wage paid to the participant, the employer shall pay an additional sum to be held in trust and applied toward the participant's postsecondary education required for completion of the certified program. The additional amount must be not less than an amount determined by the department to be sufficient to provide payment of tuition expenses toward completion of not more than two academic years of the required postsecondary education component of the certified program at an Iowa community college or an Iowa public or private college or university or through a registered apprenticeship program. The additional amount specified in this paragraph may include other related postsecondary educational expenses at the discretion of the employer. *An employer that is a consortium of two or more employers shall not be subject to the requirements of this paragraph, provided the employers are currently paying a participant's tuition as part of a stipend paid by the employer to a participant and the stipend can be identified as such.*

b. to e. No change.

ITEM 3. Rescind and reserve subrules **11.3(9)** and **11.3(10)**.

ITEM 4. Amend subrule 11.4(1) as follows:

11.4(1) Eligible Iowa payroll expenditure refund. An Iowa employer who employs a participant in a certified school to career program may claim a refund of 20 percent of the employer's payroll expenditures for each participant in the certified program *or 20 percent of the employer's expenditures for nonpaid participant experience expenses provided for in the certified program agreement which may include instructor expenses, instructional materials, up to \$150,000 of training facility costs per program, and project coordination.* The refund is limited to the first 400 hours of payroll *or nonpaid participant experience* expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant. In order to receive the refund, an employer must submit a ~~finalized certified program work site agreement claim~~ to the department ~~and receive approval for the program prior to the participant's beginning work for the business by July 1 of the following calendar year. After July 1 the department will review claims for compliance and make a payment determination. Payment may be prorated based upon availability of funds.~~

ITEM 5. Amend rule **261—11.4(15)**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 15.362, ~~and 15.363 and 15.365~~ as amended by ~~2000~~ 2001 Iowa Acts, ~~chapter 1013 House File 695,~~ and Iowa Code

Supplement section 15.364 as amended by 2000 Iowa Acts, chapter 1013.

[Filed 10/22/01, effective 12/19/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1083B

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 168, "Additional Program Requirements," Iowa Administrative Code.

Pursuant to 2001 Iowa Acts, Senate File 81, additional points may be awarded, or additional consideration given, to applicants for assistance for economic development-related purposes if:

(1) The business or individual is located in a brownfield area or a blighted area, or

(2) The area is located in a city or county that meets the distress criteria under the enterprise zone program.

The amendments incorporate the statutory revision into the Department's rules and provide for the awarding of supplementary credit of up to ten points.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 5, 2001, as **ARC 0917B**.

A public hearing was held on October 5, 2001. No comments were received. The adopted amendments are identical to those proposed under Notice.

These amendments are intended to implement Iowa Code section 15A.1 as amended by 2001 Iowa Acts, Senate File 81.

These amendments will become effective December 19, 2001.

The following amendments are adopted.

ITEM 1. Reserve rules **261—168.92** to **261—168.100** in Division II, "Environmental Criteria."

ITEM 2. Amend 261—Chapter 168 by adopting the following **new** Division III:

DIVISION III

BROWNFIELD AREAS, BLIGHTED AREAS

AND DISTRESSED AREAS

261—168.101(79GA,SF81) Purpose. The department will give additional consideration or additional points in the application of rating or evaluation criteria in providing a grant, loan, or other financial assistance for economic development-related purposes provided the person, or a business for whose benefit the financial assistance is to be provided, meets the criteria outlined in rule 261—168.102(79GA,SF81).

261—168.102(79GA,SF81) Criteria. To be eligible to receive the extra credit points, the person or business shall be located in an area that meets one of the following criteria:

1. The area is a brownfield site as defined in Iowa Code section 15.291.

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

2. The area is a blighted area as defined in Iowa Code section 403.17.

3. The area is located in a city or county that meets the distress criteria provided under the enterprise zone program in Iowa Code section 15E.194, subsection 1 or 2.

261—168.103(79GA,SF81) Supplementary credit. Unless prohibited by state or federal law or rule, department programs using a point system will provide supplementary credit of up to a maximum of ten points for applicants meeting the requirements of this division.

