



# IOWA ADMINISTRATIVE BULLETIN

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Pages 89 to 240

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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).

## 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

**ISSUE NUMBER**

**SUBMISSION DEADLINE**

**ISSUE DATE**

4

Friday, July 25, 1997

August 13, 1997

5

Friday, August 8, 1997

August 27, 1997

6

Friday, August 22, 1997

September 10, 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:

1. We use a Windows environment with Interleaf 6 as our word processing system and can import directly from any of the following:

Ami Pro	Microsoft Word	SuperCalc
Ami Pro Macro	Microsoft Word for Windows 1.x, 2.0, 6.0	Symphony Document
dBase	MultiMate	Wang (IWP)
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
Exec MemoMaker	Samna Word	XyWrite IV
Manuscript	SmartWare	

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3. Submit **only** 3 1/2" **High Density** (NOT Double Density) MS-DOS or compatible format diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building, when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned **unchanged** by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

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.

## 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
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
CEBA—venture project, 53.2, 53.6(3)"e," 53.9 IAB 7/16/97 ARC 7355A	Conference Room—1st Floor 200 E. Grand Ave. Des Moines, Iowa	August 5, 1997 10 a.m.
Enterprise zones, ch 59 IAB 7/16/97 ARC 7356A (See also ARC 7357A herein)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 5, 1997 1:30 p.m.
Entrepreneurial ventures assistance program, ch 60 IAB 7/16/97 ARC 7358A	Business Finance Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 6, 1997 9 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Wastewater construction and operation permits, 64.6, 64.8, 64.15, 64.16 IAB 7/16/97 ARC 7381A	Conference Room—5th Floor Wallace State Office Bldg. Des Moines, Iowa	August 7, 1997 1:30 p.m.
RCC operations, 211.2, 211.11, IAB 7/16/97 ARC 7383A	Conference Room—5th Floor West Wallace State Office Bldg. Des Moines, Iowa	August 8, 1997 9:30 a.m.
Household hazardous materials—RCCs, 214.11 IAB 7/16/97 ARC 7384A	Conference Room—5th Floor West Wallace State Office Bldg. Des Moines, Iowa	August 8, 1997 9:30 a.m.
<b>HUMAN SERVICES DEPARTMENT[441]</b>		
Family investment program (FIP), 9.10(20), 41.22, 41.25(8), 41.27, 95.3 IAB 7/2/97 ARC 7320A (See also ARC 7321A)	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	July 28, 1997 1 p.m.
	Administrative Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa	July 23, 1997 11 a.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	July 23, 1997 1 p.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	July 24, 1997 1 p.m.

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

	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	July 24, 1997 10 a.m.
	Conference Room 1 120 E. Main Ottumwa, Iowa	July 28, 1997 1 p.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	July 23, 1997 1 p.m.
	Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	July 28, 1997 10 a.m.
FIP and Medicaid—policies aligned, amendments to chs 75 and 76, rescind ch 86 IAB 7/16/97 <b>ARC 7364A</b>	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	August 8, 1997 10 a.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	August 6, 1997 9 a.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	August 7, 1997 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	August 7, 1997 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	August 6, 1997 10 a.m.
	Conference Room 2 120 E. Main Ottumwa, Iowa	August 6, 1997 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	August 6, 1997 1 p.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 6, 1997 10 a.m.
Transitional assistance for direct education costs program, 93.114, ch 94 IAB 7/16/97 <b>ARC 7362A</b>	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	August 8, 1997 11:30 a.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	August 6, 1997 11 a.m.

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

	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	August 7, 1997 11:30 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	August 7, 1997 1 p.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	August 7, 1997 10 a.m.
	Conference Room 2 120 E. Main Ottumwa, Iowa	August 6, 1997 11:30 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	August 6, 1997 2 p.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 6, 1997 1 p.m.
Family and group day care homes registration, 110.1, 110.2(3), 110.5, 110.6, 110.10, 110.21 to 110.34 <b>IAB 7/2/97 ARC 7327A</b> (See also ARC 7328A)	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	July 29, 1997 9 a.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	July 23, 1997 3 p.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	July 30, 1997 10:30 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	July 25, 1997 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	July 23, 1997 11 a.m.
	Conference Room 1 120 E. Main Ottumwa, Iowa	July 29, 1997 9 a.m.
	Conference Room B—5th Floor 520 Nebraska St. Sioux City, Iowa	July 23, 1997 2 p.m.

