



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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PUBLIC SAFETY DEPARTMENT[661]
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Schedule for Rule Making 1997

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. 13 '96	Jan. 1	Jan. 21	Feb. 5	Feb. 7	Feb. 26	Apr. 2	June 30
Dec. 27 '96	Jan. 15	Feb. 4	Feb. 19	Feb. 21	Mar. 12	Apr. 16	July 14
Jan. 10	Jan. 29	Feb. 18	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
Jan. 24	Feb. 12	Mar. 4	Mar. 19	Mar. 21	Apr. 9	May 14	Aug. 11
Feb. 7	Feb. 26	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 21	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sept. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sept. 22
Mar. 21	Apr. 9	Apr. 29	May 14	May 16	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	June 27	July 16	Aug. 20	Nov. 17
May 16	June 4	June 24	July 9	July 11	July 30	Sept. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sept. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
June 27	July 16	Aug. 5	Aug. 20	Aug. 22	Sept. 10	Oct. 15	Jan. 12 '98
July 11	July 30	Aug. 19	Sept. 3	Sept. 5	Sept. 24	Oct. 29	Jan. 26 '98
July 25	Aug. 13	Sept. 2	Sept. 17	Sept. 19	Oct. 8	Nov. 12	Feb. 9 '98
Aug. 8	Aug. 27	Sept. 16	Oct. 1	Oct. 3	Oct. 22	Nov. 26	Feb. 23 '98
Aug. 22	Sept. 10	Sept. 30	Oct. 15	Oct. 17	Nov. 5	Dec. 10	Mar. 9 '98
Sept. 5	Sept. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '98
Sept. 19	Oct. 8	Oct. 28	Nov. 12	Nov. 14	Dec. 3	Jan 7 '98	Apr. 6 '98
Oct. 3	Oct. 22	Nov. 11	Nov. 26	Nov. 28	Dec. 17	Jan. 21 '98	Apr. 20 '98
Oct. 17	Nov. 5	Nov. 25	Dec. 10	Dec. 12	Dec. 31	Feb. 4 '98	May 4 '98
Oct. 31	Nov. 19	Dec. 9	Dec. 24	Dec. 26	Jan. 14 '98	Feb. 18 '98	May 18 '98
Nov. 14	Dec. 3	Dec. 23	Jan. 7 '98	Jan. 9 '98	Jan. 28 '98	Mar. 4 '98	June 1 '98
Nov. 28	Dec. 17	Jan. 6 '98	Jan. 21 '98	Jan. 23 '98	Feb. 11 '98	Mar. 18 '98	June 15 '98
Dec. 12	Dec. 31	Jan. 20 '98	Feb. 4 '98	Feb. 6 '98	Feb. 25 '98	Apr. 1 '98	June 29 '98
Dec. 26	Jan. 14 '98	Feb. 3 '98	Feb. 18 '98	Feb. 20 '98	Mar. 11 '98	Apr. 15 '98	July 13 '98

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
26	Friday, May 30, 1997	June 18, 1997
1	Friday, June 13, 1997	July 2, 1997
2	Friday, June 27, 1997	July 16, 1997

PLEASE NOTE:

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

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

PUBLICATION PROCEDURES

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

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

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dBase	MultiMate	Wang (TWP)
DCA/FFT	Navy DIF	Windows Write
DCA/RFT	Office Writer	Word for Windows 1.x, 2.0, 6.0
DIF	Paradox	WordPerfect 4.2, 5.x, 6.0
Display Write 4	Peach Text	WordStar
Enable 1.x, 2.x, 4.x	Professional Write	WordStar 2000 ver 1.0, 3.0
Excel 3.0, 4.0, 5.0	Rich Text Format	XyWrite III, Plus
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Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, June 10, 1997, at 10 a.m. and Wednesday, June 11, 1997, at 9 a.m. in Senate Committee Room 22, State Capitol. The following rules will be reviewed:

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural lime regulation, 43.25 to 43.39, Filed ARC 7225A 5/7/97
Weights and measures, 85.39, Notice ARC 7226A 5/7/97

BLIND, DEPARTMENT FOR THE[111]

Administrative organization and procedures, 1.3, 1.4, Notice ARC 7221A 5/7/97
Vocational rehabilitation services, ch 10, Notice ARC 7222A 5/7/97

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure—specialty degree, 11.3(2)"j" and "k," Filed ARC 7238A 5/21/97
Examinations, 12.1(6), 12.2(1)"b," Filed ARC 7235A 5/21/97
Dental radiography lapsed certificate of qualification, 22.8(6) to 22.8(8), 22.9(4), 22.12,
Filed ARC 7237A 5/21/97
Continuing education credit for CD-ROM presentations, 25.3(4)"d" and "e," Filed ARC 7236A 5/21/97

EDUCATION DEPARTMENT[281]

Accreditation of area education agency programs and services, ch 72, Notice ARC 7216A 5/7/97

ELDER AFFAIRS DEPARTMENT[321]

Assisted living programs, ch 27, Filed ARC 7254A 5/21/97

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Regents tire-derived fuel program, ch 216, Filed ARC 7242A 5/21/97
Waste tire processor incentive program, ch 217, Filed ARC 7241A 5/21/97

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Campaign disclosure forms, allowable use of candidate campaign funds, and late filing, 4.1(6),
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HUMAN SERVICES DEPARTMENT[441]

Contractual and usage arrangements for departmental employees and buildings and grounds, ch 2,
Filed ARC 7205A 5/7/97
Elimination of (FIP) control groups, rescind chs 40 to 43, 45, 46, 48, 49, 58, 93, Division I,
Filed ARC 7206A 5/7/97
Effective date of eligibility for (SSA) programs, 50.3, 177.4(9)"c," Filed ARC 7207A 5/7/97
Medicaid payments and policies, chs 52, 54, 79, 81, 82, 86, Filed ARC 7208A 5/7/97
Elimination of food stamp treatment and control groups and welfare reform waiver changes, ch 65, Division I,
65.42, rescind ch 65, Division II, Filed ARC 7209A 5/7/97
Federal Surplus Food Program income eligibility guidelines, 73.4(3)"d,"(2), Notice ARC 7217A 5/7/97
Revision of statewide average cost for private pay health care, 75.15(2)"b," 75.24(3), Filed ARC 7210A 5/7/97
Medicaid organ transplant coverage, 78.1(20)"a"(5) and (6), 78.3(10), 78.3(10)"f"(4), Notice ARC 7234A 5/21/97
Dental provider and screening center claim forms, 78.18(6)"b"(2)"2," 80.2(2)"e," Filed ARC 7211A 5/7/97
MHC participation through HMO enrollment for FIP and FIP-related Medicaid eligibles, 88.1, 88.2(1)"b"(9),
88.3, 88.5(3), 88.43(1), 88.46(2), Filed ARC 7212A 5/7/97
Day care payment rates, 170.4(7), Filed ARC 7213A 5/7/97
Rehabilitative treatment services, 185.1, Filed ARC 7214A 5/7/97
Training requirements for adoptive parents, 200.4(4)"a," Filed ARC 7215A 5/7/97

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Securities, 50.33, 50.57(9), Filed ARC 7246A 5/21/97

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Technical corrections and clarifications, 1.14(6), 1.14(8), 10.2, 10.3(1), 10.3(5)"f" and "j," 10.3(5)"i"(7), 10.3(6)"b," 10.6, 11.1, 11.2(2)"g," 11.2(3)"a," 11.2(5)"b," 11.3(1)"c"(3), 11.3(1)"e," 11.4(4)"e" to "g," 11.4(5), 11.5(1)"d," 11.6(3)"b" and "c," 11.9"2," 11.9(1), 11.9(2), 11.11(1), 11.11(2), 11.11(4) to 11.11(6), 11.12(3), 11.15(1), 11.15(2), 11.18(2)"c," 11.19, 11.30(2), 11.32(2), 12.4(27), 12.16(1), 12.16(3)"d," 12.16(6)"a"(2), 12.16(4)"d," 12.50(5), 14.5(1)"d," <u>Filed</u> ARC 7245A	5/21/97
Discipline, 12.4(31), 12.4(32), <u>Filed</u> ARC 7243A	5/21/97
Standards of treatment—controlled substances for chronic, nonmalignant or intractable pain, 13.2, <u>Filed</u> ARC 7244A	5/21/97

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners, 20.2, 20.2(1), 20.4(5), 20.4(7), 20.4(10), 20.5(1), 20.8, 20.11, 20.101(1), 20.102(1), 20.102(4) to 20.102(7), 20.108(1) to 20.108(3), 20.109(2)"b," 20.110(5), 20.113, 20.214(14) to 20.214(16), <u>Filed</u> ARC 7250A	5/21/97
Behavioral science examiners, 30.3(1)"b"(1)"3," <u>Filed</u> ARC 7247A	5/21/97
Funeral directors, ch 100, <u>Filed</u> ARC 7251A	5/21/97
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Physical and occupational therapy examiners, 200.2(7), 200.20(8)"a," 202.2(7), 202.4(3), <u>Notice</u> ARC 7248A	5/21/97
Respiratory care examiners, rescind 260.17 to 260.25, adopt 260.18 to 260.34, chs 261 and 262, <u>Notice</u> ARC 7224A	5/7/97

PUBLIC SAFETY DEPARTMENT[661]

Fax transmission of criminal history records, dependent adult abuse registry and release of information, 11.2, 11.15, 11.17(1), 11.20, <u>Notice</u> ARC 7253A	5/21/97
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RACING AND GAMING COMMISSION[491]

General amendments, chs 1 to 7, 10, 20, <u>Filed</u> ARC 7204A	5/7/97
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REVENUE AND FINANCE DEPARTMENT[701]

Determining taxable sales in statutory corporate mergers, 15.20, 34.13, <u>Notice</u> ARC 7223A	5/7/97
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TRANSPORTATION DEPARTMENT[761]

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UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

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Universal service—schools and libraries, 38.8, <u>Notice</u> ARC 7239A	5/21/97

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER**ADMINISTRATION DIVISION[877]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

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Regional advisory boards, ch 6, <u>Notice</u> ARC 7231A	5/21/97
Voter registration, amend and transfer 345—1.3 to 877—ch 24, <u>Filed</u> ARC 7232A	5/21/97
Public records and fair information practices, rescind 345—ch 8, adopt 877—ch 25, <u>Filed</u> ARC 7230A	5/21/97
Petitions, amend and transfer 345—ch 9 to 877—ch 26, <u>Filed</u> ARC 7229A	5/21/97
Forms and informational materials, amend and transfer 345—ch 10 to 877—ch 28, <u>Filed</u> ARC 7228A	5/21/97

ADMINISTRATIVE RULES REVIEW COMMITTEE ACTIONS

MAY 1996 THROUGH APRIL 1997

GENERAL REFERRAL TO SPEAKER OF THE HOUSE AND PRESIDENT OF THE SENATE (17A.8(7))

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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ENVIRONMENTAL PROTECTION COMMISSION[567]

Chapter 117, Waste tires, ARRC meeting 10/8/96

HUMAN SERVICES DEPARTMENT[441]

Disability services management, 25.42, ARC 6960A, IAB 1/1/97, ARRC meeting 1/6/97

FIP, Medicaid and social service block grant programs, amendments to chs 41, 75, 86, 153, ARC 6961A, IAB 1/1/97, ARRC meeting 1/6/97

Medical services provided to persons in nonmedical public institutions, 79.9(5), ARRC meeting 11/12/96

Child abuse registry, ch 175, ARRC meeting 9/10/96

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Postdelivery benefits and care, 70.8, 70.9, ch 81, ARC 6991A, IAB 1/1/97, ARRC meeting 1/7/97

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Decision-making assistance program and parental notification of intent to terminate a pregnancy through abortion, ch 89,

ARC 6896A, IAB 12/4/96, ARRC meeting 1/6/97

PUBLIC SAFETY DEPARTMENT[661]

21.3, State medical examiner—fees for autopsies and related services, ARRC meeting 10/8/96

REVENUE AND FINANCE DEPARTMENT[701]

Motor vehicle use tax on long-term leases, 26.68, 31.4, 31.5, 32.11, 34.5, 34.9, 34.10, ARC 6974A, IAB 1/1/97, ARRC meeting 1/7/97

TRANSPORTATION DEPARTMENT[761]

Signage fees, 119.6, ARRC meeting 9/10/96

Handicapped parking, 411.3, ARRC meeting 2/10/97

Car dealer standards—hours of operation, 425.3, ARRC meeting 10/9/96

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TRANSPORTATION DEPARTMENT[761]

Tourist-oriented directional signs, 119.4, lifted objection ARRC meeting 9/10/96

DELAY UNTIL ADJOURNMENT OF 1997 GENERAL ASSEMBLY (17A.8(9))

MEDICAL EXAMINERS BOARD[653]

Chapter 21, Eligibility for physician assistant supervision, ARC 6318A, IAB 3/13/96, ARRC meeting 6/11/96

RACING AND GAMING COMMISSION[491]

10.6(2)“g”(3), second paragraph, Phenylbutazone, ARC 6706A, IAB 9/11/96, ARRC meeting 10/8/96

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ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

1.1(3), Defining practice of engineering, ARC 6241A, IAB 2/14/96, ARRC meeting 3/11/96; delay lifted ARRC meeting 5/14/96

ENVIRONMENTAL PROTECTION COMMISSION[567]

22.300, Operating permit by rule for small sources, 70 days from 6/12/96, ARC 6407A, IAB 5/8/96, ARRC meeting 6/11/96;

delay lifted ARRC meeting 6/12/96, effective 6/12/96

Chapter 83, Laboratory certification, delay expiration 7/24/96, Item 14, ARC 6363A, IAB 4/10/96, ARRC meeting 5/14/96

MEDICAL EXAMINERS BOARD[653]

13.2, Standards of practice—surgical care, delay expiration 8/24/96, ARC 6358A, IAB 4/10/96, ARRC meeting 5/14/96

REVENUE AND FINANCE DEPARTMENT[701]

Communication services, 18.20(5), 18.20(6), delay expiration 4/30/97, ARC 6997A, IAB 1/15/97, ARRC meeting 2/10/97.

ECONOMIC IMPACT STATEMENT**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Agricultural lime, 43.30 to 43.39, ARC 6881A, IAB 11/20/96, ARRC meeting 12/12/96; request withdrawn at ARRC meeting 4/7/97.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Laboratory certification for analyses of public water supplies, underground storage tank program, wastewater, groundwater and sewage sludge, ARC 6363A, IAB 4/10/96, ARRC meeting 5/14/96; presented at ARRC meeting 7/9/96

MISCELLANEOUS**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Special review—Meat inspection, ch 76, ARRC meeting 9/10/96

CORRECTIONS DEPARTMENT[201]

Special review—Prison industries, ARRC meeting 10/8/96

Dietary requirements in local jails, 50.16, ARRC meeting 2/10/97

HUMAN SERVICES DEPARTMENT[441]

Special review—Child abuse registry, ARRC meeting 9/10/96

Special review—Boot camps, ARRC 11/12/96

Special review—Child care center emergency plans, 109.3(6), ARRC meeting 11/12/96

Special review—Foster parent training, 200.4, ARRC meeting 3/10/97

INSPECTIONS AND APPEALS DEPARTMENT[481]

Medicare certification of in-home health care providers, ARRC meeting 11/13/96

INSURANCE DIVISION[191]

Individual health insurance coverage, ARRC meeting 3/10/97

LABOR SERVICES DIVISION[347]

Special review—IOSHA rules, IAC, ARRC meeting 1/3/96 and ARRC meeting 5/14/96

NATURAL RESOURCE COMMISSION[571]

Special review—Boating regulations on Lake Macbride, Chapter 45, IAC, ARRC meeting 5/14/96

Joe Royce's salary—one step increase, effective 6/28/96; ARRC meeting 6/11/96

TRANSPORTATION DEPARTMENT[761]

Proof of identification for inmates of corrections institutions, ARRC meeting 3/10/97

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

EDITOR'S NOTE: Terms ending April 30, 1999.

Senator H. Kay Hedge, Chairperson
3208 335th Street
Fremont, Iowa 52561

Senator Merlin E. Bartz
2081 410th Street
Grafton, Iowa 50440

Senator John P. Kibbie
4285 440th Avenue
Emmetsburg, Iowa 50536

Senator William Palmer
1002 Lakeview Drive
Ankeny, Iowa 50021

Senator Sheldon Rittmer
3539 230th Street
DeWitt, Iowa 52742

Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515) 281-3084
Fax (515)281-3084

Representative Christopher Rants, Vice-Chairperson
2740 South Glass
Sioux City, Iowa 51106

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Representative Minnette Doderer
2008 Dunlap Court
Iowa City, Iowa 52245

Representative Janet Metcalf
12954 NW 29th Drive
Des Moines, Iowa 50325

Representative Keith Weigel
315 W. Main, P.O. Box 189
New Hampton, Iowa 50659

Paula Dierenfeld
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 15
Des Moines, Iowa 50319
Telephone (515) 281-6331
Fax (515)281-6611

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
BLIND, DEPARTMENT FOR THE[111]		
Administrative and organization procedures, 1.3, 1.4, amendments to chs 6 to 11 IAB 5/7/97 ARC 7221A	Director's Conference Room 524 Fourth St. Des Moines, Iowa	May 27, 1997 1 p.m.
Vocational rehabilitation services, ch 10 IAB 5/7/97 ARC 7222A	Director's Conference Room 524 Fourth St. Des Moines, Iowa	May 27, 1997 1 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Licenses and endorsements, amendments to chs 12, 14 to 16, 20 IAB 4/23/97 ARC 7197A	State Board Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	May 27, 1997 1 p.m.
EDUCATION DEPARTMENT[281]		
Accreditation of area education agency programs and services, ch 72 IAB 5/7/97 ARC 7216A	Community School District Gene Vincent Auditorium 2809 N. Grant Rd. Carroll, Iowa	May 28, 1997 6:30 to 8 p.m.
	Community School District Board Room 509 S. Dubuque St. Iowa City, Iowa	May 29, 1997 6:30 to 8 p.m.
	Heartland AEA Conference Rooms 3 - 4 6500 Corporate Dr. Johnston, Iowa	May 30, 1997 1 to 2:30 p.m.
HUMAN SERVICES DEPARTMENT[441]		
Organ transplants, 78.1(20)“a,” 78.3(10) IAB 5/21/97 ARC 7234A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	June 12, 1997 9 a.m.
	Administrative Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa	June 13, 1997 9 a.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	June 12, 1997 2 p.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	June 12, 1997 1 p.m.

**HUMAN SERVICES
DEPARTMENT[441]
(Cont'd)**

Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	June 11, 1997 10 a.m.
Conference Rooms 1 and 2 120 E. Main Ottumwa, Iowa	June 13, 1997 10 a.m.
Fifth Floor 520 Nebraska St. Sioux City, Iowa	June 11, 1997 1:30 p.m.
Conference Room 420 Pincrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	June 12, 1997 10 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Health care facilities; nursing services for ICFs, amendments to chs 56 to 59, 61 to 65 IAB 4/23/97 ARC 7192A	Conference Room—3rd Floor Side One Lucas State Office Bldg. Des Moines, Iowa	May 23, 1997 1 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Optometry examiners, 180.6, 180.12(3) IAB 5/21/97 ARC 7249A	Conference Room—3rd Floor Side 2 Lucas State Office Bldg. Des Moines, Iowa	June 11, 1997 1 to 3 p.m.
Respiratory care practitioners, 260.17 to 260.34, chs 261, 262 IAB 5/7/97 ARC 7224A	Conference Room—4th Floor Side 1 Lucas State Office Bldg. Des Moines, Iowa	May 28, 1997 9 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Fax transmission of criminal history records; dependent adult abuse, 11.2, 11.15, 11.17(1), 11.20 IAC 5/21/97 ARC 7253A	Conference Room—3rd Floor West Half Wallace State Office Bldg. Des Moines, Iowa	June 16, 1997 10:30 a.m.
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TRANSPORTATION DEPARTMENT[761]

Highway and bridge construction, 125.1 to 125.3 IAB 5/21/97 ARC 7227A	Conference Room 800 Lincoln Way Ames, Iowa	June 12, 1997 10 a.m. (If requested)
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UTILITIES DIVISION[199]

Safety and service standards, 9.1(1), 10.1, 10.3(4), 10.7 to 10.10, 10.12(1), 12.7, 19.2, 19.5(2), 19.6(3), 19.8, 20.5 to 20.7, 25.2 IAB 5/7/97 ARC 7220A	First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa	July 8, 1997 10 a.m.
Quality of service—telephone, 22.1(3), 22.2(6), 22.3, 22.6 IAB 5/7/97 ARC 7219A	First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa	July 9, 1997 10 a.m.
Universal service—schools and libraries, 38.8 IAB 5/21/97 ARC 7239A	First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa	June 26, 1997 10 a.m.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Regional advisory boards, ch 6 IAB 5/21/97 ARC 7231A	Room 135 150 Des Moines St. Des Moines, Iowa	June 10, 1997 1 p.m.
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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

- 441 IAC 79 (Chapter)
- 441 IAC 79.1(249A) (Rule)
- 441 IAC 79.1(1) (Subrule)
- 441 IAC 79.1(1)“a” (Paragraph)
- 441 IAC 79.1(1)“a”(1) (Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

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

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

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

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

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

The following list will be updated as changes occur:

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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]

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Banking Division[187]

Credit Union Division[189]

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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]

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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]

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School Budget Review Committee[289]

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EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

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HUMAN INVESTMENT COUNCIL[417]

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 State Public Defender[493]
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LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
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PUBLIC DEFENSE DEPARTMENT[601]
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PUBLIC EMPLOYMENT RELATIONS BOARD[621]
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 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
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REGENTS BOARD[681]
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REVENUE AND FINANCE DEPARTMENT[701]
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SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Industrial Services Division[873]
 Labor Services Division[875]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

NOTICE---AVAILABILITY OF PUBLIC FUNDS

IAB 5/21/97

PUBLIC FUNDS AVAILABILITY

Agency	Program	Service Delivery Area	Eligible Applicants	Types of Projects	Application Due Date
Emergency Management Division	Hazard Mitigation Grant Program (5% set-aside funds)	Statewide	<ul style="list-style-type: none"> • State and local governments • Private non-profit organizations or institutions that own or operate a private non-profit facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221(e) • Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals 	<p>Projects may be of any nature that will result in protection to public or private property. Eligible projects include, but are not limited to:</p> <ul style="list-style-type: none"> • Structural hazard control or protection projects • Construction activities that will result in protection from hazards • Retrofitting of facilities • Property acquisition or relocation, as defined in the 44 CFR, Section 206.434(d) • Development of State or local mitigation standards • Development of comprehensive hazard mitigation programs with implementation as an essential component • Development or improvement of warning systems 	July 21, 1997

Application and guidance may be obtained by contacting:

Steve Zimmerman
 State Hazard Mitigation Officer
 Iowa Emergency Management Division
 Hoover State Office Building, Level A
 Des Moines, IA 50319-0113
 (515) 281-3231

NOTICE---AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Drug & Violence	Statewide	Nonprofit and governmental entities with experience in providing substance abuse prevention or related service.	Drug and Violence prevention services	7-16-97	9-30-97 to 6-30-98

Request application packet from:

Allen Vander Linden
Contracts Administrator
Iowa Department of Public Health
Division of Substance Abuse and Health Promotion
321 East 12th Street
Lucas State Office Building
Des Moines, Iowa 50319-0075
Phone (515) 281-4636
Fax (515) 281-4535

NOTICE---AVAILABILITY OF PUBLIC FUNDS

IAB 5/21/97

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Law Enforcement Education Partnership	Statewide	State, County, or local law enforcement agencies; including district attorneys.	Drug Abuse and Violence prevention activities	7-11-97	9-30-97 to 6-30-98

PUBLIC FUNDS AVAILABILITY

Instructions: To obtain a copy of the application in writing or by FAX contact:

Allen Vander Linden
 Contracts Administrator
 Iowa Department of Public Health
 Division of Substance Abuse and Health Promotion
 321 East 12th Street
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 Phone (515) 281-4636
 Fax (515) 281-4535

NOTICE — AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

March 1, 1996 — March 31, 1996	6.70%
April 1, 1996 — April 30, 1996	6.55%
May 1, 1996 — May 31, 1996	6.70%
June 1, 1996 — June 30, 1996	6.75%
July 1, 1996 — July 31, 1996	6.75%
August 1, 1996 — August 31, 1996	6.85%
September 1, 1996 — September 30, 1996	6.90%
October 1, 1996 — October 31, 1996	6.80%
November 1, 1996 — November 30, 1996	6.75%
December 1, 1996 — December 31, 1996	6.75%
January 1, 1997 — January 31, 1997	6.65%
February 1, 1997 — February 28, 1997	6.70%
March 1, 1997 — March 31, 1997	6.70%
April 1, 1997 — April 30, 1997	6.70%
May 1, 1997 — May 31, 1997	7.00%

ARC 7234A

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 §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 §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 78, “Amount, Duration and Scope of Medical and Remedial Services,” appearing in the Iowa Administrative Code.

These amendments expand transplant coverage under the Medicaid program to include coverage of lung transplants for adults and specify that heart-lung transplants are not covered. Lung transplants will only be covered at Medicare-designated lung transplant centers. In addition, liver transplant facilities are added to the application procedure to fix a prior oversight, and the address for applications is changed from the Division of Medical Services to the Medicaid fiscal agent to reflect changes in administrative responsibilities within the Department.