These rules are intended to implement Iowa Code section 15A.1 as amended by 2001 Iowa Acts, Senate File 81.

[Filed 10/22/01, effective 12/19/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1094B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby rescinds Chapters 1 to 7 and adopts new Chapter 1, "Administration"; Chapter 2, "Fees and Charges"; Chapter 3, "Application and Renewal Process"; Chapter 4, "Engineering Licensure"; Chapter 5, "Land Surveying Licensure"; Chapter 6, "Seal and Certificate of Responsibility"; Chapter 7, "Professional Development"; Chapter 8, "Professional Conduct of Licensees"; Chapter 9, "Complaints, Investigations and Disciplinary Action"; Chapter 10, "Peer Review"; Chapter 11, "Minimum Standards for Property Surveys"; Chapter 12, "Minimum Standards for U.S. Public Land Survey Corner Certificates"; and Chapter 13, "Civil Penalties for Unlicensed Practice," Iowa Administrative Code.

This amendment is intended to reformat, clarify, and simplify the rules governing the licensing and regulation of the professions of engineering and land surveying in accordance with Executive Order Number 8.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 2001, as **ARC 0864B**.

No public comment was received on this amendment. This amendment is identical to the Notice of Intended Action.

This amendment is intended to implement Iowa Code chapters 542B, 354, 355 and 272C.

This amendment will become effective January 1, 2002.

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 1 to 13] is being omitted. These rules are identical to those published under Notice as **ARC 0864B**, IAB 8/8/01.

[Filed 10/24/01, effective 1/1/02]

[Published 11/14/01]

[For replacement pages for IAC, see IAC Supplement 11/14/01.]

ARC 1125B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of 2001 Iowa Acts, Senate File 276, section 32, the Insurance Division hereby amends Chapter 10, "Licensing of Insurance Producers," Iowa Administrative Code.

The amendment rescinds Division I and adopts a new division. The new division is intended to conform the administrative rules to new Iowa Code chapter 522B which was enacted in 2001 Iowa Acts, Senate File 276.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 19, 2001, as **ARC 0948B**. A public hearing was held on October 11, 2001. One comment was received which requested clarification of the rule on letters of certification. No other comments were received. The amendment is identical to that published under Notice.

This amendment shall become effective January 1, 2002.

These rules are intended to implement 2001 Iowa Acts, Senate File 276.

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 10, division I] is being omitted. These rules are identical to those published under Notice as **ARC 0948B**, IAB 9/19/01.

[Filed 10/26/01, effective 1/1/02]

[Published 11/14/01]

[For replacement pages for IAC, see IAC Supplement 11/14/01.]

ARC 1104B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 516E.7, the Insurance Division rescinds Chapter 23, "Motor Vehicle Service Contracts," Iowa Administrative Code, and adopts a new Chapter 23 with the same title.

The Iowa Motor Vehicle Service Contracts Act (the Act) was transferred from Iowa Code chapter 321I to Iowa Code chapter 516E pursuant to 2000 Acts, chapter 1147, section 15. New Chapter 23 deletes unnecessary restatements of Iowa Code chapter 516E and clarifies existing provisions. Pursuant to Iowa Code section 516E.10(6), rule 191—23.11(516E) adopts national standards for rebuilt parts used to repair motor vehicles covered by a motor vehicle service contract. The adopted rule recognizes the vehicle manufacturers' performance specifications and the minimum standards set by the Federal Trade Commission provisions set forth in Part 20 of Title 16, Section 20.3(b), regarding the process of rebuilding a part, as the applicable national standards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 27, 2001, as **ARC 0750B**. No written or oral comments were received.

One nonsubstantive change from the Notice has been made. In the first sentence of 191—23.10(516E), the word

INSURANCE DIVISION[191](cont'd)

"make" was changed to "cause." The sentence now reads as follows: "A motor vehicle service contract provider shall not cause or permit any unfair discrimination between individuals of the same class in the rates charged for any contract, in the benefits received thereunder, in any of the terms or conditions of such contract, or in any other manner."