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

	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	July 23, 1997 11 a.m.
Child day care services, 130.3(1), 170.1, 170.2, 170.4(3), 170.8 IAB 7/16/97 ARC 7363A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	August 8, 1997 1 p.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	August 6, 1997 10 a.m.
	Conference Room 5—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	August 6, 1997 9 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	August 6, 1997 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	August 6, 1997 1 p.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	August 7, 1997 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	August 8, 1997 9 a.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 7, 1997 10 a.m.
Purchase of service—counties, 150.3(5), 150.21, 150.22, 153.57(3) IAB 7/2/97 ARC 7333A (See also ARC 7334A)	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	July 28, 1997 10 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	July 23, 1997 9 a.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	July 23, 1997 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	July 24, 1997 10 a.m.

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

	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	July 23, 1997 10 a.m.
	Conference Room 1 120 E. Main Ottumwa, Iowa	July 28, 1997 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	July 25, 1997 1 p.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	July 23, 1997 10 a.m.
Abuse of children, amendments to ch 175 IAB 7/2/97 ARC 7329A (See also ARC 7330A)	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	July 30, 1997 9 a.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	July 23, 1997 2 p.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	July 30, 1997 1 p.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	July 23, 1997 9:30 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	July 23, 1997 1 p.m.
	Conference Room 1 120 E. Main Ottumwa, Iowa	July 29, 1997 1 p.m.
	Conference Room B—5th Floor 520 Nebraska St. Sioux City, Iowa	July 24, 1997 1 p.m.
	Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	July 24, 1997 10 a.m.
<b>INSURANCE DIVISION[191]</b>		
Health care plans, 35.22, 36.4(8), 71.1 to 71.7, 71.9 to 71.14, 75.10(3), 75.11 IAB 7/16/97 ARC 7370A (See also ARC 7371A herein)	Insurance Division—6th Floor Lucas State Office Bldg. Des Moines, Iowa	August 6, 1997 1 p.m.

**LIVESTOCK HEALTH ADVISORY COUNCIL[521]**

Annual state appropriation, ch 1 IAB 7/2/97 ARC 7344A	Iowa Cattlemen's Association 2055 Ironwood Ct. Ames, Iowa	August 6, 1997 12 noon
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**NATURAL RESOURCE COMMISSION[571]**

Special deer and turkey permits, 15.11 IAB 7/16/97 ARC 7377A	Conference Room—4th Floor East Wallace State Office Bldg. Des Moines, Iowa	August 5, 1997 11 a.m.
Sand and gravel permits, ch 19 IAB 7/16/97 ARC 7387A	Conference Room—4th Floor East Wallace State Office Bldg. Des Moines, Iowa	August 5, 1997 11 a.m.
Deer depredation management, 106.11 IAB 7/16/97 ARC 7385A	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	August 19, 1997 10 a.m.
Trapping near beaver lodges and dens, 108.7(2) IAB 7/16/97 ARC 7386A	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	August 14, 1997 2 p.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Funeral directors, 100.1, 100.6(3), 100.11 IAB 7/2/97 ARC 7343A	Conference Room—4th Floor Side 1 Lucas State Office Bldg. Des Moines, Iowa	July 23, 1997 9 to 11 a.m.
Respiratory care practitioners, 260.1 to 260.17 IAB 7/16/97 ARC 7389A	Conference Room—4th Floor Side 1 Lucas State Office Bldg. Des Moines, Iowa	August 7, 1997 9 to 11 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Fire safety for small group homes, 5.620 IAB 7/16/97 ARC 7393A	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	August 6, 1997 10 a.m.
Sex offender registry, 8.301 to 8.305 IAB 7/2/97 ARC 7350A	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	July 23, 1997 1:30 p.m.
State medical examiner, rescind ch 21, adopt ch 70 IAB 7/16/97 ARC 7396A	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	August 6, 1997 9:30 a.m.
Gambling boats—closed-circuit video surveillance, 23.1, 23.4, 23.5, 23.9 IAB 7/16/97 ARC 7395A	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	August 6, 1997 10:30 a.m.

**RACING AND GAMING COMMISSION[491]**

General amendments, 1.2(3), 2.2(2), 3.14, 5.16(16), 7.7 to 7.16, 10.5(1), 12.8, 20.10(5) IAB 7/16/97 ARC 7353A	Suite B 717 E. Court Des Moines, Iowa	August 5, 1997 9 a.m.
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**REAL ESTATE COMMISSION[193E]**

Business conduct, 1.1, 1.37, rescind 1.41 and 1.49 IAB 7/2/97 ARC 7345A	Conference Room—2nd Floor Department of Commerce Bldg. 1918 S.E. Hulsizer Ankeny, Iowa	July 22, 1997 9 a.m.
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**SECRETARY OF STATE[721]**