The success rate of lung transplants has increased. It is now comparable with other covered transplant procedures. The annual review of the status of transplants by the Iowa Foundation for Medical Care recommended that Medicaid seek funding for the procedure, and funding has been included in the Department’s budget for State Fiscal Year 1998. Medicaid is seeing increased availability of the procedure and an increase in the number of lung transplants performed nationally. The Department has also had an increased number of requests for exceptions to policy for lung

transplants, indicating increased use of the procedure in Iowa.

Medicare currently covers this procedure. This is an indicator of the accepted status of the procedure. Having Medicare coverage of lung transplants also reduces the cost to the Medicaid program as Medicare will pay much of the costs of dual eligibles. Medicaid has covered the procedure for children under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT).

Heart-lung transplants are considered a different procedure and have not been as successful as separate heart and lung transplants. Use of the heart-lung procedure has decreased and coverage was not recommended by the Iowa Foundation for Medical Care.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before June 11, 1997.

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

- Cedar Rapids - June 12, 1997 9 a.m.
Cedar Rapids Regional Office
Iowa Building - Suite 600
Sixth Floor Conference Room
411 Third St. S. E.
Cedar Rapids, Iowa 52401
- Council Bluffs - June 13, 1997 9 a.m.
Administrative Conference Room
Council Bluffs Regional Office
417 E. Kanesville Boulevard
Council Bluffs, Iowa 51501
- Davenport - June 12, 1997 2 p.m.
Davenport Area Office
Bicentennial Building - Fifth Floor
Conference Room 3
428 Western
Davenport, Iowa 52801
- Des Moines - June 12, 1997 1 p.m.
Des Moines Regional Office
City View Plaza
Conference Room 104
1200 University
Des Moines, Iowa 50314
- Mason City - June 11, 1997 10 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401
- Ottumwa - June 13, 1997 10 a.m.
Ottumwa Area Office
Conference Rooms 1 and 2
120 East Main
Ottumwa, Iowa 52501
- Sioux City - June 11, 1997 1:30 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska St.
Sioux City, Iowa 51101

HUMAN SERVICES DEPARTMENT[441](cont'd)

Waterloo - June 12, 1997
 Waterloo Regional Office
 Pincrest Office Building
 Conference Room 420
 1407 Independence Avenue
 Waterloo, Iowa 50703

10 a.m.

ARC 7249A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF OPTOMETRY EXAMINERS

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 §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 §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 Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, "Board of Optometry Examiners," Iowa Administrative Code.

The proposed amendments revise the requirements for licensure by endorsement and add provision for continuing education credit for Internet courses.

Any interested person may make written comments on the proposed amendments not later than June 11, 1997, addressed to Sharon Cook, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on June 11, 1997, from 1 p.m. to 3 p.m. in the Third Floor Conference Room, Side 2, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code sections 147.76 and 154.3 and chapter 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 180.6(2), paragraph "a," as follows:

a. Proof of graduation with a doctor of optometry degree from an accredited school or college of optometry ~~which required four years' attendance approved by the board in a state, territory, or district of the United States and, in the case of foreign graduates, adhere to the standards presently accepted by the National Board of Examiners in Optometry.~~

ITEM 2. Rescind and reserve subrule 180.6(2), paragraph "c."

ITEM 3. Amend subrule 180.6(2), paragraph "e," as follows:

e. Evidence of a current, valid license to practice optometry in another state, territory or district of the United States (that has a similar scope of practice) ~~issued upon clinical examination. to this state.~~

ITEM 4. Amend subrule 180.6(2), paragraph "g," as follows:

g. Certification by the state board or boards of optometry, or equivalent authority in which applicant ~~has engaged in the practice of optometry,~~ holds an optometry license, that the applicant has not been the subject of final or pending disciplinary action.

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 78.1(20), paragraph "a," subparagraph (5), as follows:

(5) Heart transplants. Artificial hearts and ventricular assist devices, either as a permanent replacement for a human heart or as a temporary life-support system until a human heart becomes available for transplants, are not covered. *Heart-lung transplants are not covered.*

Heart transplants require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1)"f.") Covered heart transplants are payable only when performed in a facility which meets the requirements of 78.3(10).

Further amend subrule 78.1(20), paragraph "a," by adding the following new subparagraph (6).

(6) Lung transplants. Lung transplants for persons having end-stage pulmonary disease. Lung transplants require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1)"f.") Covered transplants are payable only when performed in a facility which meets the requirements of 78.3(10). Heart-lung transplants are not covered.

ITEM 2. Amend subrule 78.3(10) as follows:

Amend the introductory paragraph as follows:

78.3(10) Payment will be approved for organ and tissue transplant services, as specified in subrule 78.1(20). Kidney, cornea, skin, bone, allogeneic bone marrow, autologous bone marrow, heart, ~~and liver,~~ and lung transplants are covered as specified in subrule 78.1(20). *Lung transplants are payable at Medicare-designated lung transplant centers only.* Heart and liver transplants are payable when performed at facilities that meet the following criteria:

Amend paragraph "f," introductory paragraph and subparagraph (4), as follows:

f. Application procedure. A Medicare-designated heart, liver, or lung transplant facility needs only to submit evidence of this designation to the ~~address in subparagraph (4) below Medicaid fiscal agent.~~ The application procedure for other heart and liver facilities is as follows:

(4) The application should be mailed to the *Medicaid fiscal agent.* ~~address below in a manner which provides the facility with documentation that it was received by:~~

Division Administrator
 Division of Medical Services
 Department of Human Services
 Hoover Building
 Des Moines, IA 50319-0114

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 5. Rescind and reserve subrule 180.6(2), paragraph "h."

ITEM 6. Amend subrule 180.6(2), paragraph "j," as follows:

j. ~~Evidence that the state, territory or district from which the applicant comes extends licensure without examination to Iowa optometrists who hold a current license, graduated from an accredited school or college of optometry and have had five consecutive years in practice. Submission of a copy of the current optometry licensing law and regulation of the jurisdiction will satisfy this requirement. in which the applicant presently practices or has been licensed for the previous five years.~~

ITEM 7. Rescind and reserve subrule 180.6(3).

ITEM 8. Amend subrule 180.6(4) as follows:

180.6(4) The board ~~may also shall~~ require such examinations (whether written, clinical/practical or oral) as deemed necessary to evaluate the applicant for licensure by endorsement, including jurisprudence each applicant to successfully complete an Iowa optometry law written examination at an appropriate time and location as specified by the board.

ITEM 9. Amend subrule 180.12(3), paragraph "e," as follows:

e. ~~Correspondence courses which include postcourse test results, which include written and electronic transmitted material and have a postcourse test,~~ may be used for a maximum of ten hours' credit for each biennium. Certification of the continuing education requirements and of passing the test must be given by the institution providing the continuing education, and that institution must be accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education, and approved by the board of optometry examiners.

ARC 7248A

PROFESSIONAL LICENSURE
DIVISION[645]

PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS

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 §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 200, "Physical Therapy Examiners," and Chapter 202, "Physical Therapist Assistants," Iowa Administrative Code.

These proposed amendments eliminate temporary approval of applications, add new language regarding applicant physical therapists who fail the examination, and clarify requirements for licensure by endorsement for physical therapist assistants.

Any interested person may make written comments on the proposed amendments not later than June 11, 1997, addressed to Sharon Cook, Professional Licensure, Depart-

ment of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code section 147.76 and chapter 148A.

The following amendments are proposed.

ITEM 1. Rescind and reserve subrule 200.2(7).

ITEM 2. Amend subrule 200.20(8), paragraph "a," as follows:

a. Applicant physical therapist. A person who has made application for licensure and is awaiting board action may practice only under the supervision of a licensed physical therapist for a period not to exceed six months in the case of licensure by examination and three months for licensure by endorsement. During this time the applicant may evaluate, plan treatment programs, and provide periodic reevaluation only under "on-site" supervision of a licensed physical therapist who shall bear full responsibility for care provided under their supervision and cosign all physical therapy records. *A person who has failed the examination in any state, territory, or country shall not practice as an applicant physical therapist.*

ITEM 3. Rescind and reserve subrule 202.2(7).

ITEM 4. Amend subrule 202.4(3), introductory paragraph, as follows:

202.4(3) An applicant for licensure by interstate endorsement shall *have successfully completed a course of study for the physical therapist assistant accredited by the commission on accreditation in education of the American Physical Therapy Association, or another appropriate accrediting body, and have passed an examination administered by the board of physical and occupational therapy examiners, and:*

ARC 7253A

PUBLIC SAFETY
DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 692.10, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 11, "Identification Section of the Division of Criminal Investigation," Iowa Administrative Code.

Since July 1, 1996, criminal history files have been available to the public upon request. The Department, as authorized by Iowa Code section 692.2 and rule 661—11.15(692), charges a fee of \$13 per name checked for criminal history records. Criminal justice agencies are exempt from the fee.

The primary purpose of the amendments proposed here is to allow for the provision of criminal history records by fax transmission upon request. An additional fee of \$2 per record will be charged for transmission by fax. Additionally, these amendments provide that the fee for receipt of criminal history records will be no more than \$13 normally or no more than \$15 if transmitted by fax. The purpose of charging a fee for searching and transmitting criminal histories is to

PUBLIC SAFETY DEPARTMENT[661](cont'd)

recover the cost of providing this service. With a growing volume of non-criminal justice requests, it is anticipated that the unit cost of providing criminal history records may decline. If so, the Department intends to adjust the price of receiving a record accordingly. These amendments also correct an electronic mail address provided for obtaining information about the process of obtaining criminal histories, add a definition of the dependent adult abuse registry, and provide for limited release by the Department of information on dependent adult abuse received from the Iowa Department of Human Services.

A public hearing on these proposed amendments will be held on June 16, 1997, at 10:30 a.m. in the Third Floor Conference Room (West Half), Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319 by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing. Any written comments or information regarding these proposed amendments may be directed to the Plans and Research Bureau by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code chapter 135C as amended by 1997 Iowa Acts, Senate File 523, and Iowa Code chapter 692.

The following amendments are proposed.

ITEM 1. Amend rule **661—11.2(17A,690,692)** by adding the following **new** definition in alphabetical order:

“Dependent adult abuse registry” means the official registry kept by the department of human services, established pursuant to Iowa Code chapter 235B.

ITEM 2. Amend rule **661—11.15(692)** as follows:

661—11.15(692) Fees. All individuals, their attorneys, and other non-criminal justice agencies applying for receipt of criminal history information may be assessed a fee. The department may accept cash, money orders, or checks. Other arrangements may be made, such as a prepaid retainer or credit card. The fee for receipt of criminal history information from the department shall be *not more than* \$13 for each surname for which information is requested *and not more than \$15 per surname for fax service*. The fee shall be prominently posted at the headquarters of the division of criminal investigation. Each alias or maiden name submitted shall be considered a separate name for purposes of computing this fee. Employers must pay the cost of the criminal history fee of a potential employee.

ITEM 3. Amend **661—subrule 11.17(1)** as follows:

11.17(1) Requests for criminal history data. Persons or agencies requesting criminal history data should direct requests in writing using forms or methods approved by the commissioner of public safety. Requests for forms to use in requesting criminal history information may be addressed by mail to the Identification Section, Division of Criminal Investigation, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or by

electronic mail via the Internet to echinfo@safe.ia.gov or cchinfo@dps.state.ia.us.

The commissioner may authorize other methods of requesting criminal history information besides mail. These other methods may include fax transmission, electronic mail, or computer access. This authorization by the commissioner of public safety shall be based on the ability to efficiently and accurately receive and disseminate criminal history information.

ITEM 4. Adopt **new** rule **661—11.20(135C)** as follows:

661—11.20(135C) Release of dependent adult abuse records. Effective July 1, 1997, the department of public safety, division of criminal investigation, may release to health care facilities licensed under Iowa Code chapter 135C dependent adult abuse registry information received from the department of human services. The department of public safety and the department of human services shall enter into a 28E agreement to carry out this rule.

ARC 7227A

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 §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 125, “General Requirements and Covenants for Highway and Bridge Construction,” Iowa Administrative Code.

Chapter 125 adopts by reference Sections 1101 to 1105 of the “Standard Specifications for Highway and Bridge Construction, Series of 1997,” which expresses measurements in U.S. customary (English) units of measure, and Sections 1101 to 1105 of the “Standard Specifications for Highway and Bridge Construction (Metric), Series of 1995,” which expresses measurements in metric units. Chapter 125 also adopts by reference supplements and amendments to these specifications.

This rule-making action adopts by reference one supplemental specification to the Series of 1995 and one supplemental specification to the Series of 1997. The two are identical except for the expression of units of measure. The supplemental specifications being adopted are as follows:

SS-97004: Supplemental Specification for On-the-Job Training (Equal Employment Opportunity Responsibilities) (dated 5/2/97)

SS-95004M: Supplemental Specification for On-the-Job Training (Equal Employment Opportunity Responsibilities) (dated 5/2/97)

These supplemental specifications were promulgated using normal rule-making procedures and were effective in 1993 (English) and 1994 (metric). They were subsequently deleted in error, effective January 22, 1997. To correct this error, the Department is readopting these specifications. Other than assigning new specification numbers to them, the specifications themselves have not changed.

This rule-making action also adopts by reference one amendment to both the Series of 1995 and the Series of 1997.

TRANSPORTATION DEPARTMENT[761](cont'd)

The amendment is the same for both books. The amendment modifies Article 1102.01.

Currently, contractors have two types of prequalification for bidding: individually prepared statements and CPA audited statements. Individually prepared statements limit a contractor to \$100,000 of uncompleted work under contract. CPA audited statements allow a contractor to have uncompleted work under contract up to the contractor's maximum prequalification amount. The amendment incorporates a third type of prequalification: CPA reviewed statements. This type will allow a contractor to have up to \$600,000 of uncompleted work under contract.

The addition of a third type of contractor prequalification will benefit smaller contractors who wish to be prequalified for more than \$100,000 of uncompleted work under contract. It will mostly benefit contractors performing the following types of work: bridges, culverts, lighting, patching and joint and crack sealing.

The third type of prequalification will allow more competition on some larger projects by allowing smaller contractors to compete with the larger contractors. Subcontractors are not affected; the change affects only prime contractors. The Department should not be exposed to any greater risk of contractor default because the bonding companies providing the bid and performance bonds usually have their own system for limiting contractors to certain amounts of uncompleted work under contract.

The two supplemental specifications and the amendment to Article 1102.01 have been submitted to the Administrative Rules Coordinator with this Notice for publication as a part of this Notice. [See page 1872] Additional copies may be obtained from the Specifications Engineer, Office of Development Support, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

Once the Notice period has expired, it is the Department's intent to implement these amendments under the emergency rule-making provisions of Iowa Code section 17A.5 because they will confer a benefit on smaller contractors and promote competition.

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, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639.
5. Be received by the Director's Staff no later than June 10, 1997.

A meeting to hear requested oral presentations is scheduled for Thursday, June 12, 1997, at 10 a.m. in the Commission Conference Room of the Iowa Department of Transportation, 800 Lincoln Way, Ames. The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code subsection 17A.31(4), paragraphs "a" to "l." The following may request the issuance of a regulatory flexibility analysis: the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons

signing the request who qualify as a small business, or an organization registered with the Department and representing at least 25 persons. The request must:

1. Include the name, address, and telephone number of the person(s) authoring the request.
2. Be submitted in writing to the Director's Staff at the address listed in this Notice.
3. Be delivered to the Director's Staff or postmarked no later than 20 days after publication of this Notice in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 307A.2.

Proposed rule-making action:

Amend Chapter 125, "General Requirements and Covenants for Highway and Bridge Construction," as follows:

CHAPTER 125

GENERAL REQUIREMENTS AND COVENANTS FOR HIGHWAY AND BRIDGE CONSTRUCTION

761—125.1(307A) Standard specifications. Sections 1101 to 1105 of the manual, "Standard Specifications for Highway and Bridge Construction, Series of 1997," and the supplemental specifications adopted in subrules 125.1(1) and 125.1(2) which supplement or amend these sections constitute the standards and requirements governing terminology, proposal requirements and conditions, approval for award and award of contracts, scope of work and control of work for highway construction and maintenance performed under contracts awarded by the department.

125.1(1) The following supplements to Article 1102.18 of the Series of 1997 are adopted:

SS-97004: Supplemental Specification for On-the-Job Training (Equal Employment Opportunity Responsibilities) (dated 5/2/97)

SS-97020: Supplemental Specifications for Equal Employment Opportunity and Affirmative Action Requirements (dated 5/2/97)

SS-97021: Supplemental Specifications for Specific Affirmative Action Responsibilities (Disadvantaged Business Enterprise) on Federal Aid Projects (dated 5/2/97)

SS-97022: Supplemental Specifications for Specific Affirmative Action Responsibilities on Non-Federal Aid Projects (Targeted Small Business Project Participation) (dated 5/2/97)

SS-97023: Supplemental Specifications for On-the-Job Training Pilot (dated 5/2/97)

125.1(2) Amendments to the following articles in Sections 1101 to 1105 of the Series of 1997 are adopted:

<u>Article No.</u>	<u>Title</u>	<u>Effective Date of Amendment</u>
1101.03	Definition of Terms	1/22/97
1102.01	Competency and Qualification of Bidders	1/22/97, (effective date of rule)
1103.01	Consideration of Bids	1/22/97
1104.08	Final Cleaning Up	1/22/97
1105.12	Restrictions on Moving and Use of Heavy Equipment	1/22/97

761—125.2(307A) Standard specifications. Sections 1101 to 1105 of the manual, "Standard Specifications for Highway and Bridge Construction (Metric), Series of 1995," and the supplemental specifications adopted in subrules 125.2(1) and 125.2(2) which supplement or amend these sections constitute the standards and requirements governing terminology, proposal requirements and conditions, approval for award and award of contracts, scope of work and control of work for

TRANSPORTATION DEPARTMENT[761](cont'd)

highway construction and maintenance performed under contracts awarded by the department.

125.2(1) The following supplements to Article 1102.18 of the Series of 1995 are adopted:

SS-95004M: Supplemental Specification for On-the-Job Training (Equal Employment Opportunity Responsibilities) (dated 5/2/97)

SS-95020M: Supplemental Specifications for Equal Employment Opportunity and Affirmative Action Requirements (dated 5/2/97)

SS-95021M: Supplemental Specifications for Specific Affirmative Action Responsibilities (Disadvantaged Business Enterprise) on Federal Aid Projects (dated 5/2/97)

SS-95022M: Supplemental Specifications for Specific Affirmative Action Responsibilities on Non-Federal Aid Projects (Targeted Small Business Project Participation) (dated 5/2/97)

SS-95023M: Supplemental Specifications for On-the-Job Training Pilot (dated 5/2/97)

125.2(2) Amendments to the following articles in Sections 1101 to 1105 of the Series of 1995 are adopted:

<u>Article No.</u>	<u>Title</u>	<u>Effective Date of Amendment</u>
1101.03	Definition of Terms	1/22/97
1102.01	Competency and Qualification of Bidders	1/22/97, (effective date of rule)
1103.01	Consideration of Bids	1/22/97
1104.08	Final Cleaning Up	1/22/97
1105.12	Restrictions of on Moving and Use of Heavy Equipment	1/22/97

761—125.3(307A) Availability of specifications.

125.3(1) The publication entitled "Standard Specifications for Highway and Bridge Construction" may be obtained from the Central Warehouse, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Copies of the publication are also available for examination at various departmental offices located throughout the state.

125.3(2) Copies of supplemental specifications may be obtained from the Office of Contracts, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

125.3(3) Supplemental specifications applicable to a particular project also accompany each bidding proposal issued for that project.

These rules are intended to implement Iowa Code section 307A.2.

EDITOR'S NOTE: The amendment to Article 1102.01 and the two supplemental specifications submitted by the Department of Transportation with this Notice of Intended Action have been reproduced on pages 1872 to 1878.

REPLACE the second paragraph of **Article 1102.01**, Competency and Qualification of Bidders, with the following:

The Contracting Authority will compute the Contractor's maximum prequalification amount based on the following prequalification formula:

$$\text{MAXPREQ} = [\text{CURRENT} + \text{NONCURRENT} + \text{LL}] * \text{F}$$

Where:

- MAXPREQ = maximum prequalification amount
- CURRENT = current assets minus current liabilities
- NONCURRENT = (non-current assets minus non-current liabilities)/2 if > 0
- NONCURRENT = (non-current assets minus non-current liabilities) if < 0
- LL = approved authorization to loan letter
- F = experience factor

The Contracting Authority will qualify Contractors into three categories:

A. Individually Prepared Statement.

This type of statement may be prepared by the Contractor without the assistance of a CPA. A compilation by a CPA will be also considered an Individually Prepared Statement. The experience factor (F) of 1.0 will be used in the prequalification formula. A Contractor who submits an Individually Prepared Contractor's Financial Statement will be limited to awards which do not exceed the maximum prequalification amount from the prequalification formula (\$100,000 maximum) minus the amount of their uncompleted work under contract.

B. CPA Reviewed Statement.

The experience factor (F) will be within a range of 0.0 to 10.0 based on past performance with contracts let by the Department. A Contractor who submits a CPA Reviewed Contractor's Financial Statement will be limited to awards which do not exceed the maximum prequalification amount from the prequalification formula (\$600,000) minus the amount of their uncompleted work under contract.

C. CPA Audited Statement.

The experience factor (F) will be within a range of 0.0 to 10.0 based on past performance with projects let by the Department. A Contractor who submits a CPA Audited Contractor's Financial Statement will be limited to awards which do not exceed the maximum prequalification amount from the prequalification formula minus the amount of their uncompleted work under contract.

The CPA Reviewed Statement and the CPA Audited Statement shall be prepared by a certified public accountant or by a public accountant meeting the qualifications shown on the Accountant's Certificate (included in Form 650004).

TRANSPORTATION DEPARTMENT[761](cont'd)

SUPPLEMENTAL SPECIFICATIONS

for

**ON-THE-JOB TRAINING
(Equal Employment Opportunity Responsibilities)**

May 2, 1997

THE STANDARD SPECIFICATIONS, SERIES OF 1997, ARTICLE 1102.18, IS SUPPLEMENTED BY THE FOLLOWING ADDITIONS. THESE ARE SUPPLEMENTAL SPECIFICATIONS TO THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

97004.01 GENERAL.

This training specification supplements subparagraph 7e of the Contract Provision entitled "Standard Federal Equal Opportunity Construction Contract Specification (Executive Order 11246)" and is in implementation of 23 U.S.C. 140(a).

As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainee hours to be assigned will be shown in the contract documents.

If a Contractor subcontracts a portion of the contract work, the Contractor shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this specification. The Contractor shall also ensure that this training specification is made applicable to the subcontract. Where feasible, 25 percent of the apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

97004.02 WORK CLASSIFICATIONS.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the Contractor shall submit to The Department for approval, the number of trainees to be trained in each selected classification and the training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee employed on the contract work, who is currently enrolled or becomes enrolled in an approved program, and will be reimbursed for these trainees as provided in Article 97004.05.

TRANSPORTATION DEPARTMENT[761](cont'd)

97004.05 PAYMENT.

Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given to an employee on the contract work in accordance with an approved training program. As approved by the Engineer, and the Office of Contracts, reimbursement will be made for training persons in excess of the number specified in the contract documents. This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided the other sources do not specifically prohibit the Contractor from receiving other reimbursement. The Contractor may be reimbursed for offsite training indicated above, provided, the trainee is concurrently employed on a Federal-aid project and the Contractor does one or more of the following:

Contributes to the cost of the training.

Provides the instruction to the trainee.

Pays the trainee's wages during the offsite training period.

Payment shall not be made to the Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this training specification. It is normally expected that a trainee will begin training on the project as soon as feasible after start of work utilizing the skill involved and that the trainee remains on the project as long as training opportunities exist in that work classification or until the trainee has completed the training program. It is not required that all trainees be on board for the entire length of the contract. The Contractor's responsibilities under this training specification will have been fulfilled if acceptable training was provided to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

97004.06 PAYMENT TO TRAINEES.

Trainees shall be paid by the Contractor at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the U. S. Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this training specification.

97004.07 RECORDS.

The Contractor shall furnish the trainee a copy of the program the trainee will follow during the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The Contractor shall provide for the maintenance of records and furnish periodic reports documenting his or her performance under this training specification.

TRANSPORTATION DEPARTMENT[761](cont'd)

97004.03 MINORITIES AND WOMEN.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this training specification. Accordingly, the Contractor shall make every effort to enroll minority trainees and women by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that these persons are available within a reasonable area of recruitment. The Contractor shall be responsible for demonstrating the steps taken in pursuance of recruitment, prior to a determination of the Contractor being in compliance with this training specification. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

97004.04 TRAINING.

An employee shall not be employed as a trainee in any classification in which an employee has successfully completed a training course leading to journeyman status or in which an employee has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by The Department and the Federal Highway Administration. The Department and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training will also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions, such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and is approved by the division office of the Federal Highway Administration. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

TRANSPORTATION DEPARTMENT[761](cont'd)

**METRIC
SUPPLEMENTAL SPECIFICATIONS
for
ON-THE-JOB TRAINING
(Equal Employment Opportunity Responsibilities)**

May 2, 1997

THE METRIC STANDARD SPECIFICATIONS, SERIES OF 1995, ARTICLE 1102.18, IS SUPPLEMENTED BY THE FOLLOWING ADDITIONS. THESE ARE SUPPLEMENTAL SPECIFICATIONS TO THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

95004M.01 GENERAL.