This amendment shall become effective December 19, 2001.

This amendment is intended to implement Iowa Code chapter 516E.

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 23] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0750B**, IAB 6/27/01.

[Filed 10/26/01, effective 12/19/01]
[Published 11/14/01]

[For replacement pages for IAC, see IAC Supplement 11/14/01.]

ARC 1127B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue and Finance hereby amends Chapter 13, "Permits," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Chapter 19, "Sales and Use Tax on Construction Activities," Chapter 28, "Definitions," Chapter 31, "Receipts Subject to Use Tax," and Chapter 32, "Receipts Exempt from Use Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIV, Number 6, page 390, on September 19, 2001, as **ARC 0944B**.

The 2001 session of the legislature enacted a variety of changes in the Iowa sales and use tax laws which make it necessary to amend the rules which interpret those laws.

Item 1 amends the appropriate rule to allow a business which is changing its location to use the same sales tax permit at both the old and new locations.

Item 2 amends a rule applicable to communication services.

Item 3 rescinds a right which building contractors had to claim a refund for additional tax paid as a result of the increase, in 1992, in the sales and use tax rates.

Item 4 adopts a new rule to define the term "retailer maintaining a place of business in this state" to include a lessor with only leased property in Iowa.

Item 5 adopts a new rule to reflect the fact that communication service is now subject to use tax.

Item 6 adopts a new exemption which excludes from use tax any service exempt from sales tax.

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

These amendments will become effective December 19, 2001, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 422.53 as amended by 2001 Iowa Acts, House File

715, section 9; Iowa Code section 422.47 as amended by 2001 Iowa Acts, House File 715, section 8; Iowa Code subsection 423.1(10) as amended by 2001 Iowa Acts, House File 736, section 5; Iowa Code subsection 423.1(12) as amended by 2001 Iowa Acts, House File 736, section 6; and Iowa Code subsection 423.4(4) as amended by 2001 Iowa Acts, House File 715, section 17.

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 [13.10, 18.20, 19.2, 28.4, 31.7, 32.2] is being omitted. These amendments are identical to those published under Notice as **ARC 0944B**, IAB 9/19/01.

[Filed 10/26/01, effective 12/19/01]
[Published 11/14/01]

[For replacement pages for IAC, see IAC Supplement 11/14/01.]

ARC 1128B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby amends Chapter 15, "Determination of a Sale and Sale Price," Chapter 16, "Taxable Sales," Chapter 17, "Exempt Sales," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Chapter 26, "Sales and Use Tax on Services," Chapter 31, "Receipts Subject to Use Tax," Chapter 32, "Receipts Exempt from Use Tax," Chapter 34, "Vehicles Subject to Registration," Chapter 86, "Inheritance Tax," and Chapter 89, "Fiduciary Income Tax," and adopts Chapter 202, "Accounting Procedures of Public Impact," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIV, Number 6, page 392, on September 19, 2001, as **ARC 0936B**.

Items 1 through 36 set forth amendments that either clarify existing rules or provide new rules which implement existing Department policies. These amendments are the result of survey responses received by the Department pursuant to the Governor's Executive Orders and based on in-depth, in-house review of rules and survey responses from Department employees.

The following is a summary of the amendments:

Item 1 rescinds rule 701—15.7(422,423), which is an obsolete rule regarding trading stamps.

Item 2 amends rule 701—15.13(422,423) by adopting a new paragraph explaining what types of charges may be included as freight and transportation charges.

Item 3 amends subrule 15.19(5) to correct two citations.

Item 4 amends rule 701—15.19(422,423) by adopting new subrule 15.19(6) regarding three-way trade-in transactions.

Item 5 amends subrule 16.4(1) clarifying the time period that this subrule governs.

Item 6 amends rule 701—16.11(422,423) providing examples for clarification.

Item 7 amends the introductory paragraph of rule 701—17.8(422) clarifying that the exemption for sales in interstate commerce applies.