Election forms, 4.3 IAB 7/16/97 ARC 7391A	Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	August 5, 1997 1:30 p.m.
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Election forms and instructions, amendments to ch 21 IAB 7/16/97 ARC 7390A	Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	August 5, 1997 2 p.m.
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Alternative voting systems, amendments to ch 22 IAB 7/16/97 ARC 7392A	Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	August 5, 1997 1:30 p.m.
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**TRANSPORTATION DEPARTMENT[761]**

Real property acquisition and relocation assistance, 111.1 IAB 7/16/97 ARC 7352A	Commission Conference Room 800 Lincoln Way Ames, Iowa	August 7, 1997 10 a.m. (If requested)
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Operation and movement of vehicles and loads of excess size and weight, 511.1, 511.2(1), 511.4(3), 511.5(2), 511.9(1), 511.14, 511.15 IAB 7/16/97 ARC 7372A (See also ARC 7373A herein)	Conference Room—Upper Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	August 7, 1997 10 a.m. (If requested)
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Undercover motor vehicle licenses, ch 625 IAB 7/2/97 ARC 7317A	Conference Room—Lower Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	July 24, 1997 10 a.m. (If requested)
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**UTILITIES DIVISION[199]**

Rb factor, 19.10(4) IAB 7/2/97 ARC 7319A	First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa	August 11, 1997 10 a.m.
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Quality of service—telephone, 22.1(3), 22.2(6), 22.3, 22.6 IAB 6/18/97 ARC 7315A	First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa	July 17, 1997 10 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

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

Agricultural Development Authority[25]

Soil Conservation Division[27]

**ATTORNEY GENERAL[61]**

**AUDITOR OF STATE[81]**

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

**CITIZENS' AIDE[141]**

**CIVIL RIGHTS COMMISSION[161]**

**COMMERCE DEPARTMENT[181]**

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

**CORRECTIONS DEPARTMENT[201]**

Parole Board[205]

**CULTURAL AFFAIRS DEPARTMENT[221]**

Arts Division[222]

Historical Division[223]

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

City Development Board[263]

Iowa Finance Authority[265]

**EDUCATION DEPARTMENT[281]**

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

**EGG COUNCIL[301]**

**ELDER AFFAIRS DEPARTMENT[321]**

**EMPLOYMENT SERVICES DEPARTMENT[341]**

Job Service Division[345]

Labor Services Division[347]

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**EXECUTIVE COUNCIL[361]**

**FAIR BOARD[371]**

**GENERAL SERVICES DEPARTMENT[401]**

**HUMAN INVESTMENT COUNCIL[417]**

**HUMAN RIGHTS DEPARTMENT[421]**

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of Blacks Division[434]

Status of Women Division[435]

**HUMAN SERVICES DEPARTMENT[441]**

INSPECTIONS AND APPEALS DEPARTMENT[481]  
  Employment Appeal Board[486]  
  Foster Care Review Board[489]  
  Racing and Gaming Commission[491]  
  State Public Defender[493]  
INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
MANAGEMENT DEPARTMENT[541]  
  Appeal Board, State[543]  
  City Finance Committee[545]  
  County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
  Energy and Geological Resources Division[565]  
  Environmental Protection Commission[567]  
  Natural Resource Commission[571]  
  Preserves, State Advisory Board[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
  BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
  Emergency Management Division[605]  
  Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
  Substance Abuse Commission[643]  
  Professional Licensure Division[645]  
  Dental Examiners Board[650]  
  Medical Examiners Board[653]  
  Nursing Board[655]  
  Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
  Archaeologist[685]  
REVENUE AND FINANCE DEPARTMENT[701]  
  Lottery Division[705]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
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 — 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:

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%
June 1, 1997 — June 30, 1997	7.00%
July 1, 1997 — July 31, 1997	6.95%

### ARC 7355A

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 53, "Community Economic Betterment Program," Iowa Administrative Code.

The proposed amendments provide for a new Venture Project component of the CEBA program. The amendments include eligibility requirements for Venture Project applications, application procedures and evaluation criteria.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 5, 1997. Interested persons may submit written or oral comments by contacting Ken Boyd, Bureau of Business Finance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4810.

A public hearing to receive comments about the proposed amendments will be held on August 5, 1997, at 10 a.m. at the above address in the first floor Business Finance Conference Room. Individuals interested in providing comments at the hearing should contact Ken Boyd by 4 p.m. on August 4, 1997, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code sections 15.315 to 15.325.

The following amendments are proposed.

ITEM 1. Amend 261—53.2(15) by adding the following new definition in alphabetical order:

"Venture project" means an economic activity performed by a start-up or early-stage company.