This training specification supplements subparagraph 7e of the Contract Provision entitled "Standard Federal Equal Opportunity Construction Contract Specification (Executive Order 11246)" and is in implementation of 23 U.S.C. 140(a).

As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainee hours to be assigned will be shown in the contract documents.

If a Contractor subcontracts a portion of the contract work, the Contractor shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this specification. The Contractor shall also ensure that this training specification is made applicable to the subcontract. Where feasible, 25 percent of the apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

95004M.02 WORK CLASSIFICATIONS.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the Contractor shall submit to The Department for approval, the number of trainees to be trained in each selected classification and the training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee employed on the contract work, who is currently enrolled or becomes enrolled in an approved program, and will be reimbursed for these trainees as provided in Article 95004M.05.

TRANSPORTATION DEPARTMENT[761](cont'd)

95004M.03 MINORITIES AND WOMEN.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this training specification. Accordingly, the Contractor shall make every effort to enroll minority trainees and women by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that these persons are available within a reasonable area of recruitment. The Contractor shall be responsible for demonstrating the steps taken in pursuance of recruitment, prior to a determination of the Contractor being in compliance with this training specification. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

95004M.04 TRAINING.

An employee shall not be employed as a trainee in any classification in which an employee has successfully completed a training course leading to journeyman status or in which an employee has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by The Department and the Federal Highway Administration. The Department and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training will also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions, such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and is approved by the division office of the Federal Highway Administration. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

95004M.05 PAYMENT.

Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given to an employee on the contract work in accordance with an approved training program. As approved

TRANSPORTATION DEPARTMENT[761](cont'd)

by the Engineer, and the Office of Contracts, reimbursement will be made for training persons in excess of the number specified in the contract documents. This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided the other sources do not specifically prohibit the Contractor from receiving other reimbursement. The Contractor may be reimbursed for offsite training indicated above, provided, the trainee is concurrently employed on a Federal-aid project and the Contractor does one or more of the following:

- Contributes to the cost of the training.
- Provides the instruction to the trainee.
- Pays the trainee's wages during the offsite training period.

Payment shall not be made to the Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this training specification. It is normally expected that a trainee will begin training on the project as soon as feasible after start of work utilizing the skill involved and that the trainee remains on the project as long as training opportunities exist in that work classification or until the trainee has completed the training program. It is not required that all trainees be on board for the entire length of the contract. The Contractor's responsibilities under this training specification will have been fulfilled if acceptable training was provided to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

95004M.06 PAYMENT TO TRAINEES.

Trainees shall be paid by the Contractor at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the U. S. Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this training specification.

95004M.07 RECORDS.

The Contractor shall furnish the trainee a copy of the program the trainee will follow during the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The Contractor shall provide for the maintenance of records and furnish periodic reports documenting his or her performance under this training specification.

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 Michael K. Guttau, 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 May is 8.75%.

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 April 9, 1997, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7 - 31 days Minimum 4.70%
- 32 - 89 days Minimum 4.80%
- 90 - 179 days Minimum 5.10%
- 180 - 364 days Minimum 5.30%
- One year Minimum 5.40%
- Two years or more Minimum 6.40%

These are minimum rates only. The one year and less are six-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 7239A

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, 476.3, and 476.102 and the Telecommunications Act of 1996, 47 U.S.C. section 254, the Utilities Board

(Board) gives notice that on April 24, 1997, the Board issued an order in Docket No. RMU-97-5, In re: Universal Service—Schools and Libraries, "Order Commencing Rule Making," proposing new rule 199 IAC 38.8(476), to address the discount rate to be applied for intrastate telecommunication services to elementary schools, secondary schools, and libraries.

Section 254(h)(1)(B) of the Telecommunications Act of 1996 provides in pertinent part:

[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.

The statute further provides the discount shall be an amount that the Federal Communications Commission sets for interstate services and the states set with respect to intrastate services appropriate and necessary to ensure affordable access to and use of such services. The FCC is required to have rules setting the interstate discount rate by May 8, 1997. The Utilities Board, anticipating that funding for schools and libraries will be available this fall, has expressed a policy to participate in the federal program. In order to be in a position to participate as soon as money becomes available, the proposed rule adopts the federal discount. Comments should include discussion of whether the federal discount announced on May 8, 1997, is appropriate for the intrastate discount.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position on the proposed rule no later than June 10, 1997, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled for 10 a.m., June 26, 1997, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

The amendment is intended to implement Iowa Code section 476.102 and the Telecommunications Act of 1996.

The following new rule is proposed.

Adopt new rule 199—38.8(476) as follows:

199—38.8(476) Universal service. With respect to intrastate telecommunication services, determined by either the board or the Federal Communications Commission to be within the definition of universal service, the discount for elementary schools, secondary schools, and libraries shall be equal to the discount the Federal Communications Commission sets with respect to interstate service.

ARC 7231A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

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 §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 §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 84A.1B(9) and 96.11, the Department of Workforce Development hereby gives Notice of Intended Action to adopt Chapter 6, “Regional Advisory Boards,” Iowa Administrative Code.

On April 23, 1997, the Workforce Development Board approved the proposed new chapter. The new chapter defines the Regional Advisory Boards’ membership and duties.

Written comments concerning the proposed new chapter will be accepted until 4:30 p.m. on June 10, 1997. Interested persons may submit written or oral comments by contacting JoAnn Callison, Office of Workforce Development Policy, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)281-9017.

A public hearing to receive comments about the proposed chapters will be held at 1 p.m. on June 10, 1997, at the above address in Room 135. Individuals interested in providing comments at the hearing should contact Shari Auch (515)281-9019 by 4 p.m. on June 9, 1997, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 84A.4.

The following new chapter is proposed.

Adopt the following **new** 877—Chapter 6:

**CHAPTER 6
REGIONAL ADVISORY BOARDS**

877—6.1(84A) Number of boards. The governor, in consultation with chief elected officials, shall appoint a regional advisory board in each workforce development region of the state.

877—6.2(84A) Composition.

6.2(1) Voting members. Each regional advisory board shall have an equal number of members from business and labor and shall include a county elected official, a city official, a representative of a school district, and a representative of a community college.

6.2(2) Alternates. Members appointed to a regional advisory board may send an alternate if the member cannot at-

tend a meeting. The alternate shall not have voting privileges or be counted as present for the member in determining meeting quorum.

6.2(3) Nonvoting members. The board may appoint ex officio, nonvoting members.

877—6.3(84A) Meetings. The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. The chairperson and vice chairperson shall not be of the same political party. The board shall meet at the call of the chairperson or when a majority of the members of the board file a written request of the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

877—6.4(84A) Duties. The board shall perform the following duties and other functions as necessary and proper to carry out its responsibilities.

6.4(1) Conduct an annual needs assessment to identify the workforce development needs of the region.

6.4(2) Assist the workforce development board and the department of workforce development to award grants and contracts administered by the department in the region.

6.4(3) Monitor the performance of grants and contracts awarded in the region.

6.4(4) File an annual report with the department as required by Iowa Code section 84A.1B.

6.4(5) Make recommendations to the workforce development board and department concerning workforce development services.

877—6.5(84A) Records. Agendas, minutes, and materials presented to the board are available from the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4) or which are otherwise confidential by law. Board records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 96.11(6). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

These rules are intended to implement Iowa Code section 84A.4.

ARC 7238A

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners adopts an amendment to Chapter 11, "Applications," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 26, 1997, as ARC 7058A. A public hearing was held on April 2, 1997.

The revision to Chapter 11 allows a method of licensure for those dentists holding a specialty degree who do not meet the requirements for licensure by credentials.

There are no changes as a result of the public hearing and this amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 147.3.

This amendment will become effective June 25, 1997.

The following amendment is adopted.

Amend subrule 11.3(2) by adding **new** paragraph "j" as follows and renumbering existing paragraph "j" as "k":

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

[Filed 5/1/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7235A

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners adopts amendments to Chapter 12, "Examinations," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 26, 1997, as ARC 7057A. A public hearing was held on April 2, 1997.

These amendments clarify that if a candidate fails the second examination, remedial training will be required. Also, beginning April 1, 1997, the written examination will not be offered by Central Regional Dental Testing Service.

There are no changes as a result of the public hearing, and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 147.36.

These amendments will become effective June 25, 1997. The following amendments are adopted.

ITEM 1. Amend subrule 12.1(6) as follows:

12.1(6) 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. Effective April 1, 1995, 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 will be eliminated from the examination.*

ITEM 2. Amend subrule 12.2(1), paragraph "b," as follows:

b. A dental examinee who fails ~~three or more sections of~~ the second examination will be required to complete remedial education requirements set forth in 12.2(2).

[Filed 5/1/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7237A

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners adopts amendments to Chapter 22, "Minimum Training Standards for Dental Assistants Engaging in Dental Radiography," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 26, 1997, as ARC 7056A. A public hearing was held on April 2, 1997.

These amendments establish a procedure for reinstatement of a lapsed Certificate of Qualification in Dental Radiography.

There are no changes as a result of the public hearing, and these amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 136C.3.

These amendments will become effective June 25, 1997.

The following amendments are adopted.

ITEM 1. Amend subrule 22.8(6) as follows:

22.8(6) Failure to renew a certificate prior to November 1 following expiration shall cause the certificate to lapse and become invalid. A certificate holder whose certificate has lapsed and become invalid is prohibited from taking radiographs until the procedures for ~~application and testing provided for in these rules~~ *reinstatement* are met.

ITEM 2. Rescind subrule 22.8(7).

ITEM 3. Renumber existing subrule 22.8(8) as 22.8(7).

ITEM 4. Adopt **new** subrule 22.9(4) as follows:

22.9(4) The fee for reinstatement of a lapsed certificate of qualification in dental radiography shall be \$60.

ITEM 5. Adopt **new** rule 650—22.12(153) as follows:

650—22.12(153) Reinstatement of lapsed certificate of qualification in dental radiography.

22.12(1) Certificate holders who allow their certificates to lapse by failing to renew such certificate may be reinstated by submitting the following:

a. A completed application for reinstatement of a lapsed certificate to engage in dental radiography.

b. Payment of reinstatement fee and current renewal fee.

DENTAL EXAMINERS BOARD[650](cont'd)

c. Proof of attendance of an updating seminar in dental radiography taken within the previous four-year period from the date of application.

d. A dental assistant who ceases to participate in dental radiography for more than two years shall be required to successfully complete the examination and proficiency evaluation pursuant to rule 22.6(153).

e. A dental assistant who has current certification issued by another state is exempt from the examination requirement.

22.12(2) Reserved.

[Filed 5/1/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7236A**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners adopts an amendment to Chapter 25, "Continuing Education," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 26, 1997, as **ARC 7055A**. A public hearing was held on April 2, 1997.

This amendment allows continuing education credit for CD-ROM presentations.

There are no changes as a result of the public hearing and this amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 272C.2.

This amendment will become effective June 25, 1997.

The following amendment is adopted.

Amend subrule **25.3(4)** by adding the following new paragraph "**d**" and renumbering existing paragraph "**d**" as "**e**":

d. 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.

[Filed 5/1/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7254A**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.23, the Department of Elder Affairs hereby adopts Chapter 27, "Assisted Living Programs," Iowa Administrative Code.

This chapter describes the procedures and standards for certification and monitoring of assisted living programs, and the outcomes of the same. The chapter also further defines authorized providers, structures, activities and users of the same.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 26, 1997, as **ARC 7151A**. A public hearing was held on April 15, 1997.

The only changes from the Notice are in the language and organization. The changes provide further clarity to the definition of "part-time or intermittent," handling of medications by the assisted living program, nurse review, the outcomes of certification and monitoring processes, and the appeals process, and are made in response to public comment and recommendations from the Attorney General's liaison to the department.

The chapter is intended to implement Iowa Code chapter 231C.

This new chapter will become effective July 1, 1997.

The following new chapter is adopted.

CHAPTER 27**ASSISTED LIVING PROGRAMS****321—27.1(231C) Definitions.**

"Dwelling unit" means an apartment, group of rooms, or single room occupied as a separate living quarter or, if vacant, intended for occupancy as a separate living quarter, in which the occupants can live and sleep separately from any other persons in the building and which has direct access from the outside of the building or through a common hall.

"Health care professional" means a physician, physician's assistant, or licensed nurse.

"Part-time or intermittent" means the less than daily provision of skilled nursing services and professional therapies; or the daily provision of skilled nursing services and professional therapies for temporary, but not indefinite, periods of time of up to 21 days a month; but does not include 24-hour care provided by a licensed nurse or other licensed health care professional. Skilled nursing services and professional therapies which are provided daily shall be for no more than 8 hours a day when combined with nurse-delegated activities and personal care.

"Supervision of self-administration" means activities including prompting and reminding, opening of containers or packaging, reading instructions and other label information in order for the tenant to administer a medication to self.

321—27.2(231C) Certification and voluntary accreditation.**27.2(1) Recognition of voluntary accreditation.**

a. A list of organizations recognized by the department for the purposes of voluntary accreditation of assisted living programs will be available from the department.

b. An entity voluntarily accredited as an assisted living program by an organization listed according to 27.2(1), paragraph "a," may choose to send a copy of the accreditation document in lieu of the application for certification.

c. Upon receipt of appropriate documentation of voluntary accreditation, the department will deem the assisted living program as certified and notify the assisted living program that it has been listed.

27.2(2) Application process.

a. Application materials may be obtained from the Iowa department of elder affairs.

ELDER AFFAIRS DEPARTMENT{321}(cont'd)

b. The applicant shall submit two copies of the completed application and the certification fee to the Iowa department of elder affairs.

27.2(3) Application contents. Applications submitted to the department for certification and recertification of an assisted living program shall include the following:

a. A listing with the name, address and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, trustees and the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The entity shall notify the department of any changes in the list within ten working days;

b. A statement affirming that none of the individuals listed in 27.2(3), paragraph "a," have been convicted of a felony or found in violation of the dependent adult abuse code in any state;

c. A statement disclosing whether any of the individuals listed in 27.2(3), paragraph "a," have or have had an ownership interest in an assisted living program, home health agency, residential care facility or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare programs; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect;

d. A copy of the policy and procedure for evaluation of each tenant in accordance with subrule 27.3(1), including:

(1) Any assessment tool to be used to identify the tenant's ability to function independently; or

(2) Indication that the assisted living program is using the long-term care coordinating unit's (LTCCU) designated assessment tool; or

(3) Indication that the assessment is included in the occupancy agreement.

e. Identification of target population, if applicable;

f. A copy of the service plan format;

g. If the assisted living program is contracting personal care or health-related care services from a certified home health agency or a licensed health care facility, copy of that entity's license;

h. Medication policy;

i. A policy describing accident and emergency response procedures;

j. A copy of the occupancy agreement;

k. The process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others;

l. Documentation by a qualified professional that the following systems have been inspected and are found to be installed and maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators;

m. A copy of the food service establishment or health care facility license for the food service;

n. A copy of the documentation signed by the state fire marshal or designee showing that the structure meets the requirements of 661 IAC 5.626(231C);

o. A copy of the assisted living program's fire safety procedure; and

p. A copy of the floor plan for any structures operated as part of the assisted living program.

27.2(4) Certification process.

a. The department or its designee shall review the application for completion within five working days and notify the applicant of application status.

b. The department or its designee(s) shall determine whether or not the proposed assisted living program meets applicable administrative rules contained in 321—Chapter 27 within 30 days of receiving all finalized documentation.

c. The department or its designee shall send notification to the assisted living program within five working days of determination.

d. The department shall maintain a list of assisted living programs certified by the department or voluntarily accredited. The list will be available from the department on request.

27.2(5) Scope of certificate.

a. Duration of certificate. Certification as an assisted living program by the department will be applicable for two years, unless obtained through subrule 27.2(5), paragraph "b" or "d," or suspended or revoked.

b. Expanded certificate. The department may certify for three or four years an assisted living program which demonstrates above-standard or exemplary operation.

c. Transference of certificates. A certificate, unless suspended or revoked, will be transferable to a new owner/sponsor. The new owners/sponsors are required to notify the state within 30 days prior to the change in ownership. The notice shall include assurance that the new owner will meet all requirements of 321—Chapter 27.

d. Transitional provisions. Programs that were operational prior to July 1, 1996, will be granted certification for one year from the date of issuance. At the end of the one-year certification, the program must meet all applicable administrative rules contained in 321—Chapter 27 to renew certification. Upon certification, the program shall be subject to rule 27.11(231C).

e. Renewal of certification. A certificate for an assisted living program, unless suspended or revoked, shall expire at the end of the time period specified in the certificate and shall be renewed upon application by the owner or operator in accordance with this paragraph. In order to obtain a renewal of the assisted living program certification, the applicant must submit:

(1) The completed application form at least 30 days prior to the expiration of such certificate;

(2) The required certification fee for an assisted living program with the application for renewal;

(3) Documentation by a qualified professional that the following systems have been inspected and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators;

(4) If the assisted living program is contracting personal care or health-related care services from a certified home health agency or a licensed health care facility, copy of that entity's current license or monitoring report;

(5) A copy of the food service establishment or health care facility current license for the food service;

(6) A copy of the documentation signed by the state fire marshal or designee showing that the structure meets the requirements of 661 IAC 5.626(231C);

(7) Appropriate changes in the documentation submitted for certification to reflect any changes in the assisted living program; and

ELDER AFFAIRS DEPARTMENT[321](cont'd)

(8) An assurance that all other elements of the assisted living program's operation remain the same as previously submitted.

321—27.3(231C) Conditions for occupancy and transfer.

27.3(1) Evaluation of tenant. Each assisted living program shall have written policies and procedures for the evaluation of each tenant's functional ability and health status and the determination of needed services prior to occupancy and as needed.

27.3(2) Signed agreement. Each tenant shall sign an occupancy agreement and managed risk statement prior to occupancy.

27.3(3) Occupancy and transfer criteria.

a. An assisted living program shall not knowingly admit or retain a tenant:

(1) Who requires more than part-time or intermittent health-related care;

(2) Who is dangerous to self or others;

(3) Who is in an acute stage of alcoholism, drug addiction, or mental illness;

(4) Who is under age 18; or

(5) Who meets the assisted living program's transfer criteria.

b. An assisted living program may have additional occupancy or transfer criteria if disclosed in writing prior to occupancy.

c. An assisted living program may request an exception to the provision of 27.3(3)"a"(1) in accordance with the requirements of 321—27.6(231C).

27.3(4) Transfer planning. The assisted living program shall assist a tenant who requires more services than the assisted living program is able to provide in making arrangements for care in an alternative setting.

321—27.4(231C) Services.

27.4(1) Service plan required.

a. An individualized service plan shall be developed for each tenant:

(1) In consultation with the tenant and, at the tenant's request, with the family member(s) or designated responsible party;

(2) Prior to occupancy and updated at least annually or whenever changes in need are identified; and

(3) When the tenant needs personal care or health-related care, the service plan shall be developed in consultation with a multidisciplinary team, which consists of no less than three individuals, including a health care professional and a person with a bachelor's degree in a human services-related field.

b. The service plan shall be individualized and shall indicate, at a minimum:

(1) The tenant's identified needs and requests for assistance;

(2) Any services and care to be provided per agreement with tenant;

(3) The provider(s) if other than the assisted living program; and

(4) Transfer and referral arrangements for health care providers selected by each tenant.

27.4(2) Medications. Each assisted living program shall have a written medication policy which includes the following:

a. Tenants are allowed to self-administer medications unless the prescription states that tenant is not to self-administer the medication or the tenant delegates administration to the assisted living program by occupancy agreement or signed service plan.

b. Tenants may keep their own medications in their possession unless the prescription states that the medication is to be stored by the assisted living program or the tenant delegates partial or complete control of medications to the assisted living program by occupancy agreement or signed service plan.

c. The program shall list in a tenant's record any medications to be stored or administered by the program.

d. The following requirements shall apply to medications which are supervised or administered by the assisted living program:

(1) Supervision of self-medication and administration of medications shall be provided by a practitioner or the practitioner's authorized agent in accordance with 655—subrule 6.2(5) and Iowa Code chapter 155A.

(2) The program shall document by exception any medication the program has agreed to administer or supervise which is not taken by the tenant.

e. The following requirements shall apply to medications which are stored by the assisted living program:

(1) The medications shall be kept in a secure place that is not accessible to persons other than employees responsible for the supervision of such medications.

(2) The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

(3) No person other than the dispensing pharmacist shall alter a prescription label.

(4) Each tenant's medication shall be stored in its originally received container.

(5) When delegated partial or complete control by the tenant, medications may be transferred from the original prescription containers into medication reminder boxes or medication cups within the tenant's unit.

27.4(3) Meals.

a. The assisted living program shall have the capacity to provide hot or other appropriate meals at least once a day or coordinate with other community providers to make arrangements for the availability of meals.

b. Meals provided by the assisted living program but not prepared on site shall be obtained from or provided by an entity licensed for meal preparation.

27.4(4) Service and medication records. The assisted living program shall maintain a service and medication record for each tenant.

27.4(5) Nurse review.

a. An assisted living program which administers prescription drugs or provides physician-directed or health-related care shall provide for a registered nurse to:

(1) Monitor each tenant receiving program-administered prescription drugs for response to program-administered medications, ensure that the prescription drug orders are current, and that the prescription drugs are administered consistent with such orders at least every 30 days; and

(2) Ensure that physicians' orders for tenants receiving physician-directed care from the assisted living program are current at least every 30 days; and

(3) Assess and document the health status of each tenant receiving health-related care, make recommendations as appropriate and monitor progress on previous recommendations at least every 90 days.

b. The registered nurse shall provide the assisted living program with signed, dated and timed written documentation of the above activities.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—27.5(231C) Staffing.

27.5(1) Sufficient trained staff shall be available at all times to fully meet tenant's identified needs.

27.5(2) Each tenant shall have access to a 24-hour personal emergency response system which automatically identifies the tenant in distress and can be activated with one touch.

27.5(3) The owner or sponsor of the assisted living program is responsible for ensuring that both management and direct service employees receive training appropriate to the task.

27.5(4) Any nursing services shall be available in accord with Iowa Code chapter 152 and 655—Chapter 6.

27.5(5) The assisted living program shall have a training and staffing plan on file and shall maintain documentation of training received by staff.

27.5(6) The owner or sponsor of the assisted living program may employ a qualified manager who is at least 21 years of age.

27.5(7) All personnel of the assisted living program shall be able to implement the assisted living program's accident, fire safety and emergency procedures.

321—27.6(231C) Exceptions to service limits. The department may grant on a time-limited basis an exception to the service limits of this chapter for a tenant who temporarily needs hospice care or more than part-time or intermittent health-related care.

27.6(1) Procedures. The department:

a. Shall accept a written request from an assisted living program for exception to an individual tenant's service limit as soon as it becomes apparent to the assisted living program's staff that the tenant is going to need skilled nursing activities daily for more than the 21-day limit;

b. Shall respond in writing to such requests within two working days of receipt of necessary documentation;

c. Shall monitor the tenant medical and functional information for continued appropriateness of the exception regularly for the duration of the exception;

d. Shall keep exceptions to a minimum.

27.6(2) Criteria for service limit exception. The department may grant an exception if the assisted living program proves by clear and convincing evidence the following criteria are met:

a. It is the informed choice of the tenant to remain in the home; and

b. The assisted living program is able to obtain the staff necessary to meet the tenant's extended care needs in addition to the care of the other tenants; and

c. The exception shall not jeopardize the care, health, safety or welfare of the tenants.

321—27.7(231C) Financial.

27.7(1) Occupancy agreement.

a. The assisted living program shall enter an occupancy agreement with each tenant for assisted living housing and services that clearly describes the rights and responsibilities of the tenant and of the provider.

b. The occupancy agreement shall also include, but not be limited to, the following:

(1) Description of all fees, charges and rates describing tenancy and basic services covered, any additional and optional services and related costs;

(2) Statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the assisted living program;

(3) Procedure for nonpayment of fees;

(4) Identification of party responsible for payment of fees;

(5) Guarantee that the assisted living program will notify the tenant in writing at least 30 days in advance of any changes to the occupancy agreement and guarantee that all tenant information will be maintained in a confidential manner to the extent allowable under state and federal law;

(6) Occupancy and transfer criteria;

(7) Emergency response policy; and

(8) The staffing policy which identifies whether or not staff is available 24 hours a day, whether or not task delegation will be used, and how staffing will be adapted to changing tenant needs.

27.7(2) Managed risk statement. The assisted living program shall have a managed risk statement which includes the tenant's or responsible person's signed acknowledgment of the shared responsibility for identifying and meeting needs and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

27.7(3) Tenant funds management. The assisted living program shall have written policies, procedures and accounting records for handling tenant's financial resources. If the assisted living program or staff agree to manage a tenant's financial resources:

a. Appropriate documentation of income and expenditures for each tenant whose funds are managed shall be available; and

b. Tenants' funds shall be kept in a separate account.

321—27.8(231C) Structure.

27.8(1) The structure of the assisted living program shall be designed and operated to meet the needs of the tenants.

27.8(2) Building and grounds shall be well maintained, clean, safe and sanitary.

27.8(3) Assisted living programs may have private dwelling units with lockable doors and individual cooking facilities.

27.8(4) Dwelling units.

a. Each dwelling unit shall have at least one room which will have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.

c. A dwelling unit used for double-occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

27.8(5) The assisted living program shall have a minimum common area of 15 square feet per tenant.

321—27.9(231C) Fire safety.

27.9(1) The assisted living program shall have a written fire safety procedure.

27.9(2) The assisted living program facility shall meet the fire safety standards designated for this category in 661 IAC 5.626(231C).