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

Item 8 amends rule 701—18.12(422,423) to reference another rule governing poultry.

Item 9 amends subrule 18.20(1) adopting information regarding the taxability of paging services.

Item 10 amends rule 701—18.40(422,423) clarifying that the 31-day rental requirement cannot be accumulated.

Item 11 amends rule 701—26.1(422) by adopting subrule 26.1(2) to provide an explanation regarding taxable and non-taxable services.

Item 12 amends rules 701—26.5(422) and 701—26.6(422) by adopting a new paragraph to explain the taxability of disposal fees charged in connection with a service.

Item 13 amends subrule 26.18(2) by adopting a new paragraph “e” regarding the taxability of deposits.

Item 14 amends rule 701—26.28(422) to clarify what is considered to be a “machine” for the purpose of this rule.

Item 15 amends rule 701—26.43(422) to state that one-way paging services are not included as taxable telephone answering services.

Item 16 amends rule 701—26.61(422) to amend a definition and examples of the term “lawn.”

Item 17 rescinds and reserves rule 701—26.70(422,423), which is an outdated rule regarding lobbying.

Item 18 amends subrule 26.71(1) to remove nonprofit hospitals licensed under Iowa Code chapter 135B as being taxable.

Item 19 amends rule 701—31.4(423), numbered paragraph “5,” to implement the five-month lease requirement for leased property.

Items 20 and 21 amend subrules 31.5(1) and 31.5(2) to rearrange the text of these subrules for the purpose of clarification.

Item 22 amends rule 701—32.10(423) to reference another rule regarding vehicles in interstate commerce.

Item 23 amends subrule 34.1(3) to provide that document fees are not part of the taxable price of a vehicle.

Item 24 amends rule 701—34.7(423) which governs the titling of used foreign vehicles by dealers.

Item 25 amends 701—Chapter 34 to adopt new rules 701—34.14(423) through 701—34.21(423) regarding the taxation of vehicles in various situations. The first is rule 701—34.14(423), refunds of use tax on the purchase of a vehicle. This item also adopts rule 701—34.15(423), registration by manufacturers, rule 701—34.16(423), rebates, rule 701—34.17(321,423), repossession of a vehicle, rule 701—34.18(423), federal excise tax, rule 701—34.19(423), claiming an exemption from Iowa use tax, rule 701—34.20(423), affidavit forms, and rule 701—34.21(423), insurance companies.

Item 26 amends subrule 86.1(1) by adopting the definition of the term “unknown heirs.”

Item 27 amends subrule 86.1(6) by adopting joint account reporting requirements.

Item 28 amends paragraph 86.2(2)“d” by adopting two new unnumbered paragraphs regarding the limitation on step-relationships for exemption and the inheritance tax rate schedule.

Item 29 amends paragraph 86.5(7)“d” clarifying the taxable status of gifts made within three years prior to death.

Item 30 amends paragraph 86.5(11)“b” to clarify the requirements necessary for a valid Iowa qualified terminable interest election.

Items 31 and 32 amend rule 701—86.11(450) by adopting new subrules 86.11(6) and 86.11(7) which provide an explanation for valuation of growing crops owned by the decedent and an explanation for valuation of cash rent farm leases, respectively.

Item 33 amends subrule 86.14(9) to provide an explanation regarding the posting of bonds in a deferred estate.

Item 34 amends rule 701—86.14(450) by adopting subrule 86.14(10) regarding credit for prior transfers.

Item 35 amends rule 701—89.3(422) by adopting a new subrule 89.3(3) regarding the taxation of a part-year trust.

Item 36 adopts new 701—Chapter 202, “Accounting Procedures of Public Impact.” This chapter sets forth sections of the Department’s “Accounting and Procedures Manual” that impact the public concerning the payment and collection of money by the Department for items such as travel expenses, claims, taxes, vendor issues, and contracting.

Two changes have been made to the Notice of Intended Action. The first is a change in Item 4. The wording in subrule 15.19(6) was changed to clarify the three-way trade-in transaction. The reference to the “same” vehicle in the introductory paragraph was changed to “another” vehicle.