ITEM 2. Amend paragraph 53.6(3)"e" as follows:

e. The department will rate and rank applications according to the criteria in rule 53.7(15). Additionally, for Small Business Gap Financing applications the department will use rule 53.8(15), or for New Business Opportunities, or New Product Development, or Venture Project applications the department will use rule 53.9(15). The department will present its recommendations on rating and ranking to the committee. The committee will present its recommendations to the board. The board will have final authority in the rating and ranking of applications. The board will also make the final decision to approve, reject, table, defer, or refer an application to another funding program. The department may negotiate with the applicant or proposed recipient concerning dollar amounts, terms, or any other elements of the application package. The board may offer an award in a lesser amount or structured in a manner different than requested.

ITEM 3. Amend 261—53.9(15) as follows:

**261—53.9(15) New business opportunities, and new product development components, and venture project components.**

**53.9(1) Additional criteria and targeting for new business opportunities and new product development components.** The criteria in rule 53.7(15) will be used for evaluating applications under these components. Applications for these components must be for businesses that show the following characteristics:

a. The industry is one targeted within the state's strategic plan; or

b. The resulting economic activity is underrepresented in the state's overall economic mix; and

c. The project offers a quality economic opportunity to Iowans.

**53.9(2) Additional criteria for venture projects.** The criteria in rule 53.7(15) will be used for evaluating applications under this component. Applications for this component shall also meet the following criteria:

a. The business requesting CEBA assistance must be a start-up or early-stage company; and

b. The business must accept the assistance as an equity-like investment; and

c. The CEBA assistance is limited to \$100,000.

**53.9(2) 53.9(3) Applications.** Applicants applying for assistance under these components shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

a. Small business gap financing component of CEBA;

b. EDSA (economic development set-aside program);

c. BDFC (business development finance corporation program); or

d. PFSA (public facilities set-aside program).

**53.9(3) 53.9(4) Rating system.** The rating system for proposed projects will be as follows:

a. Local effort (as defined in 53.8(3)"a"). Maximum — 20 points;

b. Private contributions as compared to CEBA request (as defined in 53.8(3)"c"). Maximum — 20 points;

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

c. Certified community builder community (as defined in 53.8(3)"c"). Maximum — 10 points;

d. Extra points if small business, as defined by the SBA. Maximum — 10 points;

e. Project impact, as defined in 53.8(3)"f" and 53.8(4). Maximum — 120 points;

f. Potential for future expansion of the industry in general. Maximum — 20 points. This factor awards additional points for those projects that tend to show a greater potential for expansion of that industry within Iowa.

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.9(15) will not be recommended for funding by the staff to the committee.

**53.9(4) 53.9(5)** Project period. Projects funded under rule 53.9(15) are considered to have up to a maximum five-year project period.

Forgivable loans require that the recipient achieve the pledged jobs at the project expiration date and upon the agreement expiration date or be subject to penalties set out in rule 53.13(15).

The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.13(15).

## ARC 7356A

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 59, "Enterprise Zones," Iowa Administrative Code.

The proposed new rules describe how a city or county may request enterprise zone certification by the Department, establish eligibility requirements for businesses seeking to participate in the enterprise zone, describe application and evaluation procedures, and outline the requirements for the creation of an Enterprise Zone Commission.

Portions of these rules were Adopted and Filed Emergency and are published herein as **ARC 7357A**. The provisions relating to enterprise zone designation and certification have been adopted on an emergency basis so these procedures are available on July 1, 1997, when the statute becomes effective. The emergency filing will permit counties and cities to begin to identify enterprise zone areas and initiate the certification process.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 5, 1997. Interested persons may submit written or oral comments by contacting Bob Henningsen, Business Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4725.

A public hearing to receive comments about the proposed new chapter will be held on August 5, 1997, at 1:30 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Bob Henningsen by 4 p.m. on August 4, 1997, to be placed on the hearing agenda.

These rules are intended to implement 1997 Iowa Acts, House File 724.

The following **new** chapter is proposed.

#### CHAPTER 59 ENTERPRISE ZONES

**261—59.1(15E) Purpose.** The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Eligible businesses locating or located in an enterprise zone are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city.

#### **261—59.2(15E) Definitions.**

"Act" means 1997 Iowa Acts, House File 724.

"Average county wage" means the average the department calculates using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Average regional wage" means the wage calculated by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining county, so that the resulting figure reflects a regional average that is representative of the true labor market area. In performing the calculation, the greatest importance is given to the central county by "weighting" it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from the same county, as compared to commuters from other adjoining counties.

"Board" means the Iowa department of economic development board.