321—27.10(231C) Monitoring.

27.10(1) The department or its designee(s) will monitor a certified assisted living program at least once during the program's certification period.

27.10(2) All records and areas of the assisted living program deemed necessary to determine compliance with the requirements for certification under 321—Chapter 27 shall be accessible to the department or its designee for purposes of monitoring.

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27.10(3) The area where food is stored, prepared or served by the assisted living program may be inspected annually by the department of inspections and appeals or its designee. If food is prepared in the assisted living program, a current food service establishment license shall be posted in the food service area.

321—27.11(231C) Complaint procedure. Any person with concerns regarding the operations and service delivery of an assisted living program may file a written complaint with the community-based housing and services unit of the Department of Elder Affairs, 200 Tenth Street, Third Floor - Clemens Building, Des Moines, Iowa 50309-3609.

27.11(1) The complaint shall include the complainant's name, address, and telephone number, and shall be signed and dated by the complainant. The complaint shall identify the assisted living program and shall include the complainant's concerns regarding the program.

27.11(2) Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary review of the complaint. Within 20 working days of receipt of the complaint, the department shall make or cause to be made an on-site inspection of the assisted living program.

27.11(3) The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. Upon conclusion of the investigation, the department shall notify the complainant and assisted living program promptly of the results.

321—27.12(231C) Denial, suspension, or revocation. The department shall have the authority to deny, suspend or revoke a certificate in any case where the department finds there has been a substantial or repeated failure on the part of the assisted living program to comply with the requirements of 321—Chapter 27 or for any of the following reasons:

27.12(1) Cruelty or indifference to assisted living program tenants.

27.12(2) Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal guardian.

27.12(3) Permitting, aiding, or abetting the commission of any illegal act in the program.

27.12(4) Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

27.12(5) Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the assisted living program.

27.12(6) Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.

27.12(7) Any of the individuals listed in 27.2(3), paragraph "a," have or have had an ownership interest in an assisted living program, home health agency, residential care facility or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare programs; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

27.12(8) In the case of a certificate applicant or an existing certified owner or operator which is an entity other than an individual, the department may deny, suspend, or revoke a certificate if any individual, who is in a position of control or is an officer of the entity, engages in any act or omission proscribed by this chapter.

321—27.13(2231C) Notice—hearings.

27.13(1) The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by certified mail, return receipt requested, or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended.

27.13(2) If the applicant or certificate holder requests a hearing, the department shall transmit the request to the department of inspections and appeals pursuant to 481 IAC 10.4(10A).

27.13(3) The hearing shall be conducted by the department of inspections and appeals pursuant to 481 IAC 10.1(10A) to 10.24(10A,17A).

27.13(4) At any time at or prior to the hearing, the department may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—27.14(231C) Appeals. All appeals shall be conducted pursuant to 321 IAC 2.7(4).

321—27.15(231C) Judicial review. Procedures for judicial review shall be conducted pursuant to 321 IAC 2.7(6).

321—27.16(231C) Records. The department collects and stores a variety of records in the course of certifying and monitoring assisted living programs. Some information stored may be personally identifiable. None is retrievable by personal identifier with the exception of a business which uses an individual's name in the title. Each assisted living program record maintained by the department contains both open and confidential information.

27.16(1) Open information includes:

- a. Certificate application and status;
- b. Final findings of state and Medicaid surveys;
- c. Records of complaints;
- d. Reports from the fire marshal;
- e. Plans of correction submitted by the program;
- f. Medicaid status;
- g. Official notices of certificate and Medicaid sanctions;
- h. Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 27.12(231C), 27.13(231C) and 27.14(231C).

27.16(2) Confidential information includes:

- a. Survey or investigation information which does not comprise a final finding. Survey information which does not comprise a final finding may be made public in a proceeding concerning the citation of a program, denial, suspension or revocation of a certificate;
- b. Names of all complainants;
- c. Names of tenants of all assisted living programs, identifying medical information and the address of anyone other than an owner.

These rules are intended to implement Iowa Code chapter 231C.

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[Published 5/21/97]

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ARC 7242A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455D.11, the Environmental Protection Commission hereby adopts Chapter 216, "Regents Tire-Derived Fuel Program," Iowa Administrative Code.

This new chapter provides for the allocation of moneys to State Board of Regents' institutions of higher education to offset additional fuel costs incurred by these institutions through the use of tire-derived fuel in generating heat, electricity, or power on a British thermal unit equivalent basis.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 12, 1997, as **ARC 7048A**. A public hearing was held on March 5, 1997. Written and oral comments were accepted from the public at that time.

As a result of the comments received, the Department has made revisions to the Notice of Intended Action. These revisions include expanding the definition of "Additional fuel costs" to include labor and equipment maintenance costs associated with the blending of tire-derived fuel with the primary fossil fuel used by the institution. Also included are revisions regarding eligible and ineligible reimbursement costs, and eligible amounts of reimbursement for these costs. These revisions are contained in rules 216.3(455D), 216.7(455D), 216.8(455D), and 216.11(455D).

These rules are intended to implement Iowa Code section 455D.11E.

This chapter will become effective June 25, 1997.

The following new chapter is adopted.

CHAPTER 216

REGENTS TIRE-DERIVED FUEL PROGRAM

567—216.1(455D) Goal. The goal of this program is to assist in the state's effort to manage waste tires in an environmentally sound manner, by encouraging state board of regents institutions of higher education to use waste tires for beneficial uses to the fullest extent practicable, including the use of tire-derived fuel.

567—216.2(455D) Purpose. The purpose of this chapter is to establish a regents tire-derived fuel program for the allocation of moneys to such institutions to offset additional fuel costs incurred through the use of tire-derived fuel in generating heat, electricity, or power on a British thermal unit equivalent basis. This program shall be available only to the extent that such moneys help to reduce the number of waste tires within the state.

567—216.3(455D) Definitions. As used in this chapter: "Additional fuel costs" means the difference between the purchase price of tire-derived fuel and the purchase price of an institution's primary fossil fuel as compared on a price per million Btu equivalency basis, and labor and equipment maintenance costs associated with blending tire-derived fuel with the institution's primary fossil fuel.

"Btu" means British thermal unit.

"Department" means Iowa department of natural resources.

"Institutions" means the following institutions of higher education as governed by the state board of regents:

1. The University of Iowa.

2. The Iowa State University of Science and Technology, including the agricultural experiment station.

3. The University of Northern Iowa.

"Processing site" means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

"Tire-derived fuel" means a fuel derived from waste tires. This may include whole tires or tires processed into uniform, flowable pieces which satisfy the specifications of the end-user for use as either a primary or supplemental fuel.

"Tire processor" means a person who reduces waste tires into a processed form suitable for recycling or producing fuel for energy or heat, or uses whole waste tires in any other beneficial use as authorized by the department. "Tire processor" does not mean a person who retreads tires or processes and stores tires.

"Waste management assistance division" means the waste management assistance division of the department of natural resources established by Iowa Code section 455B.483.

"Waste tire," as defined in Iowa Code section 455D.11, means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. "Waste tire" does not include a nonpneumatic tire.

567—216.4(455D) Role of the department of natural resources. The department is responsible for the administration of funds for award to regents institutions under these rules. The department will ensure that funds disbursed meet guidelines established in Iowa Code section 455D.11E.

567—216.5(455D) Funding source. The department will use funds available from the waste tire management fund authorized by Iowa Code section 455D.11C. Pursuant to Iowa Code section 455D.11E, \$100,000 in annual funding is provided for the regents tire-derived fuel program over a six-year period, beginning in fiscal year 1997 through fiscal year 2002.

567—216.6(455D) Eligibility. Any institution as defined in rule 216.3(455D) may request funding through this program to offset additional fuel costs incurred through the use of tire-derived fuel during the fiscal year for which funding has been requested, subject to the requirements of this chapter, and the following conditions:

1. The institution may request reimbursement only if the tire-derived fuel was purchased from a tire processor operating a processing site located within Iowa, and

2. The institution must be in compliance with all local, state, and federal regulations and requirements regarding the use and combustion of tire-derived fuels.

567—216.7(455D) Eligible costs. Institutions may request reimbursement funding to offset additional fuel costs associated with the use of tire-derived fuel. The reimbursement allocation shall be based upon the difference between the purchase price of tire-derived fuel and the purchase price of the institution's primary fossil fuel on a price per million Btu equivalency basis.

In arriving at this cost difference, transportation costs associated with transport of the tire-derived fuel from the processor to the institution may be considered in this comparison, provided that the costs associated with transport of the primary fossil fuel used by the institution are also included in the comparison.

Labor and equipment maintenance costs associated with blending tire-derived fuel with the institution's primary fossil fuel are also eligible costs. Reimbursement for these costs under this program shall not exceed 25 percent of the differ-

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ence between the purchase price of tire-derived fuel and the purchase price of the institution's primary fossil fuel on a price per million Btu equivalency basis that is calculated by the institution pursuant to this rule.

567—216.8(455D) Ineligible costs. Funds through this program shall not be provided or used for costs that include, but are not limited to, the following:

1. Purchase of equipment for off-loading, handling, or storing tire-derived fuel;
2. Building purchase, construction, remodeling, rent, or leasing associated with the storage or processing of tire-derived fuel;
3. Administration and accounting;
4. Consultant fees;
5. Permits, fees, and monitoring expenses;
6. Purchase of tire-derived fuel outside of the fiscal year for which funds are currently available.

567—216.9(455D) Intent to participate. Institutions desiring to obtain cost reimbursement through the regents tire-derived fuel program shall submit a letter of intent to the department, which shall describe their intent to participate in the program, by June 1 prior to the beginning of the fiscal year for which funds are anticipated to be requested. The letter of intent shall provide the following information:

1. Estimated quantity of tire-derived fuel to be purchased during the fiscal year as measured on a tonnage basis.
2. A comparison between the purchase price of tire-derived fuel and the purchase price of the institution's primary fossil fuel on a price per million Btu equivalency basis.

In arriving at this cost difference, transportation costs associated with transport of the tire-derived fuel from the processor to the institution may be considered in this comparison, provided that the costs associated with transport of the primary fossil fuel used by the institution are also included in the comparison.

3. Any contract or bid obtained by the institution for the purchase of tire-derived fuels from producers of tire-derived fuel products must be provided to the department. Procedures used to make contract award determinations shall also be described. If multiple bids or price estimates were obtained by the institution, all such bid and pricing information shall be included in the narrative submitted to the department.

567—216.10(455D) Allocation of funds. Funding shall be allocated to institutions as reimbursement for eligible costs as described in rule 216.7(455D). Such reimbursement shall be made available at the end of each quarter of the fiscal year that funding has been allocated.

216.10(1) Funding allocation limitations. The department shall determine the total amount of funding available for allocation to an institution during a fiscal year, based upon consideration of the following:

- a. The institution's estimated total eligible expenditures for the fiscal year that funding has been requested, as contained in the institution's letter of intent to participate, as described in rule 216.9(455D).

- b. An individual institution's estimate of funds to be requested shall be compared to the total amount of funding available. If the total amount of funds requested by all institutions exceeds the total amount of annual funds available, funding allocations shall be made proportionately between the institutions based on the estimated tonnage of tire-derived fuel estimated to be procured during the fiscal year period by each institution.

216.10(2) Allocation of remaining funds. An institution which does not submit a letter of intent to participate according to the schedule as listed in rule 216.9(455D) may still be eligible to receive reimbursement for tire-derived fuel purchases subject to the following:

- a. Sufficient program funds remain after allocations to institutions that previously submitted letters of intent that were approved by the department.

- b. The institution submits a letter of intent to participate in accordance with rule 216.9(455D) for the portion of the fiscal year that yet remains.

567—216.11(455D) Disbursement of funds. Funds through the program shall be disbursed to institutions approved by the department. Funds shall be disbursed as reimbursement for approved expenditures on a quarterly fiscal year basis; ending dates of each quarter of a fiscal year are September 30, December 31, March 31, and June 30.

The department will issue reimbursement payments to the institution only. In order to disburse funds an institution must submit the following information within 45 days following the end of the fiscal year quarter for which reimbursement is requested:

1. Copies of statements or invoices that clearly denote the quantity of tire-derived fuel delivered to the institution, and the purchase price for the tire-derived fuel, during the past fiscal year quarter for which funds have been requested.

2. Copies of statements, invoices, or other documentation that clearly denote the purchase price of the primary fossil fuel used by an institution during the equivalent fiscal year quarter.

3. Reports or analysis of the Btu value of the tire-derived fuel purchased and the primary fossil fuel purchased during the period for which the reimbursement is to be awarded.

4. Comparison of the above-listed information for determination of the additional fuel costs incurred on a per million Btu equivalent basis.

5. Detailed description of the eligible labor and equipment maintenance activities and itemized expenditures for which the institution is seeking reimbursement. Pursuant to rule 216.7(455D), reimbursement for labor and equipment maintenance costs associated with blending tire-derived fuel with the institution's primary fossil fuel shall not exceed 25 percent of the difference between the purchase price of tire-derived fuel and the purchase price of the institution's primary fossil fuel on a price per million Btu equivalency basis that is calculated by the institution.

6. Submittal of a correctly completed state claim voucher to the department.

567—216.12(455D) Funding denial. An institution may be denied funding through this program for any of the following reasons:

1. An institution does not meet the definition of "institution," as defined in rule 216.3(455D);

2. An institution does not meet eligibility requirements pursuant to rules 216.6(455D) to 216.8(455D); or

3. An institution does not provide sufficient information as requested in rules 216.9(455D) and 216.11(455D).

These rules are intended to implement Iowa Code section 455D.11E.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7241A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455D.11, the Environmental Protection Commission hereby adopts Chapter 217, "Waste Tire Processor Incentive Program," Iowa Administrative Code.

This new chapter provides for the awarding of incentive moneys to eligible waste tire processors located within the state as an incentive to encourage such tire processors to lower the rates at which they sell processed waste tire materials.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 12, 1997, as ARC 7049A. The adopted chapter is identical to the one published under Notice of Intended Action.

These rules are intended to implement Iowa Code section 455D.11F.

This new chapter will become effective June 25, 1997.

The following new chapter is adopted.

CHAPTER 217

WASTE TIRE PROCESSOR INCENTIVE PROGRAM

567—217.1(455D) Goal. The goal of this program is to provide an incentive to encourage tire processors to lower the rates at which they sell processed waste tire materials.

567—217.2(455D) Purpose. The purpose of this chapter is to establish a waste tire processor incentive program for the allocation of moneys to such processors.

567—217.3(455D) Definitions. As used in this chapter: "Department" means Iowa department of natural resources.

"Passenger tire equivalent" means a conversion measurement used to estimate waste tire amounts from a total weight figure where one passenger car tire is equal to 20 pounds.

"Processing site" means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

"Site of end use" means a site where whole or processed waste tires are recycled or reused in a beneficial manner authorized by the department.

"Tire processor" means a person who reduces waste tires into a processed form suitable for recycling or producing fuel for energy or heat, or uses whole waste tires in any other beneficial use as authorized by the department. "Tire processor" does not mean a person who retreads tires or processes and stores tires.

"Waste management assistance division" means the waste management assistance division of the department of natural resources established by Iowa Code section 455B.483.

"Waste tire," as defined in Iowa Code section 455D.11, means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. "Waste tire" does not include a nonpneumatic tire.

567—217.4(455D) Role of the department of natural resources. The department is responsible for the administration of funds awarded to tire processors under these rules. The department will ensure that funds disbursed meet guidelines established in Iowa Code section 455D.11F.

567—217.5(455D) Funding source. The department will use funds available from the waste tire management fund, authorized by Iowa Code section 455D.11C. Pursuant to Iowa Code section 455D.11F, \$300,000 in annual funding is provided from the waste tire management fund for the waste tire processor's incentive program over a six-year period, beginning in fiscal year 1997 through fiscal year 2002. Funds shall be made available to eligible tire processors as specified in rule 217.7(455D) at the end of each fiscal year.

567—217.6(455D) Allocation of funds. The department shall determine the total amount of funding available for allocation to an individual tire processor during a fiscal year, based upon consideration of the following:

217.6(1) Maximum allocation. Eligible tire processors may receive funding of 20 cents per passenger tire equivalent processed and delivered to a site or sites of end use. An individual tire processor shall not receive more than \$20,000 from the waste tire management fund in a fiscal year.

217.6(2) Allocation requests in excess of funding availability. An individual tire processor's request for funds shall be compared to the total amount of annual program funding available. If the total amount of requests for funds exceeds the total amount of annual funds available, funding allocations shall be made proportionately based on the passenger tire equivalent of waste tires processed and delivered to a site or sites by each tire processor during the fiscal year for which funding has been requested.

567—217.7(455D) Eligibility. Any tire processor as defined in rule 217.3(455D) may request funding through this program subject to the requirements of this chapter and the following conditions:

1. The tire processor must be currently operating a tire processing site located within Iowa.

2. The tire processor must annually process the passenger tire equivalent of more than 250,000 waste tires, as defined in Iowa Code section 455D.11, into a form suitable for recycling or the production of fuel for energy or heat, or must deliver 250,000 or more whole waste tires to a site or sites of beneficial use as approved by the department.

3. Of the total annual quantity of tires processed, only those processed tires or whole waste tires that are delivered to a site or sites of end use will qualify for funding as specified in subrule 217.6(1).

4. The tire processor must be in compliance with all applicable provisions of local, state, and federal regulations, including the department's waste tire storage, collection, and processing requirements as set forth in 567—Chapter 117.

5. There are no current or pending enforcement actions against the tire processor by the department. If such actions exist, the tire processor is ineligible to receive moneys under this program.

567—217.8(455D) Request for funds. Tire processors desiring to obtain funds through the waste tire processor incentive program shall submit a written request for funds to the department no earlier than July 1 and no later than September 1 after the end of a fiscal year for which funds are requested. The written request shall provide the following information:

1. Address and location of the tire processing operation.

2. Documentation, reports, or statements submitted to the satisfaction of the department, that denote the processing of more than 250,000 waste tires by the tire processor within the fiscal year that funds have been requested.

3. Documentation of the quantity of processed or whole waste tires, on a passenger tire equivalency basis, that have been delivered to a site of end use.

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4. A statement of how funds awarded through this program will be used by the tire processor. Consistent with the goals of the program, as specified in rule 217.1(455D), processors are encouraged to use funds awarded to lower the rates at which they sell processed waste tire materials.

567—217.9(455D) Disbursement of funds. Funds through the program shall be disbursed to tire processors that have submitted a request for funds to the waste management assistance division, and have had such a request approved by the department. The department will disburse funds to the permitted tire processor only. Within 30 days of the tire processor's notification of approval of the request for funds by the department, the tire processor shall submit a correctly completed state claim voucher to the department. Payment to the tire processor will then be issued.

567—217.10(455D) Funding denial. A tire processor may be denied funding through this program for any of the following reasons:

1. A processor does not meet the definition of "tire processor," as defined in rule 217.3(455D);
2. A tire processor does not meet the eligibility requirements pursuant to rule 217.7(455D); or
3. A tire processor does not provide sufficient information as requested in rule 217.8(455D).

These rules are intended to implement Iowa Code section 455D.11F.

[Filed 5/2/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7246A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.607(1), the Iowa Division of Insurance hereby adopts an amendment to Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 26, 1997, as **ARC 7135A**. Although a public hearing was not held, written comments were accepted until April 15, 1997. No comments were received. The Insurance Division adopted this amendment on May 1, 1997.

The revision to Chapter 50 permits a limited registration for Canadian broker-dealers and agents which would permit them to effect transactions in securities with Canadian persons (1) who were preexisting clients and who are temporarily resident in Iowa, or (2) who are resident in Iowa and whose transactions are in a self-directed, tax-advantaged retirement plan in Canada.

The new subrule incorporates by reference North American Securities Administrator's Association (NASAA) guidelines which apply to qualifications and registrations of direct participation mortgage programs in the form of limited partnerships, trusts, limited liability companies, and limited liability partnerships. The rules contained in these guidelines will be applied by analogy to mortgage programs in

other forms. Where these guidelines conflict with requirements of the Securities and Exchange Commission, the guidelines do not apply. The official reporter for this NASAA statement of policy is the NASAA REPORTS volume printed by Commerce Clearing House, Inc. A copy of the NASAA REPORTS volume is available to the public during regular business hours at the offices of the Administrator in the Lucas State Office Building.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 502.201(1), 502.203(18) and 502.301(1)"b"(3).

The amendments will become effective June 25, 1997.

The following amendments are adopted.

ITEM 1. Amend 191—Chapter 50 by adding the following new rule:

191—50.33(502) Limited registration of Canadian broker-dealers and agents.

50.33(1) A Canadian broker-dealer that is resident in Canada and has no office or other physical presence in Iowa may, provided the broker-dealer is registered in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

a. A person from Canada who is temporarily resident in Iowa, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

b. A person from Canada who is resident in Iowa, whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

50.33(2) An agent who will be representing a Canadian broker-dealer registered under this rule may, provided the agent is registered in accordance with this rule, effect transactions in securities in Iowa as permitted for the broker-dealer in 50.33(1).

50.33(3) A Canadian broker-dealer may register under this rule provided that the broker-dealer:

a. Files an application in the form required by the jurisdiction in which it has its head office;

b. Files a consent to service of process;

c. Is registered as a broker or dealer in good standing in the jurisdiction from which the broker-dealer is effecting transactions into this state and files evidence thereof; and

d. Is a member of a self-regulatory organization or stock exchange in Canada.

50.33(4) An agent who will be representing a Canadian broker-dealer registered under this rule in effecting transactions in securities in Iowa may register under this rule provided that the agent:

a. Files an application in the form required by the jurisdiction in which the broker-dealer has its head office;

b. Files a consent to service of process; and

c. Is registered in good standing in the jurisdiction from which the agent is effecting transactions into Iowa and files evidence thereof.

50.33(5) If no denial order is in effect and no proceeding is pending under Iowa Code section 502.304, registration becomes effective on the sixtieth day after an application is filed, unless earlier made effective.

50.33(6) A Canadian broker-dealer registered under this rule shall:

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a. Maintain provincial or territorial registration and membership in a self-regulatory organization or stock exchange in good standing;

b. Provide the administrator upon request with the books and records relating to its business in Iowa as a broker-dealer;

c. Inform the administrator forthwith of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and

d. Disclose to the broker-dealer's clients in Iowa that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

50.33(7) An agent of a Canadian broker-dealer registered under this rule shall:

a. Maintain the agent's provincial or territorial registration in good standing;

b. Inform the administrator forthwith of any criminal action, taken against the agent, or of any finding or sanction imposed on the agent as a result of any self-regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

50.33(8) Renewal applications for Canadian broker-dealers and agents under this rule must be filed before December 1 each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to 50.33(3)"a" or 50.33(4)"a," as the case may be.

50.33(9) Every applicant for registration or renewal registration under this rule shall pay the fee for broker-dealers and agents as required under the Act.

50.33(10) A Canadian broker-dealer or agent registered under this rule may only effect transactions in Iowa:

a. As permitted in 50.33(1) or 50.33(2);

b. With or through (1) the issuers of the securities involved in the transactions, (2) other broker-dealers, and (3) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; and

c. As otherwise permitted by this rule.

50.33(11) A Canadian broker-dealer or agent registered under this rule and acting in accordance with the limitations set out in 50.33(10) is exempt from all of the requirements of the Act, except the antifraud provisions and the requirements set out in this rule.

50.33(12) All transactions in securities effected between Canadian broker-dealers or agents registered under this rule and Canadian persons who meet the requirements in 50.33(1)"a" or "b" are exempt from Iowa Code sections 502.201 and 502.602.

ITEM 2. Amend 191—50.57(502) by adding the following new subrule:

50.57(9) Registration of mortgage programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Mortgage Programs as adopted by the NASAA membership on September 10, 1996, and published in CCH NASAA REPORTS, paragraph 701.

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[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7245A

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Medical Examiners hereby amends Chapter 1, "Public Records and Fair Information Practices," Chapter 10, "Medical Examiners," Chapter 11, "Licensure Requirements," Chapter 12, "Discipline," and Chapter 14, "Registration of Acupuncturists," Iowa Administrative Code.

These amendments make technical corrections and clarifications to the rules.

Notice of Intended Action was published in the March 12, 1997, Iowa Administrative Bulletin as **ARC 7099A**. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were approved at the April 30, 1997, teleconference meeting of the Board of Medical Examiners.

These amendments will become effective June 25, 1997.

These amendments are intended to implement Iowa Code chapters 147, 148, 148C, 148E, 150, 150A, and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 1.14(6) as follows:

1.14(6) Examination records. These records contain information about applicants for any of the following examinations: *United States Medical Licensing Examination (USMLE)*, Federation of State Medical Boards of the United States, Inc. - Federation Licensing Examination (FLEX), National Board of Medical Examiners, National Board of Osteopathic Medical Examiners, *National Commission for the Certification of Acupuncturists*, individual state or territorial medical licensing boards, *Licentiate of the Medical Council of Canada examination (LMCC)*, *Special Purpose Examination (SPEX)*, or other examination approved by the

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~~board National Commission on Certification of Physician's Assistants, and National Registry of Emergency Medical Technicians.~~ These records may also contain information about applicants who pursue licensure by ~~reciprocity endorsement~~, score transfer, or other means. ~~This~~ The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, ~~147A~~, 148, ~~148C~~, ~~148E~~, 150, and 150A. ~~This information and is stored electronically and on paper only.~~ The information contained in these records ~~is~~ Portions of the examination records are confidential in part pursuant to Iowa Code sections 22.7(1), 22.7(19), and 147.21.