The introductory paragraph now reads as follows:

“15.19(6) Three-way trade-in transactions. In a three-way transaction, the agreement provides that a lessee sells to a third-party dealer a vehicle (or other tangible personal property) which the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.”

The second change was made in Item 33. In subrule 86.14(9), in the first sentence of the new paragraph, the verb “must” in the phrase “a bond must be filed” was changed to “may have to be filed.”

The paragraph now reads as follows:

“If the tax on an estate is deferred, a bond may have to be filed with the proper clerk of the district court. This bond must remain effective until the tax on the deferred estate is paid. Failure to maintain or properly renew the bond will result in the bond’s being declared forfeited, and the amount collected. For additional details regarding obtaining a bond, see Iowa Code sections 450.49 and 450.50.”

These amendments will become effective December 19, 2001, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 422, 423 and 450 and Executive Order Number 8.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 15 to 18, 26, 31, 32, 34, 86, 89; Ch 202] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0936B**, IAB 9/19/01.

[Filed 10/26/01, effective 12/19/01]

[Published 11/14/01]

[For replacement pages for IAC, see IAC Supplement 11/14/01.]

ARC 1098B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on October 24, 2001, adopted Chapter 181, "Statewide Standard for Permitting Certain Implements of Husbandry," Iowa Administrative Code.

Notice of Intended Action for this rule was published in the September 19, 2001, Iowa Administrative Bulletin as **ARC 0932B**.

Iowa Code subsection 321.463(4) requires the Department to develop a statewide standard for the issuance of a permit by a local authority for operation over a bridge of a fence-line feeder, grain cart, tank wagon or tracked implement of husbandry with a weight in excess of the weights allowed in Iowa Code chapter 321. This new rule implements this requirement by requiring a structural evaluation of the bridge.

This rule does not provide for waivers because issuance of permits is at the discretion of local authorities.

This rule is identical to the one published under Notice of Intended Action.

This rule is intended to implement Iowa Code sections 321.1, 321.463(4), and 321.471.

This rule will become effective December 19, 2001.
Rule-making action:

Adopt the following **new** chapter:

CHAPTER 181**STATEWIDE STANDARD FOR PERMITTING
CERTAIN IMPLEMENTS OF HUSBANDRY****761—181.1(321) Statewide standard.**

181.1(1) A local authority may issue a special permit, based on this rule, allowing the operation over a bridge within its jurisdiction of a fence-line feeder, grain cart, tank wagon or tracked implement of husbandry with a weight in excess of the weights allowed under Iowa Code chapter 321.

181.1(2) A local authority shall evaluate a bridge according to section 6 of the American Association of State and Highway Transportation Officials (AASHTO) Manual for Condition Evaluation of Bridges, Second Edition (2000), as revised by the 2001 Interim Revisions. The operating level shall be used for the evaluation of the bridge with only one fence-line feeder, grain cart, tank wagon or tracked implement of husbandry on the bridge at a time. The live load to be used in the analysis for permit decisions should be the actual vehicle crossing the bridge, together with an impact factor in accordance with section 3 of the AASHTO Standard Specifications for Highway Bridges, Sixteenth Edition (1996), as revised by the 1997, 1998, 1999 and 2000 Interim Revisions.

181.1(3) A local authority is not liable for damage to any vehicle operating within the terms of a permit the local authority issues under this rule, or to the vehicle's cargo, if the local authority imposes weight limits on a bridge specified in the permit subsequent to the issuance of the permit. The weight limits are effective when signs giving notice of the limits are erected.

181.1(4) The AASHTO publications may be ordered from the Web site www.transportation.org. They may be inspected at the department's office of bridges and structures.

This rule is intended to implement Iowa Code sections 321.1, 321.463(4) and 321.471.

[Filed 10/24/01, effective 12/19/01]

[Published 11/14/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/14/01.

ARC 1097B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 328.12, the Department of Transportation, on October 24, 2001, adopted amendments to Chapter 717, "General Aviation Airport Infrastructure Program," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the September 19, 2001, Iowa Administrative Bulletin as **ARC 0930B**.