"Commission" or "Enterprise zone commission" means the enterprise zone commission established by a city or county within a designated enterprise zone.

"Contractor" or "Subcontractor" means a person who contracts with an eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development zone, of the eligible business.

"Created jobs" means the full-time jobs pledged by the business which pay an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business shall not be less than \$7.50 per hour.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

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

“DRF” means the Iowa department of revenue and finance.

“Enterprise zone” means a site or sites certified by the department of economic development board for the purpose of attracting private investment within economically distressed counties or areas of cities within the state.

“Full-time” or “Full-time equivalent position” means the equivalent of employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year.

**261—59.3(15E) Enterprise zone certification.** An eligible county or a city may request the board to certify an area meeting the requirements of the Act and these rules as an enterprise zone. Zone designations will remain in effect for a period of ten years from the date of the board’s certification as a zone. A county or city may request zone designation at any time prior to July 1, 2000.

**59.3(1) County—eligibility.**

a. Requirements. To be eligible for enterprise zone designation, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 1995 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 1990 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1990 and 1995.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 1990 census.

b. Zone parameters. Up to 1 percent of a county area may be designated as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land designated as enterprise zones under subrules 59.3(1) and 59.3(2) shall not exceed in the aggregate 1 percent of the total county area (excluding any area which qualifies as an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993).

**59.3(2) City—eligibility.**

a. Requirements. To be eligible for enterprise zone designation, a city (population of 24,000 or more as shown by the 1990 certified federal census) must meet at least two of the following criteria:

(1) The area has a per capita income of \$9,600 or less based on the 1990 census.

(2) The area has a family poverty rate of 12 percent or higher based on the 1990 census.

(3) Ten percent or more of the housing units are vacant in the area.

(4) The valuations of each class of property in the designated area is 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

(5) The area is a blighted area, as defined in Iowa Code section 403.17.

b. Population limits. A city with a population of 24,000 or more, as shown by the 1990 certified federal census, may request enterprise zone certification by the board. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose.

c. Urban or rural enterprise community. If there is an area in the city which meets the requirements for eligibility

for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an enterprise zone. (The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones).

**59.3(3) Designation procedures.**

a. Request with supporting documentation. All requests for designation shall include the following:

(1) Documentation that meets the distress criteria of Iowa Code section 15E.184.

(2) A legal description of the proposed enterprise zone area.

(3) Certification that the enterprise zone to be designated is within the overall limitation that may not exceed in the aggregate 1 percent of the county area and that the boundaries of the area to be designated are under the jurisdiction of the city or county requesting the designation.

(4) Resolution of the city council or board of supervisors, as appropriate, requesting designation of the enterprise zone(s).

b. Board review. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

c. Notice of board action. The department will provide notice to a city or county of the board’s certification, denial, or deferral of the city’s or county’s request for designation of an area as an enterprise zone. If an area is certified by the board as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

d. Amendments and decertification. A certified enterprise zone may be amended or decertified upon application of the city or county originally applying for the zone designation. However, an amendment shall not extend the zone’s ten-year expiration date, as established when the zone was initially certified by the board. An amendment or decertification request shall include, but is not limited to, the following information: reason(s) for the amendment or decertification and confirmation that the amended zone meets the requirements of the Act and these rules. The board will review the request and may approve, deny, or defer the proposed amendment or decertification.

**261—59.4(15E) Enterprise zone commission.** Following notice of enterprise zone certification by the board, the applicant city or county shall establish an enterprise zone commission. The commission shall review applications from businesses located in the zone and forward eligible applications to the department for approval.

**59.4(1) Commission composition.**

a. County enterprise zone commission. Whether an entire county or a city or cities within a county are eligible for enterprise zone status, a county shall have only one enterprise zone commission. The enterprise zone commission shall consist of nine members. Five of these members shall be comprised of:

(1) One representative of the county board of supervisors,

(2) One member with economic development expertise selected by the department,

(3) One representative of the county zoning board,

(4) One member of the local community college board of directors, and

(5) One representative of the local workforce development center selected by the Iowa workforce development de-

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

partment unless otherwise designated by a regional advisory board.

The five members identified above shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that enterprise community zone. If the enterprise zone is located in a county that does not have a county zoning board, the representatives identified in 59.4(1)“a”(1), (2), (4), and (5) shall select an individual with zoning expertise to serve as a member of the commission.

b. City enterprise zone commission. If the enterprise zone has qualified under the city criteria, the commission shall consist of the five members identified in paragraph “a” above and the remaining four members shall be selected by these five members. One of the four members shall be a representative of an international labor organization. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that enterprise community zone. If an enterprise zone is located in any city, an enterprise zone commission may also include a representative, chosen by the city council, of each such city located in the zone.