ITEM 2. Amend subrule 1.14(8) as follows:

1.14(8) Licensure and certification records. These records contain information about doctors of medicine and surgery, osteopathic medicine and surgery, and osteopathy; and ~~physicians' assistants, advanced emergency medical technicians and paramedics registered acupuncturists~~ who are licensed or certified registered by the agency. ~~This~~ The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, ~~147A~~, 148, ~~148C~~, ~~148E~~, 150, and 150A. ~~This information and is stored on paper, in automated data processing systems, on microfiche, on CD-ROM, floppy disk, and in the state archives.~~ These records may contain information which is confidential under subrule 1.13(2).

ITEM 3. Amend 653—10.2(17A) as follows:

653—10.2(17A) Description of board. The purpose of the board of medical examiners is to administer and enforce the provisions of Iowa Code chapters 147, ~~147A~~, 148, ~~148C~~, ~~148E~~, 150 and 150A with regard to the practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; the registration of non-physician acupuncturists; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture, and the statutes and rules relating to and the standard of care provided by advanced emergency medical care providers; and the imposition of discipline upon licensees and registrants as provided by statute or rule.

ITEM 4. Amend subrule 10.3(1) as follows:

10.3(1) ~~Will make~~ Makes policy relative to matters involving medical and acupuncture education, and licensure, and discipline.

ITEM 5. Amend subrule 10.3(5), paragraph "f," as follows:

f. ~~Petition the health department to request~~ Request that the attorney general file appropriate court action for enforcement of the board's authority relating to licensees or other persons who are charged with violating statutes or rules the board is charged with administering ~~administers or enforcing enforces~~.

ITEM 6. Amend subrule 10.3(5), paragraph "j," as follows:

j. Establish and administer rules for continuing education requirements as a condition to of license renewal.

ITEM 7. Rescind subparagraph 10.3(5)"f"(7).

ITEM 8. Amend subrule 10.3(6), paragraph "b," as follows:

b. Under the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; the administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, ~~paramedics and advanced emergency medical technicians; and registered acupuncturists;~~ issuance of subpoenas on behalf of the board or a committee of the board, during the investigation of possible violations; ~~of the statutes and rules within the board responsibilities;~~ enunciate policy on behalf of the board; and in addition, performs all other duties as provided by statute or rule or as delegated by the board.

ITEM 9. Amend rule 653—10.6(17A), introductory paragraph, as follows:

653—10.6(17A) Meetings and examinations. The board shall meet approximately every six weeks and may meet at other times as needed. The board administers physician licensure and advanced emergency medical technician and paramedic examinations. Information concerning the dates and location of board meetings or examinations administered by the board may be obtained from the board's office.

ITEM 10. Amend rule 653—11.1(147,148,150,150A), definition of "Special Licensing Examination," as follows:

"Special Licensing Purpose Examination" or "SPEX" is the special licensing purpose examination of the Federation of State Medical Boards, U.S., Inc.

ITEM 11. Amend subrule 11.2(2), paragraph "g," as follows:

g. Documentation of successful completion of one year of postgraduate training or internship in a hospital program approved by the board as specified by 11.3(1) "b d";

ITEM 12. Amend subrule 11.2(3), paragraph "a," as follows:

a. After the 120 days, applicants shall update credentials and submit a nonrefundable reactivation of application fee of \$150 unless granted an extension in writing by the license and examination committee or the board. The period for requesting reactivation is limited to one year (365 days) from the date the application form is received by the board.

ITEM 13. Amend subrule 11.2(5), paragraph "b," as follows:

b. Pursuant to Iowa Code section 147.4, upon any of the grounds for which ~~registration licensure~~ licensure may be revoked or suspended as specified in Iowa Code section 147.55.

ITEM 14. Amend subparagraph 11.3(1)"c"(3) as follows:

(3) Provide a certified statement of a passing score on either a basic science examination administered by a U.S. or Canadian medical licensing authority or the Special Licensing Purpose Examination (SPEX), document successful completion of three years of postgraduate training or internship in a program approved by the board or certification by examination issued by a specialty board approved by the board, and submit evidence of five years of active practice as a permanent licensee of a U.S. state, territory, or Canada without restrictions.

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ITEM 15. Amend subrule 11.3(1), paragraph "e," as follows:

e. Have successfully completed the Federation Licensing Examination (FLEX), a national board examination of the United States, the United States Medical Licensing Examination (USMLE), the *Licentiate of the Medical Council of Canada Licentiate Qualifying Examination examination* (LMCC), or a state structured qualifying examination approved by the board, and any additional written, oral or practical examination the board deems necessary to assess an applicant's ability to practice with reasonable safety and skill.

ITEM 16. Amend subrule 11.4(4) by inserting the following new paragraphs "e," "f," and "g":

e. The board may impose limits or restrictions on the practice of any applicant once licensed in this state that are equal in force to the limits or restrictions imposed on the applicant by any other jurisdiction or state;

f. The board may require an applicant to appear for an interview before the full board or a committee of the board as part of the application process.

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

ITEM 17. Amend subrule 11.4(5) as follows:

11.4(5) Rules for conducting examinations. Any applicant deemed eligible to sit for Step 3 of the USMLE administered by the board or its designated testing service is required to adhere to the examination procedures and protocol approved by the board. The examination procedures and protocol for administering USMLE Step 3 approved by the board are those established by the Federation of State Licensing Medical Boards, U.S., Inc., and the National Board of Medical Examiners in the following publications: USMLE Test Administration Standards and Policies and Procedures Regarding Indeterminate Scores and Irregular Behavior, Federation of State Medical Boards, 6000 Western Place, Suite 707, Fort Worth, Texas 76107-4695 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039.

ITEM 18. Amend subrule 11.5(1), paragraph "d," as follows:

d. Authorize the appropriate testing authority to verify scores obtained on the examination including the general or weighted average, the scores on each component of the FLEX, part of the NBME, or step of the USMLE accepted in combination thereof as specified in subrule 11.4(6) or provide certification of national board credentials or LMCC scores. In lieu of the aforementioned, provide the certificate of examination issued by the National Board of Osteopathic Examiners of the United States of America; and

ITEM 19. Amend subrule 11.6(3), paragraph "b," as follows:

b. ~~In any case, the board may require the~~ The candidate may be required to appear for a personal interview before the board or a ~~member thereof~~ committee of the board.

ITEM 20. Rescind subrule 11.6(3), paragraph "c."

ITEM 21. Amend rule 653—11.9(147,148,150,150A), numbered paragraph "2," as follows:

2. Refer the license application to the ~~physician licensure license and examination~~ committee for review and consideration when the executive director determines that mat-

ters including, but not limited to, prior criminal history, chemical dependence, competency, physical or psychological illness, or professional disciplinary history are relevant in determining the applicants' qualifications for licensure.

ITEM 22. Amend subrule 11.9(1), introductory paragraph, as follows:

11.9(1) Following review and consideration of a physician licensure application referred by the executive director, the ~~physician licensure license and examination~~ committee may at its discretion:

ITEM 23. Amend subrule 11.9(2), introductory paragraph, as follows:

11.9(2) Following review and consideration of a physician licensure application referred by the ~~physician licensure license and examination~~ committee the board shall:

ITEM 24. Amend subrule 11.11(1), introductory paragraph, as follows:

11.11(1) ~~For the biennial period beginning July 1, 1983, and ending June 30, 1985, reporting of continuing medical education shall be on a pro-rata basis in accordance with the physician's month and year of birth and every two years thereafter.~~ Except as provided in these rules, a total of 40 hours of approved continuing education classified as category 1 hours shall be required as a condition for biennial license renewal. *Continuing education hours shall be determined by the board on a pro-rata basis beginning one year from the date of original issuance of the license to facilitate biennial renewal according to month and year of birth.*

ITEM 25. Rescind subrule 11.11(1), paragraphs "a" and "b."

ITEM 26. Amend subrule 11.11(2) as follows:

11.11(2) ~~Beginning July 1, 1983, a~~ A licensee desiring to obtain credit for carry-over hours, not to exceed 20 category 1 hours earned ~~subsequent to January 1, 1983,~~ shall report the carry-over credit at the time of filing the biennial report. ~~However, category 1 hours and carry-over credit in effect on December 31, 1982, may be applied to satisfy the biennial continuing medical education requirements set forth in these rules.~~

ITEM 27. Rescind subrule 11.11(4) and renumber subrules 11.11(5) and 11.11(6) as 11.11(4) and 11.11(5).

ITEM 28. Amend subrule 11.12(3) as follows:

11.12(3) It is conducted by individuals who have ~~a special~~ the education, training and experience ~~by reason of which said individuals should to~~ be considered experts ~~concerning~~ in the subject matter of the program.

ITEM 29. Amend subrule 11.15(1) as follows:

11.15(1) The board relies upon each individual licensee's integrity in certifying to ~~their~~ compliance with the continuing medical education requirements ~~herein provided in this chapter.~~ Nevertheless, the board reserves the right to require, if it so elects, any licensee to submit, ~~in addition to such report, further~~ additional evidence ~~satisfactory to the board~~ demonstrating to the board compliance with the these continuing medical education requirements ~~herein provided.~~ Accordingly, it is the responsibility of each licensee to retain ~~or otherwise be able to have, or cause to be made, available at all times, reasonably satisfactory evidence of such compliance.~~

ITEM 30. Amend subrule 11.15(2) as follows:

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11.15(2) The licensee shall maintain a file in which ~~containing records of the documenting continuing education activities are kept~~, including dates, subjects, duration of programs, registration receipts where appropriate and ~~other appropriate documentations~~ any other relevant material for a period of ~~three~~ four years after the date of the program.

ITEM 31. Amend subrule **11.18(2)**, paragraph "c," as follows:

c. Successful completion of the Iowa state license ~~an approved~~ examination conducted within one year immediately prior to the submission of such application for reinstatement.

ITEM 32. Amend rule 653—11.19(272C) as follows:

653—11.19(272C) Exemptions for active practitioners. A physician licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy shall be deemed to have complied with the continuing education requirements of this state during period that the licensee serves honorably on active duty in the military services, or for periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and meets all requirements of that state or district for practice therein, or for periods that the licensee is a government employee working in their licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board. ~~under this rule shall be exempt from the continuing education requirements for:~~

11.19(1) Periods that the licensee serves honorably on active duty in the military;

11.19(2) Periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and the licensee meets all requirements of that state or district for practice therein;

11.19(3) Periods that the licensee is a government employee working in the licensee's specialty and assigned to duty outside the United States; or

11.19(4) For other periods of active practice and absence from the state approved by the board.

ITEM 33. Amend subrule 11.30(2) as follows:

11.30(2) ~~Beginning July 1, 1983,~~ A permanent license issued during a calendar year shall be valid for a period not to exceed two years as determined by the board in accordance with the physician's month and year of birth.

ITEM 34. Amend subrule 11.32(2) as follows:

11.32(2) The board may require a licensee applying for reinstatement to successfully complete Step 3 of the USMLE with a passing score of 75 percent or better or the special licensing purpose examination (SPEX) with a passing score of 75 percent or better in lieu of 11.32(1)"c" when, ~~upon conducting a personal interview with the licensee,~~ the board finds reason to doubt the licensee's ability to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy with reasonable skill and safety.

ITEM 35. Amend subrule **12.4(27)** as follows:

12.4(27) ~~Negligence in failing~~ Failure to exercise due care meet the acceptable and prevailing standard of care in the delegation of medical services to or supervision of nurses, physician's assistants, employees or other individuals, when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

ITEM 36. Amend subrule **12.16(1)**, definition of "Impairment," as follows:

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological ~~neuro-psychiatric~~ or physical disorder or disability.

ITEM 37. Amend subrule **12.16(3)**, paragraph "d," as follows:

d. One physician with expertise in the diagnosis and treatment of neuropsychological ~~neuro-psychiatric~~ disorders and disabilities; and

ITEM 38. Amend subrule **12.16(4)**, paragraph "d," as follows:

d. There is currently a board investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

ITEM 39. Amend subparagraph **12.16(6)"a"(2)** as follows:

(2) Length of participation in the program for licensees with impairments resulting from neuropsychological ~~neuro-psychiatric~~ or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified evaluator designated by the committee to establish an appropriate treatment protocol.

ITEM 40. Amend subrule 12.50(5) as follows:

12.50(5) Investigation of allegations. ~~In order For the board to determine if probable cause exists for a hearing on the complaint, to file a statement of charges,~~ the executive director ~~or someone designated by the executive director shall cause~~ shall direct compliance staff to conduct an investigation ~~to be made into of the allegations of made in the complaint or the executive director may refer the complaint to a registered peer review committee for investigation, review and report to the board. In this regard, the person complained of may be furnished with information concerning the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing but a personal conference with the executive director, investigator or peer review committee may be had as a matter of right upon request. The executive director may refer the complaint directly to a registered peer review committee or medical expert for investigation or consultation.~~

Prior to the commencement of a contested case proceeding, the licensee who is the subject of the complaint shall be contacted by the executive director, an investigator, a medical expert consulting with the agency, or peer review committee, and offered the opportunity to respond to the allegations made in the complaint. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview or conference.

ITEM 41. Amend subrule **14.5(1)**, paragraph "d," introductory sentence, as follows:

d. *Successfully* complete and provide documented evidence of:

[Filed 5/2/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7243A**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Medical Examiners hereby amends Chapter 12, "Discipline," Iowa Administrative Code.

Chapter 12 is being amended by adding two new subrules concerning medical record management to the grounds for discipline.

Notice of Intended Action was published in the March 26, 1997, Iowa Administrative Bulletin as **ARC 7153A**. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment was approved at the April 30, 1997, teleconference meeting of the Board of Medical Examiners.

This amendment will become effective June 25, 1997.

This amendment is intended to implement Iowa Code sections 148.6, 148.7, and 272C.3 to 272C.5.

The following amendment is adopted.

Amend 653—12.4(272C) by inserting the following new subrules:

12.4(31) Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

12.4(32) Improper management of medical records, including failure to maintain timely, accurate, and complete medical records.

[Filed 5/2/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7244A**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Medical Examiners hereby amends Chapter 13, "Standards of Practice and Professional Ethics," Iowa Administrative Code.

Chapter 13 is being amended to add a new rule which establishes standards of practice for prescribing or administering controlled substances for the treatment of patients with chronic, nonmalignant or intractable pain.

Notice of Intended Action was published in the March 26, 1997, Iowa Administrative Bulletin as **ARC 7152A**. No comments were received. The adopted rule is identical to that published under Notice.

This rule was approved at the April 30, 1997, teleconference meeting of the Board of Medical Examiners.

This rule will become effective June 25, 1997.

This rule is intended to implement Iowa Code chapters 148, 150, 150A, and 272C.

The following rule is adopted.

Amend 653—Chapter 13 by adding the following new rule:

653—13.2(148,150,150A,272C) Standards of practice—prescribing or administering controlled substances for the treatment of patients with chronic, nonmalignant or intractable pain. This rule establishes standards of practice for the management of chronic, nonmalignant or intractable pain. The purpose of the rule is to assist physicians who prescribe and administer drugs to provide relief and eliminate suffering in patients with intractable pain as defined in this rule.

13.2(1) Definitions. As used in this subrule:

"American Academy of Pain Medicine" or "AAPM" means the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.

"American Pain Society" or "APS" means the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.

"Chronic, nonmalignant or intractable pain" means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient. It is pain that cannot be removed or otherwise treated in the generally accepted course of medical practice subsequent to an evaluation by the attending physician and at least one other physician specializing in the treatment of the area, system, or organ perceived to be the source of the pain for any of the following reasons: (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient.

"U.S. Agency for Health Care Policy and Research" or "AHCPR" means the agency within the U.S. Department of Health and Human Services which is responsible for establishing Clinical Practical Guidelines on various aspects of medical practice.

13.2(2) General provisions. Various controlled drugs, particularly opioid analgesics, can be safely and effectively utilized to control pain in certain patients. However, inappropriate prescribing of controlled substances can lead to, or accelerate, drug abuse and diversion. Therefore, the medical management of pain shall be based on a thorough knowledge of pain assessment, pain treatment, and concern for the patient.

a. Treatment of acute pain and intractable pain associated with malignancy. Physicians may refer to the Clinical Practice Guidelines published by the U.S. AHCPR for counsel on the proper treatment of acute pain associated with trauma, surgery, and certain medical procedures, and chronic pain associated with cancer. The AHCPR Clinical Practice Guidelines provide a sound, compassionate, and flexible approach to the management of pain in these patients.

b. Treatment of chronic, nonmalignant pain. The basic premise underlying this rule is that various drugs, particularly opioid analgesics, may be useful for treating patients with chronic, nonmalignant pain in a safe, effective, and efficient manner when other efforts to remove or treat the pain have failed. The board strongly recommends that physicians who have reservations about the use of drugs in the treatment of

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chronic, nonmalignant pain consult: The Use of Opioids for the Treatment of Chronic Pain: A Consensus Statement from the American Academy of Pain Medicine and the American Pain Society (1997). Copies of the statement are available from the AAPM, the APS, and the office of the board at 1209 East Court Avenue, Des Moines, Iowa 50319.

13.2(3) Effective chronic, nonmalignant pain management. To ensure that pain is properly and promptly assessed and treated, a physician who prescribes or administers controlled substances to a patient for the treatment of intractable pain shall exercise sound clinical judgment by establishing an effective pain management plan in accordance with the following:

a. Physical examination. A physical examination that includes a comprehensive medical history shall be conducted prior to the initiation of treatment. The examination shall also include an assessment of the pain, physical and psychological function, substance abuse history and any underlying or coexisting conditions. The physician shall seek corroboration of the assessment from an evaluation conducted by another physician who specializes in pain medicine or the treatment of the area, system, or organ perceived to be the source of the pain. Interdisciplinary evaluation is strongly encouraged.

b. Treatment plan. The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief, or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any treatment modalities and rehabilitation programs necessary to manage pain of differing etiologies or physical/psychosocial impairments.

c. Informed consent. The physician shall discuss the risks and benefits of controlled substances with the patient or person representing the patient.

d. Periodic review. The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of alternative treatment modalities if periodic reviews indicate the patient's condition is not improving in accordance with the treatment plan.

e. Consultation/referral. The physician shall refer the patient for further evaluation and treatment to another physician, if necessary, to meet the treatment plan objectives.

f. Records. The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including physical examination, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.

g. Physician-patient agreements. Physicians treating patients at risk for substance abuse shall consider establishing physician-patient agreements that specify the rules for medication use and the consequences for misuse. In preparing agreements, a physician shall evaluate the case of each patient on its own merits, taking into account the nature of the risks to the patient and the potential benefits of treatment.

13.2(4) Restrictions and limitations. No aspect of this rule shall be construed to interfere with:

a. Federal and state laws and regulations governing the proper prescribing and administering of controlled substances;

b. Treatment of patients suffering from chronic malignant pain, such as patients cared for in a hospice or other long-term care facility setting; or

c. Delivery of medical services to a patient as a result of trauma or a medical emergency.

[Filed 5/2/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7250A**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF BARBER EXAMINERS****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 158.15, the Board of Barber Examiners hereby adopts amendments to Chapter 20, "Barber Examiners," Iowa Administrative Code.

These amendments adopt the requirement of successful completion of a 16-hour teaching methods class for a continuing education instructor; rescind and amend outdated language for barber equipment in barbering schools; specify that library materials must be current within the previous ten years; adopt provision for a demonstrator license; adopt provision for waiver from taking first available test after issuance of work permit; rescind outdated language for continuing education requirements; adopt language for continuing education regarding evaluation and maintenance of records; specify content for continuing education; clarify inactive status of license; adopt requirement of subject content by specific number of hours in continuing education for license reinstatement; adopt a \$35 fee for demonstrator permit plus \$10 fee for each day the permit is valid.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 12, 1997, as **ARC 7096A**.

A public hearing was held on April 2, 1997, at which no public comments were received.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments were adopted by the Board on April 29, 1997.

These amendments will become effective on June 25, 1997.

These amendments are intended to implement Iowa Code sections 147.76 and 158.15.

The following amendments are adopted.

ITEM 1. Amend 645—20.2(158), introductory paragraph and subrule 20.2(1), as follows:

645—20.2(158) Qualifications of managers and instructors for manager and instructor.

20.2(1) An instructor in a school of barbering shall *meet the following criteria:*

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. ~~be~~ Is licensed by the Iowa department of public health board of barber examiners as an instructor in barbering.

b. ~~A person is qualified to receive a license as an instructor who has met~~ Meets all the requirements of Iowa Code section 158.3, as a barber, ~~has~~.

c. ~~Has~~ Practiced as a licensed barber for not less than two years, ~~has~~.

d. ~~Has~~ graduated from an accredited high school or has an equivalent education as determined by the board, ~~and has~~.

e. ~~Has~~ completed a board-approved 16-hour teaching class.

f. ~~Has~~ passed an examination administered by the board or its designee to determine their fitness to practice as an instructor.

g. ~~Has~~ paid the required fee. If after making application for the barber instructor's examination and paying the required fee, permission is requested by the applicant in writing from the board to instruct until the date of the next examination, the board may grant such special permission not to exceed six months.

h. ~~An applicant may make a written request to instruct until the date of the next examination.~~

i. If the applicant fails the examination the second time, the board will not renew the special permission to instruct. ~~The applicant is eligible to take the examination again only after completing a special institute approved by the board.~~

ITEM 2. Rescind and reserve subrule 20.4(5).

ITEM 3. Amend subrule 20.4(7) as follows:

20.4(7) One large blackboard writing board for every classroom.

ITEM 4. Amend subrule 20.4(10) as follows:

20.4(10) The classroom shall be equipped with the specified ~~blackboard writing board~~ and charts showing illustrations of the skin, circulation of the blood, muscles and bones of the face, scalp, and neck. This room shall be used for the sole purpose of giving scientific instruction to students.

ITEM 5. Amend subrule 20.5(1) as follows:

20.5(1) ~~Any person who has been accepted as a student at a school of barbering who has not successfully completed a tenth grade education, or the equivalent, must, however, An applicant shall~~ present to the department, at the time of application for a license to practice barbering, a certificate or satisfactory evidence of having successfully completed a tenth grade education or the equivalent.

ITEM 6. Amend rule 645—20.8(147) as follows:

645—20.8(147) Library requirements. Each school of barbering shall maintain a library for the students enrolled therein consisting of textbooks, videos, current trade publications, and shop management materials *which are current within the previous ten years and which cover the topics necessary for the student to master the skill of barbering.*

This rule is intended to implement Iowa Code sections 147.29, 147.36 and 147.90.

ITEM 7. Adopt new rule 645—20.11(158) as follows:

645—20.11(158) Demonstrator's permit. The board may issue a demonstrator's permit for the purpose of demonstrating barbering skills to the public. The board shall determine and state the length of time the permit is valid.

1. A demonstrator permit shall be valid only for the person, location, purpose and duration stated on the permit.

2. A demonstrator permit shall be applied for at least 30 days in advance of dates of intended use.

3. A demonstrator permit shall be issued for from one to ten days.

4. The application shall be accompanied by the fee as set forth in 645—20.214(147).

5. No more than four permits shall be issued to any applicant during a calendar year.

ITEM 8. Amend subrule 20.101(1) as follows:

20.101(1) ~~Beginning January 1, 1979 to December 31, 1981, each person licensed to practice barbering in this state shall complete during each calendar year a minimum of six 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, 1982 each person licensed to practice barbering in this state shall complete during each continuing education biennial period a minimum of 12 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent biennial license renewal period beginning July 1 of each even-numbered year.~~

Beginning January 1, 1988, each person licensed to practice barbering in this state shall complete during each continuing education biennial period a minimum of six hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent biennial license renewal period beginning July 1 of each even-numbered year.

ITEM 9. Amend subrule 20.102(1) as follows:

20.102(1) It constitutes an organized program of learning *focusing on the specified skills or knowledge* (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

ITEM 10. Adopt new subrule 20.102(4) as follows:

20.102(4) The program instructors have successfully completed a board-approved 16-hour teaching class. Upon written request the board may grant a waiver of the 16-hour teaching class upon demonstrating meeting the requirement by equivalency.

ITEM 11. Adopt new subrules 20.102(5), 20.102(6) and 20.102(7) as follows:

20.102(5) Evaluation of the program is completed by attendees and returned to the continuing education program provider. These evaluations are to be maintained by the provider for a minimum of four years from the date of program completion and be available within two weeks upon request from the board.

20.102(6) Participant records shall be maintained for a minimum of four years from the date of program completion. The participant records shall include the name of licensee, license number, continuing education credits awarded, offering titles, and dates of offerings. The participant records of continuing education credits granted shall be available within two weeks upon request from the participant or the board.

20.102(7) Program records shall be maintained for a minimum of four years from the date of program completion.

ITEM 12. Amend subrule 20.108(1) as follows:

20.108(1) A licensee who is not engaged in practice *as a barber or a barber instructor* in the state of Iowa residing within or without the state of Iowa may ~~be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board.~~ *request an inactive license*

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status. The application request shall be in writing and contain a statement that the applicant will not engage in the practice of barbering in Iowa without first complying with all rules governing reinstatement after exemption from inactive status. The application for a certificate of exemption shall be submitted upon the form provided by the board.

ITEM 13. Amend subrule 20.108(2) as follows:

20.108(2) If the practitioner seeks a ~~compliance waiver~~ *an inactive status* for the barber's license and the practitioner also has an instructor's license, the instructor's license shall automatically become inactive.