These amendments:

- Change the title of the chapter.
- Update the chapter to reflect the new office name and telephone number.
- Make editorial changes for clarity and remove unnecessary language.
- Clarify which airports are eligible.
- Add a safety-related facility relocation as an eligible project activity.
- Create consistency between other administrative rules that serve the same customers.
- Make changes concerning the selection of projects. Selection will be based on needed economic impact and will be more consistent with the new Aviation System Plan.
- Remove language that is placed in the contract agreement.
- Amend the implementation clause for the chapter.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code chapter 328.

These amendments will become effective December 19, 2001.

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 Ch 717] is being omitted. These amendments are identical to those published under Notice as **ARC 0930B**, IAB 9/19/01.

[Filed 10/24/01, effective 12/19/01]

[Published 11/14/01]

[For replacement pages for IAC, see IAC Supplement 11/14/01.]

ARC 1093B**WORKFORCE DEVELOPMENT
DEPARTMENT[871]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 23, "Employer's Contribution and Charges," and Chapter 24, "Claims and Benefits," Iowa Administrative Code.

These amendments incorporate changes mandated by the 79th General Assembly and a federally mandated change in the definition of "construction."

Notice of Intended Action was published in the September 19, 2001, Iowa Administrative Bulletin as **ARC 0950B**. These amendments are identical to those published under Notice.

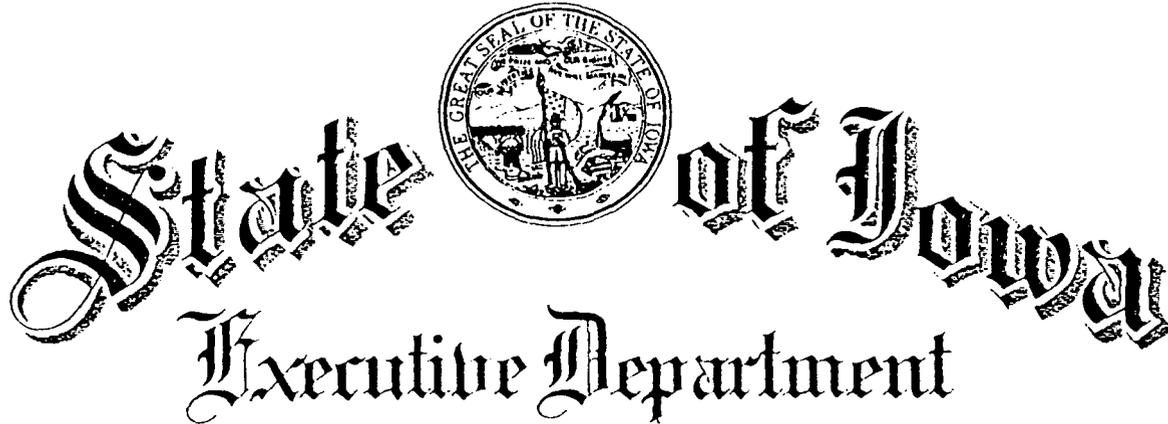
These amendments are intended to implement Iowa Code sections 96.7(2)"c"(1) and (2), and 2001 Iowa Acts, Senate Files 418 and 98.

These amendments will become effective on December 19, 2001.

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 23, 24] is being omitted. These amendments are identical to those published under Notice as **ARC 0950B**, IAB 9/19/01.

[Filed 10/24/01, effective 12/19/01]
[Published 11/14/01]

[For replacement pages for IAC, see IAC Supplement 11/14/01.]