**59.4(2)** Department review of composition. Once a county or city has established an enterprise zone commission, the county or city shall provide the department with the following information to verify that the commission is constituted in accordance with the Act and these rules:

- a. The name and address of each member.
- b. An identification of what group the member is representing on the commission.
- c. Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.
- d. Any other information that the department may reasonably request in order to permit it to determine the validity of the commission's composition.

**59.4(3)** Commission policies and procedures. Each commission shall develop policies and procedures which shall, at a minimum, include:

- a. Processes for receiving and evaluating applications from qualified businesses seeking to participate within the enterprise zone; and
- b. Operational policies of the commission such as meetings; and
- c. A process for the selection of commission officers and the filling of vacancies on the commission; and
- d. The designation of staff to handle the day-to-day administration of commission activities.

### **261—59.5(15E) Eligible business.**

**59.5(1)** Requirements. A business which is or will be located in an enterprise zone is eligible to receive incentives and assistance under the Act if the business meets all of the following:

- a. The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone. This requirement does not prohibit a business from expanding its operation in an enterprise zone if existing operations of a similar nature in the state are not closed or substantially reduced.
- b. The business is not a retail business.

c. The business pays at least 80 percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment will occur.

d. The business pays an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business shall not be less than \$7.50 per hour. These wage levels shall be met as each job is created at the business location.

e. The business creates at least ten full-time positions and maintains them for at least ten years. The business shall create these jobs within three years of the effective date of the business's agreement with the department and the city or county, as appropriate. For an existing business in counties with a population of 10,000 or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional five jobs to be added within five years. The business shall include in its strategic plan the time line for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives and assistance will cease immediately.

f. The business makes a capital investment of at least \$500,000. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to \$250,000 of the fair market value, as established by an appraisal, of the building and land.

**59.5(2)** Additional information. In addition to meeting the requirements under subrule 59.5(1), an eligible business shall provide the enterprise zone commission with all of the following:

- a. The long-term strategic plan for the business, which shall include labor and infrastructure needs.
- b. Information dealing with the benefits the business will bring to the area.
- c. Examples of why the business should be considered or would be considered a good business enterprise.
- d. The impact the business will have on other Iowa businesses in competition with it.
- e. An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

### **261—59.6(15E) Commission review of businesses' applications.**

**59.6(1)** Additional commission eligibility requirements. Under the Act, a commission is authorized to adopt additional eligibility requirements that businesses within a zone must meet in order to qualify for benefits. If a commission elects to adopt more stringent requirements than those contained in the Act and these rules for a business to be eligible for incentives and assistance, these requirements shall be submitted to the department.

**59.6(2)** Application. The department will develop a standardized application that it will make available for use by businesses within a certified enterprise zone. The commission may add any additional information to the application it deems appropriate. If the commission determines that a

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

business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

**261—59.7(15E) Department action on eligible applications.** The department may approve, deny, or defer applications from qualified businesses. In reviewing applications for incentives and assistance under the Act, the department will consider the following:

**59.7(1)** Compliance with the requirements of the Act and administrative rules. Each application will be reviewed to determine if it meets the requirements of Iowa Code section 15E.183 and these rules. Specific criteria to be reviewed include, but are not limited to: medical and dental insurance coverage; wage levels; number of jobs to be created; and capital investment level.

**59.7(2)** Competition. The department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives and assistance under this program.

**59.7(3)** Displacement of workers. The department will make a good-faith effort to determine the probability that the proposed incentives will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

**59.7(4)** Violations of law. The department will review each application to determine if the business has a record of violations of law. If the department finds that an eligible business has a record of violations of the law including, but not limited to, environmental and worker safety statutes, rules, and regulations over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under Iowa Code section 15E.186, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation.

**59.7(5)** Commission's recommendations and additional criteria. For each application from a business, the department will review the local analysis (including any additional local criteria) and recommendation of the enterprise zone commission in the zone where the business is located, or plans to locate.

**59.7(6)** Other relevant information. The department may also review an application using factors it reviews in other department-administered financial assistance programs which are intended to assess the quality of the jobs pledged.