ITEM 14. Amend subrule 20.108(3) as follows:

20.108(3) If the practitioner holds both a barber's license and instructor's license, the practitioner may choose to seek a ~~compliance waiver~~ *an inactive license status* for both licenses or for the instructor's license alone.

ITEM 15. Amend paragraph **20.109(2)“b”** as follows:

b. Completion of a total number of hours of accredited continuing education computed by ~~multiplying six by the number of years a certificate of exemption shall have been in effect for the applicant until January 1, 1988, and then compute the remaining number of continuing education hours by multiplying three by the remaining number of years a certificate of exemption~~ *the inactive status* shall have been in effect for the applicant, *not to exceed 90 hours*; or

ITEM 16. Adopt new subrule 20.110(5) as follows:

20.110(5) Continuing education shall include the following:

- a. Taper—15 hours.
- b. Basic hair cutting—15 hours.
- c. Color—15 hours.
- d. Perm—15 hours.
- e. Theory—15 hours.
- f. Miscellaneous (Iowa law, administrative rules, sanitation)—15 hours.

ITEM 17. Adopt new rule 645—20.113(272C) as follows:

645—20.113(272C) Waiver from taking first available examination. The board may grant a waiver to an applicant if the applicant shows good cause for not taking the first available examination after issuance of a temporary work permit.

ITEM 18. Amend subrule 20.214(14) as follows:

20.214(14) ~~Certified Verified~~ statement that a licensee is licensed in this state is ~~\$5.~~ *\$10.*

ITEM 19. Amend subrule 20.214(15) as follows:

20.214(15) Duplicate license is ~~\$5~~ *\$10.*

ITEM 20. Adopt a new subrule 20.214(16) as follows:

20.214(16) A demonstrator's permit is \$35 for the first day and \$10 for each day thereafter that the permit is valid.

[Filed 5/2/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7247A

PROFESSIONAL LICENSURE
DIVISION[645]

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby adopts an amendment to Chapter 30, "Licensure of Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

The amendment requires a psychopathology course for licensure as a Marital and Family Therapist.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 12, 1997, as **ARC 7095A**.

No public comments were received. This amendment is identical to the one published under Notice of Intended Action.

This amendment was adopted by the Board on April 18, 1997.

This amendment will be effective on June 25, 1997.

This amendment is intended to implement Iowa Code section 147.76.

The following amendment is adopted.

Amend **30.3(1)“b”(1)“3”** as follows:

3. Human development. Any course which deals primarily in areas such as human development; personality theory; human sexuality; *One course must be psychopathology.*

[Filed 5/2/97, effective 6/25/97]

[Published 5/21/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/21/97.

ARC 7251A

PROFESSIONAL LICENSURE
DIVISION[645]

BOARD OF MORTUARY SCIENCE EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby rescinds Chapter 100, "Funeral Directors," Iowa Administrative Code, and adopts a new Chapter 100 with the same title.

These rules establish language for licensing and regulating funeral establishments and crematories; for the funeral director in caring for dead remains and fetuses; and definitions for terms used in Chapter 100. The rules also eliminate duplicate language taken from 641—Chapter 101.

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Notice of Intended Action was published in the Iowa Administrative Bulletin on February 26, 1997, as **ARC 7075A**. A public hearing was held on March 24, 1997, using the Iowa Communications Network. Thirteen persons were present representing the Iowa Funeral Directors Association, the Association of Iowa Cemeteries, private crematories, cemeteries, funeral homes and individual licensed funeral directors. Conference calls were held after the public hearing with the former chairperson of the Peer Review Committee and with the president of the Association of Iowa Cemeteries. Following the April 11, 1997, Board meeting the revised rules were mailed to all participants at the public hearing for their review. Additional changes were made by the Board after receiving comments regarding the revised rules. The following revisions were made to the Notice in response to the comments received:

In 100.1(156), changes were made to the definitions of "alternative container," "authorized person," "body parts," "cremated remains," "cremation establishment," "disinterment," "final disposition," "funeral ceremony," "funeral rule," "human remains," and "preparation room." A definition was added for the term "custody."

In 100.2(2), the phrase "the current outline of Funeral Service Task Analysis" was added to better identify the reference source. Wording was changed from "a funeral director commencing with the removal and transfer of human remains" to "a funeral director commencing with the initial notification of death".

In 100.3(1)"c," the word "determine" was changed to "inquire."

In 100.3(2), the first sentence was deleted which stated "A funeral director may transfer unembalmed human remains to a crematory or medical college."

In 100.3(2), 100.5(4)"b" and 100.11(5)"e," wording was changed or added as follows: "prevent the leakage of body fluids".

Subrule 100.3(3) was deleted.

In 645—100.5(156), Preparation and embalming activities, the first sentence was deleted which stated "The funeral director shall perform the following duties prior to and during embalming according to commonly accepted industry standards."

In 100.5(1)"a," "Verify authorization" was changed to "Permission" for embalming. The term "authorization" was changed to "permission."

In 100.5(1)"b," the verb "may" was changed to "shall." Language was added stating "unless cremation is performed within 48 hours after death."

In 100.5(1)"c," revision was made to allow immediate family viewing of the embalming if they wish.

In 100.6(2), Arrangement conference activities, the words "If responsible" are added to the beginning of the sentence stating the duties of a funeral director.

In 100.6(3), first sentence, the words "when the body or cremated remains are present" were deleted.

In 645—100.9(156), the word "crematory" was changed to "cremation" in the title.

In 100.9(1), "cremation" was changed to "cremation establishment."

In 100.9(3), paragraphs "f" and "g" which referred to the structure and equipment type were deleted.

In 100.11(1)"c"(4), "Manner of the final" was deleted.

In 100.11(4)"a," language was added requiring a signature of the funeral director.

In 100.11(4)"b," the word "delegate" was changed to "execute" and "or other electronic telecommunication which

specifies the individual to whom authority has been delegated" was deleted.

In 100.11(5), a new paragraph "f" was added and the remaining paragraphs "f" through "n" were relettered as "g" through "o."

In 100.11(6)"a," the phrase "if responsible" was added.

In 100.11(6)"b," the sentence "After supervising the final disposition of the cremated remains, the funeral director shall be discharged" was added.

In 100.11(6)"d," the word "agent's" was deleted. In the ending sentence "funeral establishment" was changed to "entity."

In 100.11(6)"e," the phrase "Except with the express written permission of the authorizing person, no person" was deleted and "no funeral director" was inserted.

In 100.11(6)"e" (1), the phrase "at sea, by air, or" was deleted.

Throughout the chapter the term funeral "home" was changed to funeral "establishment".

These rules were adopted by the Board of Mortuary Science conference call Board meeting on April 30, 1997.

This chapter will become effective on June 25, 1997.

This chapter is intended to implement Iowa Code chapters 147, 156, and 272C.

The following new Chapter 100 is adopted:

CHAPTER 100 FUNERAL DIRECTORS

645—100.1(156) Definitions.

"Alternative container" means an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed wood, composition materials (with or without an outside covering) or like materials which prevents the leakage of body fluid.

"Authorized person" means any available member of the following classes of persons, in the order of priority listed, may make any funeral arrangements and order the final disposition of a decedent:

1. The attorney-in-fact pursuant to a durable power of attorney for health care.
2. The spouse of the decedent.
3. The decedent's surviving adult children. If there is more than one adult child, any adult child, who can confirm in writing the notification of all other adult children, may serve as the authorizing agent, unless the funeral director or crematory authority receives any objection from another adult child.
4. A parent of the decedent.
5. An adult sibling of the decedent.
6. A grandparent of the decedent.
7. A guardian of the decedent at the time of the decedent's death.

"Autopsy" means the postmortem examination of a human remains.

"Board" means the board of mortuary science examiners.

"Body parts" means appendages or other portions of the anatomy that are from a human body.

"Burial." See "Interment."

"Burial transit permit" means a legal document authorizing the removal and transportation of a human remains.

"Casket" means a rigid container which is designed for the encasement of human remains and which is usually

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constructed of wood, metal, fiberglass, plastic or like material and ornamented and lined with fabric.

"Cemetery" means an area designated for the final disposition of human remains.

"Change of ownership" means a change of controlling interest in a funeral establishment or crematory establishment.

"Columbarium" means a structure, room or space in a mausoleum or other building containing niches or recesses for disposition of cremated remains.

"Common carrier" means any carrier engaged in the business of transportation of persons or property from place to place for compensation, and who offers services to the public generally.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal or inanimate reservoir to a susceptible host; either directly or indirectly through an intermediate plant or animal host, vector or the inanimate environment.

"Cremated remains" means the body of a deceased person, including any form of body prosthesis that has been permanently attached or implanted in the body.

"Cremation" means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

"Cremation authorization/disposition form" means a form completed and signed, to accompany all human remains accepted for cremation.

"Cremation chamber" means the enclosed space within which the cremation takes place.

"Cremation establishment" means a place of business which provides any aspect of cremation services.

"Cremation permit" means a permit issued by a medical examiner allowing cremation of human remains.

"Cremation room" means the room in which the cremation chamber is located.

"Crematory" means any person, partnership or corporation that performs cremation and sells funeral goods.

"Crypt" means a chamber in a mausoleum of sufficient size to contain casketed human remains.

"Custody" means immediate charge and control exercised by a person or an authority.

"Dead body." See "Human remains."

"Death certificate" means a legal document containing vital statistics pertaining to the life and death of the decedent.

"Decedent." See "Human remains."

"Disinterment" means to remove human remains from their place of final disposition.

"Disinterment application" means a legal document requesting authorization from the department of public health to disinter a casketed human remains or an urn containing cremated remains from its place of final disposition.

"Disinterment application number" means the number assigned to a disinterment application by the department of public health, giving the funeral director the authority to disinter a casketed human remains or an urn containing cremated remains from its place of final disposition.

"Embalming" means the disinfecting or preserving of dead human remains, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injections, or by direct application into the organs or cavities for the purpose of preservation or disinfection.

"Entombment" means to place a casketed body or an urn containing cremated remains in a structure such as a mausoleum, crypt, tomb or columbarium.

"Final disposition" means the place where human remains may be interred, entombed, enshrined, scattered or otherwise disposed of.

"First call" means the original notification to the funeral director indicating the place of death from which the human remains are to be removed.

"Funeral ceremony" means a service commemorating the decedent.

"Funeral director" means a person licensed by the board to practice mortuary science.

"Funeral establishment" means a place of business as defined by the board devoted to providing any aspect of mortuary science.

"Funeral rule" means the Federal Trade Commission rule.

"Funeral services" means any services which may be used to (1) care for and prepare deceased human remains for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or final disposition of deceased human remains.

"Holding facility" means an area isolated from the general public that is designated for the temporary retention of human remains.

"Human remains" means a deceased human being for which a death certificate or fetal death certificate is required.

"Interment" means to place a casketed human remains or an urn containing cremated remains in the ground.

"Intern" means a person registered by the board to practice mortuary science under the direct supervision of a funeral director.

"Mausoleum" means an aboveground structure designed for entombment of human remains.

"Medical examiner" means a public official whose primary function is to investigate and determine cause of death when death may be thought to be from other than natural causes.

"Memorial ceremony" means a service commemorating the decedent.

"Niche" means a recess or space in a columbarium or mausoleum used for placement of cremated human remains.

"Outer burial container" means any container which is designed for placement in the ground around a casket or an urn including, but not limited to, containers commonly known as burial vaults, urn vaults, grave boxes and grave liners.

"Preparation room" means a room in a funeral establishment where human remains are prepared, sanitized, embalmed or held for ceremonies and final disposition.

"Pulverization" means a process following cremation which reduces identifiable bone fragments into granulated particles.

"Removal" means the act of taking a human remains from the place of death or place where a human remains is being held, to a funeral establishment or other designated place.

"Scattering area" means a designated area where cremated remains may be commingled with other cremated remains.

"Temporary cremation container" means a durable receptacle designed for short-term retention of cremated remains.

"Their own dead" refers to the legal authority the authorized person has regarding a human remains.

"Topical disinfection" means the direct application of chemical substances on the surface of a human remains for the purpose of preservation or disinfection.

"Transfer." See "Removal."

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"Universal precautions" means a concept of care based upon the assumption that all blood and body fluids, and materials that have come into contact with blood or body fluids, are potentially infectious.

"Urn" means a receptacle designed for permanent retention of cremated remains.

645—100.2(156) Care and preparation of dead human remains and fetuses.

100.2(1) Universal precautions and OSHA. The funeral director shall observe current guidelines of universal precautions as prescribed by the Centers for Disease Control (CDC) as well as Occupational Safety and Health Administration (OSHA) standards.

100.2(2) Conference of Funeral Service Examining Boards of the United States of America, Inc. The funeral director shall refer to the current outline of Funeral Service Task Analysis of the Conference of Funeral Service Examining Boards of the United States of America, Inc. for current guidelines when referring to rules 100.3(142,156), 100.4(135,144), and 100.5(156). These tasks reflect a minimum framework detailing the responsibilities of a funeral director commencing with the initial notification of death through the final disposition of human remains.

645—100.3(142,156) Removal and transfer of dead human remains and fetuses.

100.3(1) Removal and transfer of dead human remains. The funeral director shall perform the following duties upon notification of a death.

a. Comply with jurisdictional authority, with respect to medico-legal responsibilities, regarding the removal of the human remains.

b. Provide signature and license number when removing a dead human remains from a hospital, nursing establishment or any other institution involved with the care of the public.

c. Inquire if an autopsy is to be performed and whether embalming is to be performed prior to the autopsy or following.

d. Obtain authorization for embalming.

100.3(2) After the funeral director has assumed custody of the human remains, provided that death was not caused by a reportable communicable disease, the funeral director may delegate the task of transferring the dead human remains to an unlicensed employee or agent if, prior to transfer, the funeral director has topically disinfected the body, packed all body orifices with material which will absorb and retain all secretions and the human remains are placed in a container for transfer that will control odor and prevent the leakage of body fluids. If the decedent died of a reportable communicable disease, transfer shall only be made by a funeral director.

645—100.4(135,144) Burial transit permits. A licensed funeral director may issue a burial transit permit for the removal and transfer of dead human remains and such burial transit permit shall be issued in accordance with state law and the administrative rules promulgated by the department of public health regarding burial transit permits.

645—100.5(156) Prepreparation and embalming activities.

100.5(1) The funeral director shall perform the following duties prior to and during embalming according to commonly accepted industry standards.

a. Permission for embalming. If permission to embalm cannot be obtained after a diligent attempt to contact the au-

thorized person, the funeral director may proceed with the embalming without the permission of the authorized person.

b. If the funeral director has knowledge that the decedent died of a reportable communicable disease, the human remains shall be embalmed without the permission of the authorized person, unless cremation is performed within 48 hours after death.

c. Embalming shall be done entirely in private. No one except the funeral director, intern, or immediate family shall be allowed in the preparation room during the embalming. A student, currently enrolled at a school of mortuary science which is recognized by the board, shall be allowed in the preparation room during the embalming if under the direct physical supervision of the funeral director.

d. The human remains shall be properly covered at all times.

e. Conduct a preembalming case analysis of the human remains. Recognize the potential chemical effects on the body and select the proper embalming chemicals based upon the analysis.

f. Position the human remains on the preparation table and pose the facial features.

g. Select points of drainage and injection, and raise the necessary vessels.

h. Embalming shall include arterial and cavity injection of embalming chemicals. If the condition of the human remains does not allow arterial and cavity injection of embalming chemicals, topical embalming, using appropriate chemicals and procedures, shall be performed.

i. Once the arterial and cavity injection of the embalming chemicals is complete, evaluate the distribution of the embalming chemicals and perform treatment for discoloration, vascular difficulties, decomposition, dehydration, purge and close any incisions.

100.5(2) Reportable communicable diseases. For the purpose of the rules under this chapter, the diseases listed in 641—paragraph 1.2(1)"a" are classified as communicable and reportable in Iowa. Refer to this paragraph for a current list of these diseases.

100.5(3) Postembalming activities. The funeral director shall perform the following duties at the conclusion of the embalming activities if necessary.

a. Pack all body orifices with material which will absorb and retain all secretions.

b. Apply chemicals topically and perform hypodermic treatments.

c. Bathe, disinfect and reposition the human remains.

d. Clean and disinfect the embalming instruments, equipment and preparation room.

e. Perform any restorative treatments.

f. Select and apply the appropriate cosmetic treatments.

g. Prepare the human remains for viewing.

100.5(4) Care of the unembalmed human remains.

a. When death is not attributed to a reportable communicable disease, embalming may be omitted provided that interment or cremation is performed within 48 hours after death.

b. When death is attributed to a reportable communicable diseases, embalming may be omitted provided that cremation is performed within 48 hours after death. In such cases, the human remains shall be immediately topically disinfected, placed in a container that will control odor and prevent the leakage of body fluids and shall only be transported to the crematory by the funeral director or intern.

c. If viewing of the unembalmed human remains is requested, the human remains shall be topically disinfected and all body orifices shall be packed with material which

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will absorb and retain all secretions. No public viewing will be allowed of an unembalmed decedent who has died of a reportable communicable disease, but private viewing is permissible at the discretion of the funeral director.

645—100.6(156) Arranging and directing funeral and memorial ceremonies.

100.6(1) The Federal Trade Commission. The funeral director shall observe current guidelines of the Federal Trade Commission (FTC) funeral rule.

100.6(2) Arrangement conference activities. If responsible the funeral director shall perform the following duties associated with arranging ceremonies and the final disposition of a human remains.

a. Gather necessary statistical and biographical information relating to the decedent and explain the varied use of the information gathered.

b. Present, discuss and explain the mandated Federal Trade Commission price lists and assist or provide the consumer with:

- (1) The types of ceremony or final disposition.
- (2) The specific goods and services.
- (3) The prices of any goods and services.
- (4) The written, itemized statement of the funeral goods and services.

At the conclusion of arrangements the itemized statement shall be signed by the purchaser and the funeral director.

100.6(3) Directing of funeral and memorial ceremonies. The funeral director shall perform the following duties:

1. Direct and supervise ceremonies.
2. Direct and supervise final disposition.

645—100.7(142,156) Unclaimed dead human remains for scientific use.

100.7(1) A human remains is unclaimed when:

a. The decedent did not express a desire to be interred, entombed or cremated.

b. Relatives or friends of the decedent did not request that the human remains be interred, entombed or cremated.

100.7(2) Friend distinguished from casual acquaintance. A friend shall be distinguished from a casual acquaintance by the friend's having been closely associated with the decedent during the decedent's lifetime.

100.7(3) Delivery of human remains for scientific purposes. The funeral director, the medical examiner or managing officer of a public health institution, hospital, county home, penitentiary or reformatory shall notify the state department of public health as soon as any human remains, which are unclaimed and may be suitable for scientific purposes, shall come into their custody.

100.7(4) Department instructions. When the department of public health receives notice, the funeral director shall be instructed as to the proper disposition of the human remains.

100.7(5) Expenses incurred by funeral director. The expenses incurred by the funeral director for the transportation of the human remains to a medical college shall be paid by the medical college receiving the human remains.

645—100.8(144) Disinterments. A funeral director in charge of a disinterment shall ensure that the disinterment is performed in accordance with rules promulgated by the Iowa department of public health and shall first secure a disinterment application issued by the Iowa department of public health.

1. No person shall disinter a human remains or cremated remains unless the funeral director, in charge of the disinterment, has a numbered disinterment application which has been issued by the department of public health or by an order

of the district court of the county in which the human remains or cremated remains are interred or entombed.

2. All disinterment applications shall be requested and provided by the department of public health.

3. All disinterment applications shall be signed by the authorizing person.

4. Disinterment applications shall be furnished upon request from the department of public health and will remain valid for 30 days after issuance.

5. Disinterment numbers will only be issued to the funeral director, and the disinterment must be done under the direct supervision of the funeral director.

6. Disinterment applications and numbers shall be required for any relocation of a human remains or cremated remains from the original site of interment or entombment.

7. No disinterment application or number is necessary to remove a human remains or cremated remains from a holding facility for interment or entombment in the same cemetery where being temporarily held.

645—100.9(156) Funeral or cremation establishment license, or both.

100.9(1) Funeral establishment or cremation establishment license, or both. Any person or any corporation, partnership, joint venture, voluntary organization or any other entity doing business in this state may erect, maintain, and operate a funeral establishment or cremation establishment, or both, provided the necessary appliances and facilities for the care, preparation and disposition of human remains are in place. An establishment license must be obtained and maintained.

100.9(2) A funeral establishment or cremation establishment, or both, shall be subject to applicable local, state and federal health and environmental requirements and shall obtain all necessary licenses and permits from the agencies with jurisdiction.

100.9(3) License application. An application for a funeral establishment license or cremation establishment license, or both, shall be in writing on forms furnished by the board and accompanied by a \$75 fee. The application shall contain all of the following:

- a. Name and address of the business of applicant.
- b. Address of the personal residence of applicant.
- c. Name and address of every owner (partner, director, officer, shareholder with greater than 25 percent of stock).
- d. Name and address of the establishment.
- e. Signature of responsible authority of the establishment.
- f. Names and license numbers of all funeral directors employed by the establishment.
- g. Further information that the board reasonably may require.

645—100.10(156) License renewal.

100.10(1) Effective July 1, 1997, the renewal cycle shall be triennial beginning July 1 and ending June 30 of the third year. The renewal shall be on a form provided by the board and accompanied by a \$75 fee.

100.10(2) At least two months before the renewal date, a renewal notice will be sent to each license holder at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay triennial renewal fees on or before the renewal date.

100.10(3) Renewal fees shall be received by the board on or before the end of the last month of the renewal period. Whenever renewal fees are not received as specified, the license lapses. In addition thereto a penalty fee of \$5 shall be

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paid for each and every day the establishment remains delinquent. Delinquent days will be based on the postmark on the renewal envelope.

100.10(4) All records relating to the application and renewal of the funeral establishment or crematory establishment, or both, required to be filed under this chapter shall be subject to inspection by the board upon reasonable notice.

645—100.11(156) Cremation of human remains and fetuses.**100.11(1) Record keeping.**

a. Delivery receipt. When a human remains is delivered to a crematory, the crematory shall furnish to the delivery person a delivery receipt containing:

(1) The name, address, age, gender, and cause of death of the human remains that are delivered to the crematory.

(2) The date and time of delivery and the type of container that contains the human remains.

(3) The name of the funeral director who sent the human remains and the name of the funeral director's associated funeral establishment.

(4) The signature of the person who delivered the human remains.

(5) The signature of the person receiving the human remains on behalf of the crematory.

(6) The name and business address of the crematory establishment.

The crematory shall retain a copy of this receipt in its permanent records.

b. Receiving receipt. The crematory authority shall furnish to any person who receives the cremated remains from the crematory a receiving receipt containing:

(1) The name of the decedent whose cremated remains are released from the crematory.

(2) The date and time when the cremated remains were released from the crematory.

(3) The name of the person to whom the cremated remains are released and the name of the funeral establishment, cemetery, family or other person or entity with which they are affiliated.

(4) The signature of the person who receives the cremated remains.

(5) The signature of the person who released the cremated remains on behalf of the crematory.

(6) The name of the crematory operator and the date and time of the cremation.

The crematory shall retain a copy of this receipt in its permanent records.

c. Permanent record. A crematory shall maintain at its place of business a permanent record that includes the following:

(1) Name of deceased person.

(2) Date and time of the cremation.

(3) Copies of the delivery receipt and the receiving receipt.

(4) Disposition of the cremated remains.

d. The crematory authority shall maintain a record of all cremated remains disposed by the crematory in accordance with this chapter.

100.11(2) Employment of a funeral director by a crematory. No aspect of these rules shall be construed to require a funeral director to supervise or perform any functions at a crematory not otherwise required by law to be performed by a funeral director.

100.11(3) Authorizing person and preneed cremation arrangements. The authorized person has legal authority and may make decisions regarding the final disposition of the de-

cedent. If the decedent in the decedent's lifetime requested that the decedent's body be cremated by signing a cremation authorization, the authorized person at the time of death may revoke the cremation authorization to cancel the cremation.

100.11(4) Authorization to cremate. The crematory shall have the authority to cremate human remains upon the receipt of all the following:

1. Cremation authorization form signed by the authorizing person.

2. Permit for cremation from a medical examiner.

3. Any other documentation required by this state.

a. Cremation authorization form shall contain the following:

(1) The name, address, age and gender of the decedent whose human remains are to be cremated.

(2) The date, time of death and the cause of death of the human remains.

(3) The name of the funeral establishment and funeral director who obtained the cremation authorization form signed by the authorizing person.

(4) The signature of the funeral director.

(5) The name and address of the crematory authorized to cremate the human remains.

(6) The name and signature of the authorizing person granting permission to cremate the human remains and the authorizing person's relationship to the decedent.

(7) A representation that the authorizing person has the right to authorize the cremation of the decedent in accordance with this chapter.

(8) A representation that in the event there is another person who has superior priority right to that of the authorizing person, the authorizing person has made all reasonable efforts to contact that person and has no reason to believe that the person would object to the cremation of the decedent.

(9) A representation that the human remains do not contain any material or implants that may be potentially hazardous to equipment or persons performing the cremation.

(10) A representation that the authorizing person has made a positive identification of the decedent and that the crematory can proceed with cremation.

(11) The name of the person, funeral establishment or funeral establishment's designee to whom the cremated remains are to be released.

(12) The manner of the final disposition of the cremated remains.