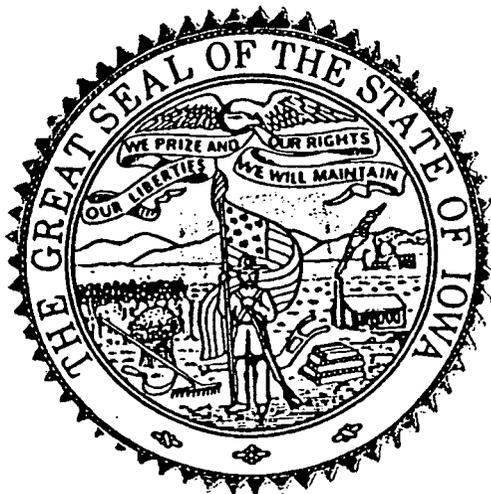


IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** EXECUTIVE ORDER NUMBER TWENTY-THREE**

- WHEREAS, over the past ten days, the bacteria associated with Anthrax has been discovered in samples taken from three individuals employed in one building located in Boca Raton, Florida; and
- WHEREAS, medical personnel have been unable to determine the manner in which the three people contracted the infection; and
- WHEREAS, federal officials are currently investigating the infections to determine where and how the bacteria was introduced, and whether there is a connection between the contamination and the terrorist attacks launched against this country on September 11, 2001; and
- WHEREAS, laboratories across the country maintain various strains of Anthrax for study and research; and
- WHEREAS, several laboratories in the State of Iowa possess strains of Anthrax for study and research; and
- WHEREAS, strict security protocols are being developed to safeguard the stock of Anthrax possessed by Iowa laboratories; and
- WHEREAS, the safety concerns of Iowans have been heightened, in the aftermath of September 11th, by reports of possible bio-terrorist attacks; and
- WHEREAS, precautionary measures taken ensure the secure security of biological agents used in Iowa laboratories for study and research would promote the health, safety, welfare, and security of Iowa residents:

NOW, THEREFORE, I Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and Constitution of the State of Iowa do hereby order the Adjutant General of the Iowa National Guard to call sufficient National Guard personnel to provide a security presence at designated Iowa laboratories. The laboratories designated for a security presence under this Order shall only be those facilities that possess a sufficient stock of biological agents that can be easily utilized for a widespread biological attack. The security presence shall remain in place at designated laboratories until the Director for the Iowa Department of Emergency Management has approved at the laboratory's security protocol.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 12th day of October, in the year of our Lord two thousand one.



 THOMAS J. VILSACK
 GOVERNOR

ATTEST:



 CHESTER J. CULVER
 SECRETARY OF STATE
 by *J. Klaassen, Deputy*

*** SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL**

THOMAS J. MILLER

July through September, 2001

APPROPRIATIONS; COUNTIES

Transfer from special fund for unrelated program. 2001 Iowa Acts, 79th G.A., ch. ____, § ____ (S.F. 65); Iowa Code §§ 25B.2, 455E.11 (2001). The General Assembly in Senate File 65 can divert money from the groundwater protection fund to the Low-Income Home Energy Assistance Program before the end of the fiscal year as long as the diversion impairs no contractual obligation. The State Mandates Act, which may excuse local entities from paying administrative fines or penalties levied by the State, does not apply to a legislative scheme in which the State provides financial benefits to local entities that achieve waste-reduction goals. (Kempkes to Jackson, Des Moines County Attorney, 9-6-01) #01-9-1

CONSTITUTIONAL LAW; CITIES

Home inspections. Iowa Const. art. III, § 38A (amend. 25); Iowa Const. art. I, § 6 (1857); Iowa Code § 364.1 (2001). Cities have home rule authority to pass ordinances requiring home inspections only for homes sold on contract. Such an ordinance would not, on its face, violate constitutional guarantees or equal protection, even if it only applied to persons or entities selling a minimum number of homes per year on contract. (Kempkes to Deluhery, State Senator, 9-20-01) #01-9-2

EMINENT DOMAIN; MUNICIPALITIES; SCHOOLS

City condemning school property. Iowa Const. art. IX (2nd part), § 1 (1857); Iowa Code §§ 6A.4, 297.1, 306.2, 306.19 (2001). Absent a clear showing of fraud, bad faith, or arbitrary abuse of discretion, a city may condemn property owned by a school district to use as right-of-way for a street. (Kempkes to McKean, State Senator, 7-31-01) #01-7-1(L)

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

PRSRT STD
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