**261—59.8(15E) Enterprise zone incentives and assistance.**

**59.8(1)** Benefits. The following benefits are available to an eligible business within a certified enterprise zone:

a. **New jobs supplemental credit.** As provided in Iowa Code section 15.331, a supplemental new jobs credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Approval and

administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E.

b. **Value-added property tax exemption.** The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code section 15E.186 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone. The commission shall provide to the department a copy of the resolution adopted by the appropriate governing body (e.g., city council, board of supervisors) which indicates the estimated value and duration of the exemption authorized. The commission shall provide the assessor with a copy of the resolution establishing the exemption.

c. **Investment tax credit.** A business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

d. **Research activities credit.** A business is eligible to claim a research activities credit as provided in Iowa Code section 15.335. This benefit is a corporate tax credit for increasing research activities in this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be "participating in the program" for a period of ten years from the date the business's application was approved by the department. This credit equals 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

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

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

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

(2) Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, within six months after project completion, make an application to DRF.

**59.8(2) Duration of benefits.** An enterprise zone designation shall remain in effect for ten years following the date of certification. Any state or local incentives or assistance that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration of the zone designation.

**261—59.9(15E) Agreement.** The department and the city or county, as applicable, shall enter into agreement with the business. The term of the agreement shall be ten years from the date the business's application was approved by the department plus any additional time necessary for the business to satisfy the job maintenance requirement. This three-party agreement shall include, but is not limited to, provisions governing the number of jobs to be created, representations by the business that it will pay the wage and benefit levels pledged and meet the other requirements of the Act as described in the approved application, reporting requirements such as an annual certification by the business that it is in compliance with the Act, and the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of the Act and these rules. In addition, the agreement will specify that a business that fails to maintain the requirements of the Act and these rules shall not receive incentives or assistance for each year during which the business is not in compliance.

**261—59.10(15E) Compliance; repayment requirements; recovery of value of incentives.**

**59.10(1) Annual certification.** A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department its compliance with the requirements of Iowa Code section 15E.183.

**59.10(2) Repayment.** If a business has received incentives or assistance under Iowa Code section 15E.186 and fails to meet and maintain any one of the requirements of Iowa Code section 15E.183 and 261—59.5(15E) to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

**59.10(3) Calculation of repayment due.** If a business fails in any year to meet any one of the requirements of Iowa Code section 15E.183(1) and 261—59.5(15E) to be an eligible business, it is subject to repayment of all or a portion of the amount of incentives received.

a. Failure to meet/maintain requirements. If a business fails in any year to meet or maintain any one of the requirements of Iowa Code section 15E.183(1), except its job creation requirement which shall be calculated as outlined in paragraph "b" below, the business shall repay the value of the incentives received for each year during which it was not in compliance.

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

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

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

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

**59.10(4) DRF; county/city recovery.** Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and finance and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under Iowa Code section 15E.186. The value of state incentives provided under Iowa Code section 15E.186 includes applicable interest and penalties.

These rules are intended to implement 1997 Iowa Acts, House File 724.

**ARC 7358A**

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 60, “Entrepreneurial Ventures Assistance Program,” Iowa Administrative Code.

The proposed new chapter establishes eligibility requirements, application procedures, review criteria and administrative procedures for a new program authorized by 1997 Iowa Acts, House File 368.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 6, 1997. Interested persons may submit written or oral comments by contacting Mike Miller, Business Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4827.

A public hearing to receive comments about the proposed new chapter will be held on August 6, 1997, at 9 a.m. at the above address in the Bureau of Business Finance Conference

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Room. Individuals interested in providing comments at the hearing should contact Mike Miller by 4 p.m. on August 5, 1997, to be placed on the hearing agenda.

These rules are intended to implement 1997 Iowa Acts, House File 368.

The following new chapter is proposed.

CHAPTER 60  
ENTREPRENEURIAL VENTURES  
ASSISTANCE PROGRAM

**261—60.1(15) Purpose.** The department of economic development administers the entrepreneurial ventures assistance (EVA) program. The purpose of the entrepreneurial ventures assistance program is to encourage the development of entrepreneurial venture planning and managerial skills in conjunction with the delivery of a financial assistance program for business start-ups and expansions.

**261—60.2(15) Definitions.** As used in this chapter, unless the context otherwise requires:

“Department” or “IDED” means the Iowa department of economic development.

“Early-stage industry company” or “Early-stage company” means a company with three years or less of experience in a particular industry.

“Eligible applicant” means an individual who is participating in or has successfully completed a recognized entrepreneurial venture development curriculum, or a business whose principal participants have successfully completed a recognized entrepreneurial venture development program.

“EVA” means the entrepreneurial ventures assistance program, authorized by Iowa Code sections 15.338 and 15.339.

“Recognized entrepreneurial venture development curriculum” means programs developed by a John Pappajohn Entrepreneurial Center (JPEC), or a holistic training program recognized by the IDED which generally encompasses the following areas: entrepreneurial training, management team development, intellectual property management, market research and analysis, sales and distribution development, financial planning and management, and strategic planning.