(13) A listing of all items of value and instructions for their disposition.

b. If the authorizing person is not available to execute the cremation authorization form in person, that person may execute that authority to another in writing, facsimile transmission, or telegram.

c. The authorizing person may revoke the authorization and instruct the crematory to cancel the cremation. The crematory shall honor any instructions given to it by an authorizing person under this rule if it receives instructions prior to beginning the cremation.

100.11(5) Cremation procedures.

a. A crematory shall have the right to schedule the cremation at its own convenience unless the crematory has received specific instruction to the contrary on the cremation authorization form and within the parameters of rule 100.4 (135,144).

b. No crematory shall cremate human remains when it has actual knowledge that the human remains contain a pacemaker, have been subjected to nuclear therapy, or have any other implants or materials which will present a health haz-

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ard to those performing the cremation and processing and pulverizing the cremated remains.

c. No crematory shall refuse to accept human remains for cremation because such human remains are not embalmed.

d. Whenever a crematory is unable or unauthorized to cremate human remains immediately upon taking custody of the remains, the crematory shall place the human remains in a holding facility in accordance with the crematory rules and regulations and within the parameters of rule 100.4(135,144).

e. No crematory shall accept human remains unless they are delivered to the crematory in a container which prevents the leakage of body fluids.

f. Under no circumstances shall an alternative container or casket be opened at the cremation establishment except for verification.

g. The container in which the human remains are delivered to the crematory shall be cremated with the human remains or safely destroyed.

h. The simultaneous cremation of the human remains of more than one person within the same cremation chamber, without the prior written consent of the authorized person, is prohibited. Nothing in this rule, however, shall prevent the simultaneous cremation within the same cremation chamber of body parts delivered to the crematory from multiple sources, or the use of cremation equipment that contains more than one cremation chamber.

i. No unauthorized person shall be permitted in the holding facility or cremation room while any human remains are being held there awaiting cremation, being cremated, or being removed from the cremation chamber.

j. A crematory shall not allow removal of any dental gold, body parts, organs, or any item of value prior to or subsequent to a cremation without previously having received specific written authorization from the authorizing person and written instructions for the delivery of these items to the authorizing person.

k. Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process shall be removed from the cremation chamber.

l. If all of the recovered cremated remains will not fit within the receptacle that has been selected, the remainder of the cremated remains shall be returned to the authorizing person or this person's designee in a separate container. The crematory shall not return to an authorized person or this person's designee more or less cremated remains than were removed from the cremation chamber.

m. A crematory shall not knowingly represent to an authorized person or this person's designee that a temporary cremation container or urn contains the cremated remains of a specific decedent when it does not.

n. Cremated remains shall be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

o. A crematory shall maintain an identification system that shall ensure that it shall be able to identify the human remains in its possession throughout all phases of the cremation process.

100.11(6) Disposition of cremated remains.

a. If responsible the funeral director shall supervise the final disposition of the cremated remains.

b. Cremated remains may be disposed of by placing them in a grave, crypt, or niche; by scattering them in a scattering area as defined in these rules; or they may remain in the personal care and custody of the authorized person. If the cremated remains are given to the authorized person or the

authorized person's designee, a burial transit permit shall be attached to the temporary cremation container or urn. In the event that the cremated remains are placed in a grave, crypt, niche or scattered in a scattering area, it is the responsibility of the authorized person or the authorized person's designee to forward the burial transit permit to the state or the funeral director who arranged the cremation services so the death certificate can be amended and accurately reflect the place of final disposition. After supervising the final disposition of the cremated remains, the funeral director shall be discharged.

c. Upon the completion of the cremation process, the crematory shall release the cremated remains to the funeral establishment or their designee. Upon the receipt of the cremated remains, the individual receiving them may transport them in any manner in this state without a permit, and may dispose of them in accordance with this rule. After releasing the cremated remains the crematory shall be discharged from any legal obligation or liability concerning the cremated remains.

d. If, after a period of 60 days from the date of the cremation, the authorizing person or designee has not instructed the funeral director to arrange for the final disposition of the cremated remains, the funeral director may dispose of the cremated remains in any manner permitted by this rule. The funeral establishment, however, shall keep a permanent record identifying the site of final disposition. The authorizing person shall be responsible for reimbursing the funeral establishment for all reasonable expenses incurred in disposing of the cremated remains. Any entity that was in possession of cremated remains prior to the effective date of these rules may dispose of them in accordance with this rule.

e. Except with the express written permission of the authorizing person, no funeral director or cremation establishment shall:

(1) Dispose of cremated remains in a manner or in a location so that the cremated remains are commingled with those of another person. This prohibition shall not apply to the scattering of cremated remains in an area located in a cemetery and used exclusively for those purposes.

(2) Place cremated remains of more than one person in the same temporary cremation container or urn.

100.11(7) Scope of rules. These rules shall be construed and interpreted as a comprehensive cremation statute, and the provisions of these rules shall take precedence over any existing laws containing provisions applicable to cremation, but that do not specifically or comprehensively address cremation.

100.11(8) Establishment rule. The regulation of crematories and crematory authorities as set forth in these rules is an exclusive power and function of the state. An establishment rule unit may not regulate crematories or crematory authorities.

These rules are intended to implement Iowa Code chapters 147, 156, and 272C.

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ARC 7252A

REVENUE AND FINANCE
DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 422.68 and 422B.9, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 107, "Local Option Sales and Service Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume XIX, Number 20, on March 26, 1997, page 1573, as ARC 7146A.

Some confusion has arisen concerning when or where a "sale" of tangible personal property has occurred for the purposes of the local option sales tax. Confusion has also arisen and federal constitutional law has changed in regard to when a retailer's connections with a county are sufficient to the point that the county can lawfully require a retailer to collect local option sales tax. In response to the above circumstances, applicable rules are amended to add a definition, a number of examples and various other new explanatory materials. As a result of recent federal legislation, state local option sales tax cannot be imposed on certain pay television services. The rule which sets out exemptions which are applicable only to local option sales tax is amended to reflect this fact. Another rule which incorrectly states that the existing state sales tax rate is 4 percent is amended to correct this error, and another rule is changed to be certain that it conforms to the substance of a recent Attorney General's ruling.

With the exception of some very minor changes, these amendments are identical to those published under Notice of Intended Action. In Item 4, 107.3(2)"c," the very last word before Example A is changed from "Iowa" to "County." In Item 5, rule 107.8(422B), last two sentences of the introductory paragraph, the word "jurisdiction" is changed to "county" in both sentences. Finally, also in Item 5, rule 107.8(422B), Example B, the fourth sentence, the words "Polk County" are added following "F.O.B. Des Moines."

These amendments will become effective June 25, 1997, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 107.

The following amendments are adopted.

ITEM 1. Amend rule 701—107.1(422B) by adding the following new fourth unnumbered paragraph:

When the meaning of the word "sale" cannot be determined by referring to the definition of that word set out in Iowa Code section 422.42(17), its meaning should be determined by studying Iowa Code chapter 554, Uniform Commercial Code, Article 2.

ITEM 2. Amend rule 701—107.2(422B), introductory paragraph, as follows:

701—107.2(422B) Local option sales and service tax. Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not sub-

ject to state sales tax. Consequently, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax table setting out the combined rate for a state sales tax of ~~4 percent~~ 5 percent and a local sales tax of 1 percent.

ITEM 3. Amend subrule 107.3(1) as follows:

107.3(1) Sales of tangible personal property. The local option sales tax is imposed upon the gross receipts from "sales" of tangible personal property which occur within that portion of a county where a tax is imposed. *There is no local option use tax.* The taxable event *which determines where a sale occurs* is "delivery" of the tangible personal property pursuant to contract for sale. If "delivery" occurs within a county, a sale has occurred there, and local option sales tax may be due. If delivery has not occurred within a county, local option sales tax is not due. Whether the contract for sale becomes binding or title passes within the county is irrelevant. *Harold D. Sturtz v. Iowa Department of Revenue, 373 N.W.2d 131 (Iowa 1985).* Delivery usually, ~~but not always,~~ occurs when the seller of tangible personal property transfers physical possession of the property to the buyer. *In most instances, this transfer takes place at the seller's place of business. However, if the seller transfers the property to the buyer from the seller's own vehicle, then the transfer usually takes place at the buyer's residence or place of business. Finally, if the seller transfers the property to a common carrier or the United States Postal Service for subsequent transport to the buyer, then "delivery" of the property occurs at the time and place where the seller transfers possession of the property to the postal service or the common carrier.*

EXAMPLE 1. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Mr. Edwards lives in Polk County and visits Smith's Furniture Storeroom also located in Polk County. Mr. Edwards enters into a contract to purchase furniture. Smith's Furniture Storeroom transports the furniture to a common carrier located in Polk County, who in turn transports it to Mr. Edwards' residence in Polk County. Local option sales tax is imposed since the delivery, and therefore the sale of the tangible personal property, occurred in a taxing jurisdiction. "Delivery" of the furniture occurred when the seller transferred physical possession of the furniture to the common carrier.

EXAMPLE 2. Assume that the whole of Polk County has enacted a local option sales tax and Jasper County has not. Mr. Jones, from Jasper County, comes to Smith's Furniture Showroom located in Polk County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. The furniture which has been purchased is placed on a Smith's Furniture Showroom truck and ~~delivered~~ transported to Mr. Jones' home in Jasper County. "Delivery" of the furniture has occurred in Jasper County at the buyer's residence because that is where Smith's Furniture Showroom (the seller) transferred physical possession of the furniture to Mr. Jones (the buyer) under their contract of sale. Because delivery has occurred within Jasper County, no Polk County local option sales tax will be collected on the transaction.

EXAMPLE 3. Assume the same factual circumstances as exist in the previous example except that Mr. Jones has driven from Jasper County to Smith's Furniture Showroom in a pickup truck and the furniture which Mr. Jones has contracted to buy is ~~delivered~~ transferred onto his truck at the Smith's Furniture Showroom loading ramp. *In this example, "delivery," and thus the sale of the furniture, has taken place in Polk County because that is where the seller transferred physical possession of the furniture to the buyer.* Since deliv-

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ery occurred in Polk County, Polk County local option sales tax would be due upon the gross receipts of the sale.

EXAMPLE 3 4. Again, assume that the whole of Polk County has enacted a local option sales tax. Again, assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House ~~delivers transports~~ the furniture in its own truck from Newton to Ms. Wilson's home in Des Moines. *"Delivery" of the furniture has occurred at Ms. Wilson's residence in Polk County because that is where physical possession of the furniture passed from the seller to the buyer. Since delivery has occurred within Polk County, the sale has occurred there, and the gross receipts of the sale are subject to Polk County's local option sales tax.* Jackson's Furniture House is obligated to collect the Polk County local option sales tax and to remit that tax to the department of revenue and finance. ~~Since delivery has occurred within Polk County, the sale has occurred there and the gross receipts of the sale are subject to Polk County's local option tax.~~

EXAMPLE 4- 5. Assume the same circumstances as in Example 3 4 except that Ms. Wilson has driven to Jackson's Furniture House in Newton in a pickup truck. ~~She takes delivery of the~~ *The furniture is loaded into* her pickup truck from the Jackson's Furniture House loading dock. In this situation delivery has occurred *at the seller's loading dock* outside Polk County; therefore, no obligation to pay Polk County local option sales tax exists with regard to the gross receipts of the sale.

ITEM 4. Amend subrule 107.3(2) as follows:

107.3(2) Taxation of sales of tangible personal property moved by carrier *with and without the use of "F.O.B." or a similar term.*

a. Ordinarily, property "sold" in a local option sales tax jurisdiction is subject to that jurisdiction's tax. Property moved into or out of a local option sales tax jurisdiction by common carrier is "sold" when the seller transfers physical possession of the property to a carrier for shipment to a buyer unless the buyer and seller indicate their intent that the sale will occur elsewhere by use of the term F.O.B. or of a phrase similar to F.O.B. See Iowa Code section 554.2504. Use of an F.O.B. point located at a place other than that where a seller transfers possession of goods to a carrier usually indicates that the buyer and seller have agreed that sale of the goods will occur at the F.O.B. point. See *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). In the following examples, assume that Dubuque County has enacted a local option sales tax and Polk County has not.

EXAMPLE A. Assume that Company A is located in Dubuque County and Customer B is located in Des Moines, Iowa, in Polk County. Customer B orders a load of office furniture from Company A. A and B agree that A will secure a common carrier to transport the office furniture to B. A secures the services of Dubuque Cartage Co., which takes possession of the furniture in Dubuque, Iowa, and transports it to Des Moines. There is no mention of the term F.O.B. or any other indication of a delivery point in the contract of sale between A and B. In this case, sale of the furniture was in Dubuque County *because that is where the seller of the furniture surrendered physical possession of it to the carrier.* A is obligated to collect from B a *the* local option sales tax imposed by Dubuque County.

EXAMPLE B. Assume the same facts as in Example A except that *under the terms of the contract of sale* delivery of the office furniture is "F.O.B. Des Moines." In this case, sale

of the office furniture has occurred in Des Moines in Polk County and not in Dubuque County *because the buyer and seller have, with the use of the term "F.O.B. Des Moines," agreed that the sale will take place there.* Because of this, A cannot collect from B local option sales tax imposed by Dubuque County.

EXAMPLE C. *Mr. Jones, a resident of Polk County, drives to Smith's Furniture Showroom located in Dubuque County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. Delivery of the furniture is to be "F.O.B. Dubuque." Smith's Furniture Showroom transfers the furniture to a common carrier in Dubuque who transports the furniture to Mr. Jones in Polk County. In this example, sale of the furniture has occurred in Dubuque County because Mr. Jones and Smith's Furniture Showroom have agreed with the use of the term "F.O.B. Dubuque" that the sale will occur there. Because of this, the sale of the furniture is subject to Dubuque County's local option tax.*

b. Taxation of property imported into a local option sales tax jurisdiction by a carrier. In the examples below (*except for Example E*), assume that the whole of Dubuque County, Iowa, has imposed a local option sales tax and that no portion of Polk County has imposed this tax. Further assume, unless otherwise noted, that any seller has the contacts (described in rule 107.8(422B)) with Dubuque County necessary for the county to require the seller to collect its local option sales tax.

EXAMPLE A. Company A is located in Dubuque County. The company orders a load of office furniture from Seller B located in Chicago, Illinois. Under the contract of sale, it is the obligation of B to place the furniture upon a carrier for transport to A. Chicago Transport picks up the furniture at B's loading dock in Chicago. Under these circumstances, sale of the furniture took place when B transferred possession of the furniture to Chicago Transport. Since sale of the furniture occurred in Illinois, the sale of the furniture is not subject to the Dubuque County local option sales tax.

EXAMPLE B. Assume the same facts as in Example A except that the contract for sale of the furniture between A and B calls for delivery of the furniture "F.O.B. Dubuque County." In this case, with the F.O.B. provision, the parties have agreed that sale of the furniture will occur in Dubuque County, Iowa. Thus, B is obligated to collect Dubuque County local option sales tax from A.

~~**EXAMPLE C.** Assume the same facts as those set out in Example B, with delivery of the furniture occurring "F.O.B. Dubuque, Iowa." However, assume for the purposes of this example that company B has no "connection" with Dubuque County which could be used to require B to collect Dubuque County local option sales tax. In this case, even though sale of the furniture took place in Dubuque County, Iowa, B cannot be required to collect local option sales tax from A.~~

EXAMPLE D C. Assume, *again*, that Company A is located in Dubuque County. However, for the purposes of this example, assume that Company B is located in Des Moines in Polk County, Iowa. A orders office furniture from B; shipment to Dubuque, Iowa, is by carrier with no mention of an F.O.B. point or any other indication of a delivery point in the contract between A and B for the sale of the furniture. In this case, sale occurred in Polk County when B placed the furniture in the hands of the carrier. B cannot collect Dubuque County local option sales tax from A.

EXAMPLE E D. Assume the facts are as stated in Example D C except that the contract between A and B specifies that delivery of the furniture shall be "F.O.B. Dubuque,

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Iowa." In this case, B is obligated to collect Dubuque County local option sales tax.

EXAMPLE E. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House delivers the furniture to a common carrier for shipment F.O.B. Ms. Wilson's home in Polk County. Since delivery (by virtue of the F.O.B. point) is in Polk County, that jurisdiction's local option tax is imposed on the sale.

c. Taxation of exports from a jurisdiction imposing Iowa local option sales tax. Sales of property which a seller transfers to a carrier for subsequent shipment to a point outside Iowa are not subject to Iowa local option sales tax. This exemption does not apply if the property is subsequently returned to a point *anywhere* within Iowa (not only within the jurisdiction imposing the local option sales tax), unless the return is solely in the course of interstate commerce or transportation; nor does the exemption apply if the buyer or the buyer's agent other than the carrier takes physical possession of the property within the jurisdiction imposing the local option sales tax. For additional material relating to this exemption see rule 701—17.8(422). For the purposes of this paragraph "c," assume that the whole of Dubuque County imposes a local option sales tax, that Company B sells furniture and is located in Dubuque, Iowa, and that Company A is located outside Dubuque County.

EXAMPLE A. Company A is located in Chicago, Illinois. The company orders a load of office furniture from Company B. Under the contract for sale, transport of the furniture from Dubuque County to Chicago, Illinois, is by carrier with no F.O.B. point or other indication of a delivery point mentioned. Sale of the furniture occurs in Dubuque County because that is the point at which the seller transferred the furniture to the carrier transporting it. However, that sale is exempt from Dubuque County local option sales tax because Company B transferred the furniture to the carrier for shipment to a point outside Iowa (Chicago, Illinois) and the furniture was subsequently used there.

EXAMPLE B. Assume the same facts as in Example A except that Company A's purchasing agent comes to Dubuque County, purchases the furniture there, takes possession of the furniture in Dubuque County and then arranges for a carrier to transport the furniture from Dubuque County to Chicago, Illinois. In this case, the exemption is not applicable and local option sales tax applies since the buyer (Company A) took possession of the furniture in Dubuque County prior to transferring the furniture to the carrier.

ITEM 5. Amend rule 701—107.8(422B) as follows:

701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer. Before any retailer can be required to collect the local option sales or service tax certain minimal connections must exist between the county imposing the tax and the retailer. *These connections are required by the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution. Basically, the county must have performed or be performing certain services for the retailer for due process purposes, the retailer must be purposefully directing its activities at the county's residents in such a way that the retailer is availing itself of an economic market in the county for which it can demand repayment in the form of tax.* Maintaining any sort of office, sending any solicitor or salesperson, whether

independent contractor or employee, or transporting property which the retailer sells into the county in the retailer's own vehicle, or continuous solicitation of business within a county, are nonexclusive examples of purposefully directed activities which require the county's protection for which the obligation to collect local option sales tax can be imposed upon a retailer. ~~In return for this protection, tax may be imposed.~~ *Quill Corporation v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). The mere soliciting and acceptance of business by mail and sending products ordered by mail or common carrier to the county are not activities which require a retailer to collect local option sales or service tax.* An Iowa retailer's physical presence within a county is no longer necessary to require the retailer to collect the county's local option tax. However, a retailer located outside the state of Iowa who does not have a physical presence in the county imposing the local option tax cannot be required, under the commerce clause of the United States Constitution, to collect this state's local option sales tax; *Quill, supra*. Such physical presence in the county exists if it occurs through the retailer's presence or by the presence of independent contractors who act on behalf of the retailer.

EXAMPLE A. Assume that Dubuque County has a local option tax and Polk County does not. Customer A is located in Dubuque County and Company B in Polk County. A buys office furniture from B with delivery of the furniture to be by common carrier "F.O.B. Dubuque, Iowa." Company B has no employees or property in Dubuque County, solicits no business there, and does not engage in any other activities purposefully directed toward Dubuque County. Thus, Company B engages in no purposefully directed activities in Dubuque County which could be used to require B to collect Dubuque County local option sales tax. In this case, even though sale of the furniture took place in Dubuque County (see rule 107.3(422B)) B cannot be required to collect local option sales tax from A.

EXAMPLE B. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture with delivery "F.O.B. Des Moines, Polk County." Jackson's Furniture House transfers the furniture to a common carrier who transports it to Ms. Wilson in Polk County. Unlike the retailer in Example A above, Jackson's Furniture House actively solicits business in Polk County by way of television and newspaper advertising. It also transports some furniture to Polk County customers in its own trucks, and its employees at times enter Polk County to repair furniture previously sold to Polk County residents. Jackson's Furniture House is obviously engaged in purposefully directed activities toward Polk County (some of the activities involving its physical presence there and some not), and by virtue of those activities is obligated to collect Polk County's local option sales tax.

EXAMPLE C. Assume the same facts as in Example B immediately above except assume that Jackson's Furniture House engages continuously and intentionally in soliciting business in Polk County by way of television and newspaper advertising, but has no "physical presence" in Polk County. Jackson's Furniture House has no employees delivering or repairing furniture in Polk County, and no property in that jurisdiction; for example, no trucks or furniture repair tools. Jackson's Furniture House is still engaged in "purposeful activity" in Polk County consisting of a continuous and widespread solicitation of business which is of such a nature

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that this activity requires it to collect local option tax on the gross receipts from its sales there.

EXAMPLE D. For the purposes of understanding this example, assume that the whole of Polk County has enacted a local option sales tax. Don's Mail Order House has offices and a warehouse in Kansas City, Missouri. Don's Mail Order House continuously solicits business in Polk County by way of advertising there on local television and radio and by sending fliers and catalogs to Polk County residents through the mails. However, Don's Mail Order House has no physical presence anywhere in Polk County. It sends no representatives into Polk County for any purpose, owns no property there, and has no independent contractors performing activities on its behalf in Polk County. So, as a result of its solicitations which are purposefully directed at the Polk County market, the due process clause of the Fourteenth Amendment of the United States Constitution does not prohibit Polk County from requiring Don's Mail Order House to collect its tax. However, since Don's Mail Order House is an out-of-state retailer (in contrast to the retailer described in Example C above) with no physical presence in Polk County, the commerce clause of the United States Constitution prevents the county from requiring that Don's Mail Order House collect its local option tax. Under the facts as stated in this example, it would be unconstitutional to require Don's Mail Order House to collect Polk County's local option sales tax.

EXAMPLE E. Assume the existence of the same facts as in Example D except that Don's Mail Order House has a representative with an office located in Polk County whose job it is to solicit and develop business for Don's Mail Order House in the state of Iowa. Because of that representative's presence in Polk County, the commerce clause of the United States Constitution no longer prohibits Polk County from requiring Don's Mail Order House to collect its local option sales tax.

The "connections" with a county described in this rule are not to be confused with the concepts of "sale" and "delivery" mentioned in rule 107.3(422B) above. A retailer may have connections with a county imposing a local option sales tax significant to the point that the county can, constitutionally, require the retailer to collect its tax if the retailer sells goods or performs taxable services within the county. However, if the retailer neither sells goods nor performs services within that county, the retailer cannot be forced to collect a tax there. Conversely, if a retailer delivers (and thus sells) goods in a county imposing a local option sales tax, but does not have the connections described in this rule with that county, then the retailer cannot be made to collect that county's local option tax even if it is making sales of goods there. It is only very rarely, if ever, that a retailer would be performing services within a county but would not have the connections with that county necessary to require the retailer to collect its tax.

ITEM 6. Amend rule 701—107.9(422B), introductory paragraph, as follows:

701—107.9(422B) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with seven exceptions:

ITEM 7. Amend rule 701—107.9(422B) by adding the following **new** numbered paragraph "6":

6. On and after February 8, 1996, a local taxing jurisdiction is prohibited from taxing the gross receipts from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government's Telecommu-

nications Act of 1996 defines a "direct-to-home satellite service" as "only programming transmitted or broadcast by satellite directly to the subscribers' premises or in the uplink process to the satellite." A "local taxing jurisdiction" is "any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state."

ITEM 8. Amend rule 701—107.9(422B) by adding the following **new** paragraph immediately after numbered paragraph "7":

Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

ITEM 9. Amend rule 701—107.10(422B), fourth unnumbered paragraph, numbered paragraph "2," by adding the following **new** paragraphs:

There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.

ITEM 10. Amend rule 701—107.10(422B) by adding **new** Example 3 after existing Example 2:

EXAMPLE 3. For the purposes of understanding this example, assume that the numbers for "certified population" from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The towns' percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1752}{1752 + 1493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1493}{1493 + 1752 + 981} = 35.32\%$$

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

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population		Receipts to be Distributed
	Number	Percentage	
Avoca	1,752	41.46%	\$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	981	23.21%	1,740.75
Total	4,226	100.00%	\$7,500.00

The "amount to be distributed by population" found in Step 4 of Example 2 would then be recomputed based on the new figures.

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ARC 7240A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 476.1, 476.2, and 476.6(19), the Utilities Board (Board) gives notice that on April 24, 1997, the Board issued an order in Docket No. RMU-96-11, In re: Energy Efficiency Cost Recovery and Prudence Review, "Order Adopting Rule Making," adopting 199 IAC 35.12(476) and 35.13(476). The Notice of Intended Action was published in IAB Vol. XIX, No. 16 (1/29/97) p.1314, **ARC 7016A**. Written comments were received from the Consumer Advocate Division of the Department of Justice. The investor-owned utilities filed joint comments. A hearing was held on March 5, 1997.

The Board incorporated several of the changes suggested by the commenters in the adopted rules. The changes in the adopted rules include clarification that only unrecovered costs can be recovered through the automatic adjustment mechanism, minimum filing requirements and clarification of the time for filing rebuttal testimony in the prudence review proceeding, a revision and refinement of the automatic adjustment formula, and some additional clarifying changes. The amendments adopted in this rule making deal with cost recovery through an automatic adjustment and the review of the prudence of the utilities' implementation of their energy efficiency plans. At a later date, the Board intends to propose additional rules regarding the planning process for energy efficiency plans.

These amendments will become effective on June 25, 1997.

These amendments are intended to implement Iowa Code sections 476.1, 476.2, and 476.6(19).

The following amendments are adopted.

ITEM 1. Rescind rule 199—35.12(476) and adopt the following new rule in lieu thereof:

199—35.12(476) Energy efficiency cost recovery. A utility shall be allowed to recover the previously approved costs, deferred past costs, and estimated contemporaneous expenditures of its approved energy efficiency plans through an automatic adjustment mechanism. The utility may propose to recover the portion of the costs of process-oriented industrial

assessments related to energy efficiency. Only unrecovered costs may be recovered through the automatic adjustment mechanism, and costs may be recovered only once.

For purposes of this rule, "previously approved costs" are defined as expenditures and related costs approved for recovery in previous energy efficiency cost recovery contested cases.

"Deferred past costs" are defined as funds actually spent by the utility on energy efficiency programs in its approved plan including the carrying charges associated with the deferred recovery of those costs, as defined in paragraph 35.12(1)"b." Deferred past costs shall be amortized and recovered over a period not to exceed the term of the plan.

"Estimated contemporaneous expenditures" are defined as costs to be incurred during the current 12-month recovery period pursuant to an approved energy efficiency plan.

35.12(1) Accounting for costs. Each utility shall maintain accounting plans and procedures to account for all energy efficiency costs incurred on or after July 1, 1990.

a. Deferred past costs incurred on or after July 1, 1990, up to a date terminating the accumulation of deferred costs set by a board order, shall be charged to account 186, "Miscellaneous Deferred Debits," as defined in the uniform system of accounts for utilities as provided in 199 IAC 16.

b. A carrying charge determined using the current monthly AFUDC rate from the formula prescribed in the uniform system of accounts for utilities, as provided in 199 IAC 16, shall accrue on costs in the account described in paragraph 35.12(1)"a." A utility shall continue to accrue a carrying charge on the account's costs, compounded semi-annually, until the date terminating accumulation of deferred costs set by a board order.

c. Estimated contemporaneous expenditures proposed for concurrent recovery through an automatic adjustment mechanism shall be charged, after the date set by a board order, to the current accounts prescribed by the uniform system of accounts, as provided in 199 IAC 16, and shall be further identified using the accounts described in paragraph 35.12(1)"d."

d. Each utility shall maintain a subaccount system, a work order system, or an accounting system which identifies individual costs by each program. Examples of individual items include, but are not limited to, the costs for planning and design, labor, advertising and promotion, rebates, customer incentives, equipment, installation, funding of the Iowa energy center and the center for global and regional environmental research, funding of the alternate energy revolving loan program, and consultant fees. Each utility shall maintain accurate employee, equipment, materials, and other records which identify all amounts related to each individual energy efficiency program.

35.12(2) Automatic adjustment mechanism. Each utility required to be rate-regulated shall file by March 1 of each year, subject to the board's approval, energy efficiency costs proposed to be recovered in rates for the 12-month recovery period beginning at the start of the first utility billing month at least 30 days following board approval. Each utility may elect to file its first energy efficiency automatic adjustment up to 120 days after the effective date of these rules.

35.12(3) Energy efficiency cost recovery (ECR) factors. The utility shall calculate ECR factors separately for each customer classification or grouping previously approved by the board. For all plans current at the time this rule becomes effective and for all future plans, if a utility desires to use customer classifications or allocations of indirect or other related costs other than those previously approved, such customer classifications or allocations of indirect or other re-

UTILITIES DIVISION[199](cont'd)

lated costs must be approved as part of a plan filing or of a modification thereof. ECR factors shall use the same unit of measurement as the utility's tariffed rates. ECR factors shall be calculated according to the following formula:

$$\text{ECR factor} = \frac{(\text{PAC}) + (\text{ADPC} \times 12) + (\text{ECE}) + \text{A}}{\text{ASU}}$$

ECR factor is the energy efficiency recovery amount per unit of sales over the 12-month recovery period.

PAC is the annual amount of previously approved costs from earlier ECR proceedings, until the previously approved costs are fully extinguished.

ADPC is amortized deferred past cost. It is calculated as the levelized monthly payment needed to provide a return of and a return on the utility's deferred past costs (DPC). ADPC is calculated as:

$$\text{ADPC} = \text{DPC} [r(1+r)^n] / [(1+r)^n - 1]$$

DPC is deferred past costs including carrying charges which have not previously been approved for recovery, until the deferred past costs are fully recovered.

n is the length of the utility's plan in months.

r is the applicable monthly rate of return calculated as:

$$r = (1+R)^{1/12} - 1 \text{ or}$$

$$r = R \div 12 \text{ if previously approved}$$

R is the pretax overall rate of return the board held just and reasonable in the utility's most recent general rate case involving the same type of utility service. If the board has not rendered a decision in an applicable rate case for a utility, the average of the weighted average cost rates for each of the capital structure components allowed in general rate cases within the preceding 24 months for Iowa utilities providing the same type of utility service will be used to determine the applicable pretax overall rate of return.

ECE is the estimated contemporaneous expenditures to be incurred during the 12-month recovery period.

A is the adjustment factor equal to overcollections or undercollections determined in the annual reconciliation and for adjustments ordered by the board in prudence reviews.

ASU is the annual sales units estimated for the 12-month recovery period.

35.12(4) Filing requirements. Each utility proposing automatic recovery for its energy efficiency costs shall provide the following information:

a. The filing shall restate the derivation of each ECR factor previously approved by the board.

b. The filing shall include new ECR factors based on allocation methods and customer classifications and groupings approved by the board in previous proceedings.

c. The filing shall include all worksheets and detailed supporting data used to determine new ECR factors. Information already on file with the board may be incorporated by reference in the filing.

d. The filing shall include a reconciliation comparing the amounts actually collected by the previous ECR factors to the amounts expended. Overcollections or undercollections shall be used to compute adjustment factors.

e. If in a prudence review, the board has determined that previously recovered energy efficiency costs were imprudently incurred, adjustment factors shall include reductions for these amounts.

35.12(5) Tariff sheets. Upon approval of the new ECR factors, the utility shall file separate tariff sheets for board approval to implement the ECR factors in its rates.

ITEM 2. Amend 199—Chapter 35 by adding the following **new rule**:

199—35.13(476) Prudence review. The board shall periodically conduct a contested case to evaluate the reasonableness and prudence of the utility's implementation of energy efficiency plans and budgets. The burden shall be on the utility to prove it has taken all reasonable actions to cost-effectively implement an energy efficiency plan as it was approved.

35.13(1) Information to be filed. The parties to the prudence review shall provide the following information:

a. The utility shall file prepared direct testimony and exhibits in support of its past implementation results including information regarding: implementation issues; monitoring and evaluation issues; program costs; program benefits; energy and demand savings; and participation rates.

b. The Consumer Advocate Division of the Department of Justice and other intervenors to the contested case shall be allowed at least seven weeks to file rebuttal testimony and exhibits to the utility's direct testimony.

35.13(2) Disallowance of past costs. If the board finds the utility did not take all reasonable and prudent actions to cost-effectively implement its energy efficiency programs, the board shall determine the amount in excess of those costs that would have been incurred under reasonable and prudent implementation. That amount shall be deducted from the next ECR factors calculated pursuant to 199 IAC 35.12(3) until satisfied.

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ARC 7233A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development adopts Chapter 1, "Workforce Development Board," and Chapter 2, "Mission and Structure," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7080A** on February 26, 1997. No comments concerning the new chapters were received from the public. The new chapters are identical to those published under Notice of Intended Action.

The new chapters define the Workforce Development Board membership and duties and the mission and structure of the Division of Workforce Development Center Administration.

The Workforce Development Board adopted the new chapters on April 23, 1997.

These rules will become effective on June 25, 1997.

These rules are intended to implement Iowa Code sections 84A.1 to 84A.1B and Iowa Code chapter 96.

The following new chapters are adopted.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

ITEM 1. Adopt the following new 877—Chapter 1:

CHAPTER 1
WORKFORCE DEVELOPMENT BOARD

877—1.1(84A) Composition.

1.1(1) Voting members. The board consists of nine voting members appointed by the governor. One member shall represent a nonprofit organization involved in workforce development, four members shall represent employers, and four members shall represent nonsupervisory employees. Of the members appointed to represent nonsupervisory employees, two members shall be from statewide organized labor organizations, one member shall be an employee representative of a labor management council, and one member shall be a person with work experience in worker training programs.

1.1(2) Nonvoting members. The board consists of seven ex officio, nonvoting members. Of the seven members, four members shall be members of the general assembly; one member shall be a president or president's designee of one of the three state universities, designated by the board of regents on a rotating basis; one member shall represent the largest statewide public employees' organization representing state employees; and one member shall be a superintendent or superintendent's designee of a community college, appointed by the Iowa association of community college presidents.

877—1.2(84A) Meetings. The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. The chairperson and vice chairperson shall not be of the same political party or gender, or represent the same group of persons. The board shall meet at the call of the chairperson or when five members of the board file a written request of the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

877—1.3(84A) Duties. The board shall perform the duties outlined in Iowa Code section 84A.1B and other functions as necessary and proper to carry out its responsibilities. The board approves contracts and administrative rules for the programs administered by the division of workforce development center administration.

877—1.4(84A) Records. Agendas, minutes, and materials presented to the board are available from the Policy Office, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4) or which are otherwise confidential by law. Board records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 96.11(5). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier. Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

These rules are intended to implement Iowa Code sections 84A.1A and 84A.1B.

ITEM 2. Adopt the following new 877—Chapter 2:

CHAPTER 2
MISSION AND STRUCTURE

877—2.1(84A) Mission. The division of workforce development center administration was established by the director as authorized under Iowa Code section 84A.1(3). The mission of the division is to develop and administer employment, placement, and training services in all 99 counties of Iowa.

877—2.2(84A) Overall organization.

2.2(1) Organization. The division of workforce development center administration is under the direction of the division administrator and divided into three bureaus: administrative service bureau, service delivery bureau, and the enterprise development, implementation and evaluation bureau.

2.2(2) Administrative service bureau. The administrative service bureau is under the direction of a bureau chief who assists the division administrator in planning, directing and coordinating activities for the division. The chief directs the administrative support functions of the bureau. The bureau is responsible for the administration of the following programs: work opportunity tax credit, alien labor certification, child labor, testing, bonding certification, and the migrant seasonal farm worker program, as well as other duties assigned by the division administrator.

2.2(3) Service delivery bureau. The service delivery bureau is under the direction of a bureau chief who assists the division administrator in planning, directing and coordinating activities for the division. The chief directs the monitoring and technical assistance functions of the bureau. The bureau is responsible for the administration of the following programs: Iowa conservation corps, Job Training Partnership Act, state labor management cooperation, mentor advisory board, nontraditional employment, workforce investment, quality jobs, PROMISE JOBS, dislocated workers, and rapid response, as well as other duties assigned by the division administrator.

2.2(4) Enterprise development, implementation, and evaluation bureau. The enterprise development, implementation and evaluation bureau is under the direction of a bureau chief who assists the division administrator in planning, directing and coordinating activities for the division. The chief directs the administrative support and technical functions of the bureau. The bureau is responsible for the administration of the consolidation of the employment and training services delivered through a competitive regional service delivery model in consultation with the regional advisory board, as well as other duties assigned by the division administrator.

These rules are intended to implement Iowa Code section 84A.1 and Iowa Code chapter 96.

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ARC 7232A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development transfers 345—1.3(96) to 877—Chapter 24 and adopts amendments to Chapter 24, "Voter Registration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7083A** on February 26, 1997. No comments concerning the proposed amendments were received from the public. The adopted amendments are identical to those published under Notice of Intended Action.

The amendments transfer 345—1.3(96) to 877—Chapter 24 and make changes to the chapter to make it easier for persons to use local workforce development centers to register to vote.

The Iowa Workforce Development Board adopted the amendments on April 23, 1997.

This rule will become effective on June 25, 1997.

This rule is intended to implement Iowa Code sections 96.10 and 96.11 and Federal Rule of Civil Procedure 65(b).

The following amendments are proposed.

Transfer **345—1.3(96)** to **877—24.1(96)** and amend 877—Chapter 24 as follows:

CHAPTER 24 VOTER REGISTRATION

877—24.1(96) Voter registration. Forms availability. *Voter registration forms are available at all workforce development centers.*

24.1(1) The division of ~~job service~~ *workforce development center administration* will permit the use of its offices to register voters subject to the following conditions.

24.1(2) Conditions.

a. Main waiting rooms. Registration shall be conducted only in main waiting room areas.

b. Hours. Registration shall be conducted only during regular office hours.

c. Number of persons. Only two persons may conduct voter registration activity at any given time.

d. Persons not to be contacted. Persons seeking assistance from the division shall not be contacted while in the process of being assisted by a division employee.

~~e. Place in line. A person waiting in line for assistance may be contacted only if that person is at least fourth in line, or more, from the service counter. Progress of lines, or of persons standing in line, shall not be impeded.~~

f. Furniture, signs, posters. No furniture, signs or posters shall be placed in division offices without permission of the office manager.

g. Identification tags. Persons registering voters may wear identification tags.

h. Normal operation of office. Persons registering voters shall not interfere with the normal operation of the office and shall conduct themselves in an orderly manner.

i. Entering and exiting office. Entering and exiting of individuals using the office shall not be impeded in any way.

j. Violations. Office managers shall notify any person or persons violating any conditions to cease the violation.

This rule is intended to implement Iowa Code sections 84A.1, 96.10 and 96.11 and Federal Rule of Civil Procedure 65(b).

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ARC 7230A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development rescinds 345—Chapter 8, "Public Records and Fair Information Practices," and adopts 877—Chapter 25, "Public Records and Fair Information Practices," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7081A** on February 26, 1997. No comments concerning the new chapter were received from the public. The new chapter is identical to that published under Notice of Intended Action.

The new chapter updates the name of the department, division and local offices where public records are located and how they can be accessed.

The Workforce Development Board adopted the new chapter on April 23, 1997.

These rules will become effective on June 25, 1997.

These rules are intended to implement Iowa Code section 22.11 and Iowa Code chapter 96.

The following new chapter is adopted.

Rescind 345—Chapter 8 and adopt the following new 877—Chapter 25:

CHAPTER 25 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The division of workforce development center administration of the department of workforce development hereby adopts the rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code with the following exceptions and amendments:

877—25.1(22,96) Definitions.

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the division of workforce development center administration of the department of workforce development".

"Person" means an individual, corporation, governmental entity, estate, trust, partnership, association, or any other legal entity.

"Personally identifiable information." In lieu of the words "an individual in a record which identifies the individual and which is contained in a record system", insert "a person in a record which identifies the person and which is contained in a record system".

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

"Record system." In lieu of the words "an individual, number, symbol, or other unique retriever assigned to an individual", insert "a person, number, symbol or other unique retriever assigned to the person".

877—25.3(22,96) Request for access to records.

25.3(1) Location of record. In lieu of the words "(insert agency head)", insert "division administrator". Also, in lieu of the words "(insert agency name and address)", insert "Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309".

25.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "customary and usual hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

25.3(4) Response to requests. In lieu of the words "X.4", insert "25.4(22,96)".

25.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)", insert "one-half hour".

877—25.4(22,96) Access to confidential records. In lieu of the words "rule X.3", insert "rule 25.3(22,96)".

877—25.6(22,96) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309."

877—25.7(22,96) Consent to disclosure by the subject of a confidential record. Remove the brackets around "(and, where applicable, the time period during which the record may be disclosed)". Also, in lieu of the words "(Additional requirements may be necessary for special classes of records)", insert "If the agency is required to obtain from a third party a confidential record about the subject to establish eligibility under a program administered by the agency, the agency has the authority under Iowa Code subsection 96.11(8) to obtain a confidential record deemed necessary for the administration of Iowa Code chapter 96."

877—25.8(22,96) Notice to suppliers of information. Insert immediately following "or by other appropriate means", "including: Form 70-5007, Handbook for Private Employers, to employing units; Form 70-6200, Facts for Workers, to individuals claiming unemployment insurance benefits; Form 70-8005, Release of Information Poster, to individuals applying for employment services; and Form 60-0243, Notification of Information Release; or Form 65-5334, Release of Information, when manual or automated, respectively, prior notice to a person of the release of information to an authorized entity is performed".

877—25.9(22,96) Disclosure without the consent of the subject.

25.9(1) An open record is routinely disclosed without the consent of the subject.

25.9(2) To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

a. For a routine use as defined in rule 25.10(22,96); however, Iowa Code subsection 96.11(7) requires notification of the subject prior to some routine uses.

b. To another governmental agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such governmental agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

c. To an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either federal law or the law of this or another state, or which is charged with a duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under Iowa Code subsection 96.11(7). The requesting agency shall be provided, with respect to any named individual specified, any of the following:

(1) Whether the individual is receiving, has received, or has made application for unemployment compensation under Iowa Code chapter 96.

(2) The period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) Wage information.

d. To the legislative fiscal bureau under Iowa Code section 2.52.

e. Disclosure in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

g. To the citizens' aide under Iowa Code section 601G.9(3).

877—25.10(22,96) Routine use.

25.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

25.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, and agent, or on the custodian's own initiative, determine what constitutes legitimate need to use a confidential record.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order, including disclosure to the county attorney for the county attorney's use in the performance of duties under Iowa Code subsection 331.756(5).

c. Disclosure of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

d. Direct disclosure of information with an attempt to provide notification to the subject and for a purpose consistent with Iowa Code chapter 96 to any of the following:

(1) An agency of this or any other state or a federal agency responsible for the administration of an unemploy-

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ment compensation law or the maintenance of a system of public employment offices.

(2) The Bureau of Internal Revenue of the United States Department of the Treasury.

(3) The Iowa department of revenue and finance.

(4) The Social Security Administration of the United States Department of Health and Human Services.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed individuals.

(6) Colleges, universities and public agencies of this state for use in connection with research of a public nature, provided the agency does not reveal the identity of the subject.

(7) An employee of the department of workforce development, a member of the general assembly, or a member of the United States Congress in connection with the employee's or member's official duties.

(8) A political subdivision, governmental entity, or non-profit organization having an interest in the administration of job training programs established pursuant to the federal Job Training Partnership Act.

(9) The United States Department of Housing and Urban Development and representatives of a public housing agency. For the purposes of this subparagraph, public housing agency means any agency described in Section 3(b)(6) of the United States Housing Act of 1937, as amended through January 1, 1989.

877—25.11(22,96) Release to a subject.

25.11(1) The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 25.6(22,96). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject when the information is authorized to be held confidential pursuant to Iowa Code subsection 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report may be withheld from the subject, except as required by Iowa Code subsection 22.7(5).

d. As otherwise authorized by law.

25.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

877—25.12(22,96) Availability of records.

25.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by law or rule.

25.12(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Unemployment insurance tax records made available to the agency and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

b. Unemployment insurance benefit records, including an initial determination made by the agency's representative under Iowa Code subsection 96.6(2) as to the benefit rights of an individual, made available to the agency and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

c. Employment records made available to the agency and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

d. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

e. Tax records made available to the agency pursuant to Iowa Code sections 422.20 and 422.72.

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

g. Minutes of closed meetings of a governmental body pursuant to Iowa Code subsection 21.5(4).

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

i. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, may be withheld from public inspection when disclosure of these statements would, pursuant to Iowa Code sections 17A.2 and 17A.3:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law;

or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code subsection 22.7(4), section 622.10, and section 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

25.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 25.4(22,96). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 25.4(3).

877—25.13(22,96) Personally identifiable information.

This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 25.1(22,96). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

25.13(1) The record systems maintained by the division are:

a. Employment records. These records are collected from each individual applying for employment and each employing unit offering employment pursuant to Iowa Code subsection 96.11(7) for the purpose of providing employment services to the individual and the employing unit. For a

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more complete description of the content of these records, see 877—Chapter 8. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

b. Other groups of records routinely available for public inspection. This paragraph describes groups of records maintained by the agency other than in a record system as defined in rule 25.1(22,96):

(1) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(2) Policy manuals. Manuals containing the policies and procedures for programs administered by the agency are available in the administrative office of the division. Subscriptions to all or part of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to the Custodian of the Record, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. Policy manuals do not contain information about persons.

(3) All other records that are not exempted from disclosure by law.

25.13(2) All data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

877—25.14(22,96) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about persons by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22 and Iowa Code chapter 96.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11 and Iowa Code chapter 96.

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**WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development transfers 345—Chapter 9 to 877—Chapter 26 and adopts amendments to Chapter 26, "Petitions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7082A** on February 26, 1997. No comments concerning the proposed amendments were received from the public. The adopted amendments are identical to those published under Notice of Intended Action.

The amendments transfer 345—Chapter 9, "Petitions," to 877—Chapter 26, "Petitions," and change the name of the department, department director, and division.

The Iowa Workforce Development Board adopted the amendments on April 23, 1997.

These amendments will become effective on June 25, 1997.

These amendments are intended to implement Iowa Code chapters 17A and 96.

The following amendments are adopted.

ITEM 1. Transfer 345—Chapter 9 to 877—Chapter 26.

ITEM 2. Amend rule 877—26.1(17A,96), introductory paragraph, as follows:

877—26.1(17A,96) Petition for rule making. Any person may file a petition for rule making with the agency *Department of Workforce Development*, 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

**DEPARTMENT OF EMPLOYMENT SERVICES
WORKFORCE DEVELOPMENT
JOB SERVICE DIVISION OF WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION**

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

ITEM 3. Amend subrule 26.1(4) as follows:

26.1(4) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the ~~Commissioner of Job Service Division, Department of Employment Services~~ Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

ITEM 4. Amend rule 877—26.2(17A,96), introductory paragraph and the first unnumbered paragraph, as follows:

877—26.2(17A,96) Petition for declaratory ruling. Any person may file a petition with the agency for a declaratory ruling concerning the applicability of any statute, rule, policy, decision, or order administered by the agency, at its offices at 1000 East Grand Avenue, Des Moines, Iowa 50319. If the petition deals with a statute within the express jurisdiction of one of the divisions it shall be forwarded to that division for determination. Service of petitions for district court review of all agency decisions, rulings, and actions (where such service is required by Iowa Code chapter 17A) shall be made by the agency. General counsel will represent the agency in all litigations relating to the agency. Declaratory rulings made by the divisions will be considered final rulings for the agency with regard to Iowa Code chapter 17A.

A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF EMPLOYMENT SERVICES
WORKFORCE DEVELOPMENT
DIVISION OF JOB SERVICE WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION

Petition by (Name of) Petitioner) for a Declaratory Ruling on) (Cite provisions of law) involved)	PETITION FOR DECLARATORY RULING
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ITEM 5. Amend subrule 26.2(2) as follows:

26.2(2) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to the ~~Commissioner of the Job Service Division, Department of Employment Services Director, Department of Workforce Development~~, 1000 East Grand Avenue, Des Moines, Iowa 50319.

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**WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development transfers 345—Chapter 10 to 877—Chapter 28 and adopts amendments to Chapter 28, "Forms and Informational Materials," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7079A** on February 26, 1997. No comments concerning the proposed amendments were received from the public. The adopted amendments are identical to those published under Notice of Intended Action.

The amendments transfer 345—Chapter 10, "Forms and Informational Materials," to 877—Chapter 28, "Forms and Informational Materials," change the name of the department and local offices, and update the forms available from the various programs administered by the Division of Workforce Development Center Administration.

The Iowa Workforce Development Board adopted the amendments on April 23, 1997.

These amendments will become effective on June 25, 1997.

These amendments are intended to implement Federal Regulation 7 CFR 273.7(d) and Iowa Code chapters 96 and 84A.

The following amendments are adopted.

ITEM 1. Transfer **345—Chapter 10** to **877—Chapter 28**.

ITEM 2. Amend **877—Chapter 28** as follows:

CHAPTER 28
FORMS AND INFORMATIONAL MATERIALS

877—28.1(96,84A) Forms. Forms listed below in numeric sequence are the forms used by the division of ~~job service workforce development center administration~~. The listing includes: ~~employer contribution and charge forms, employers records and reports, claims and benefit forms, fraud control special investigation forms, appeal procedure forms, job application and related forms, job orders and related areas, order filling and related areas, alien employment certification, complaints, work force investment program, mentoring program, Iowa conservation corps, state labor management program, work opportunity tax credit, job training partnership program, and Trade Act of 1974 forms.~~

Generally, the employer does not have to request the forms used in the claims and benefit procedures since the division sends them automatically after a claim for job insurance has been filed by a former employee or one who is on a laid-off status. The claimant will receive many of these forms in the local ~~office workforce development center~~ during or following the filing of an initial claim or within the nonmonetary determination or continued claim process. Similarly the employer does not have to request the forms used in the contribution (tax) and charges procedure or in the employer records and reports procedures since the division sends them automatically. However, if the forms are not received, the employer must ~~get obtain~~ them from the ~~Division of Job Service Department of Workforce Development~~, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The job order, job application and related forms are forms used by applicants, employer, or division employees when an individual is seeking work through a ~~job service office workforce development center~~ or when an employer uses the ~~job service offices workforce development centers~~ to fill job vacancies to obtain job applicants. The forms are either supplied or obtainable from the division at ~~150 Des Moines Street, Des Moines, Iowa 50309~~.

This rule is intended to implement Federal Regulation 7 CFR 273.7(d) and Iowa Code chapters 96 and 84A.

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