**261—60.3(15) Eligibility requirements.**

**60.3(1)** In order to be eligible for assistance, the business, or proposed business, must be located in the state of Iowa.

**60.3(2)** If the business is a sole proprietorship or a partnership, all applicable business owners must apply. If the business is a limited liability company, a limited liability partnership, or a corporation, the application must be submitted and signed by an individual who has been authorized by the business to do so.

**60.3(3)** In order to be eligible for assistance, the business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership, or corporation) must provide evidence that they are currently participating in, or have successfully completed, a recognized entrepreneurial venture development curriculum. In order to satisfy this requirement, the individuals can provide evidence of substantial progress or completion of the curriculum of study at one of the JPEC centers, or its equivalent.

**60.3(4)** In order to be eligible for assistance, the individual or business must have a business plan which details the business's growth strategy, management team (if applicable), production/management plan, marketing plan, financial plan, and other standard elements of a business plan.

**261—60.4(15) Financial assistance.** Applicants may apply to IDED for financial assistance to assist with their business

start-up or early-stage growth. The applicant may request up to \$20,000 to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, software, or for working capital needs, or other business expenses deemed reasonable and appropriate by IDED.

**261—60.5(15) Technical assistance.** Applicants may also apply for assistance in paying for consulting, or technical assistance, either in conjunction with the request for financial assistance, or after a period of time that the business has been in operation. Assistance of this nature is limited to no more than \$5,000 per applicant.

**261—60.6(15) Application process.** Applications must be submitted on forms as prescribed by the department. Applications, the business plan, and related material shall be submitted to: Entrepreneurial Ventures Assistance Program, Division of Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

**261—60.7(15) Review process.**

**60.7(1)** Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further action on the request.

**60.7(2)** The applications will then be reviewed for content of the business plan, and an evaluation of the business's potential viability and potential for growth. The department may consult with the JPEC centers, or other knowledgeable agencies or individuals, as a part of the review process.

**60.7(3)** The following items will be reviewed and evaluated:

a. Type of business.

(1) Highest priority will be given to businesses in sectors of the Iowa economy with the greatest start-up and growth potential for Iowa, including but not limited to:

1. Biotechnology (including drugs and pharmaceuticals and value-added agricultural products);
2. Recyclable materials;
3. Software development and computer-related products;
4. Advanced materials;
5. Advanced manufacturing; and
6. Medical and surgical instruments.

(2) Assistance may be provided to industries other than those listed in “1” through “6” above; however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

1. The majority of the products or services produced by the industry are exported out of Iowa;
2. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;

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

3. The goods or services produced by this industry diversify Iowa's economy;

4. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;

5. The industry shows potential for future growth;

6. The functions of the industry do not produce harmful effects for Iowa's natural environment; and

7. Whether the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales, the provision of health care or other professional services, and distributors of products or services will not be considered targeted industries and are not eligible for this program.

b. Management team and management expertise. Factors considered here would be whether the applicant(s) has a background (including education, training, work experience, and other factors) which will be helpful and useful in the business in question. Also considered would be the degree to which the applicant's background is fully documented.

c. Business capitalization. Factors considered here would be the original sources of financing for the business. Although all projects must have at least 50 percent of their financing from sources other than the EVA program, preference would be given to those applications where the other sources of financing were even higher than 50 percent.

d. Strength of business plan. Factors considered here would be the quality of the business plan and how well it addresses all elements of the business, such as a description of the company and the overall industry, the product and production plan, the market, competition, and the marketing strategy, the management team and business operations, patent issues (if applicable), critical risks and problems, and financial information and plan. The strength of the business plan will be the most important factor in the evaluation and rating of applications. Rating factors in paragraphs "a," "b," and "c" above will be evaluated as either satisfactory or not satisfactory. However, the business plan will be rated on an actual numerical or comparative scale. Those applications which are satisfactory on factors in paragraphs "a," "b," and "c" and which rate highest on strength of business plan will be funded first.

**261—60.8(15) Negotiation, decision, and award process.**

**60.8(1) Negotiations.** The department reserves the right to negotiate the amount, term, payback amount, and other conditions of an award with the applicant.

**60.8(2) Decision.** The director of the department will make the final decision on all awards under the EVA program. The department will make a final decision on an application within one month of receipt of complete information relating to that application. Within a reasonable period after the decision has been made, the department will transmit to the applicant a letter which either provides the basic reasons for denial, or states the amount of an award and the accompanying terms and conditions to the award.

**60.8(3) Contract.** Following notification of an award, the department shall prepare a contract for execution between the department and the business. After execution of the contract by both parties, the business owner may request disbursement of funds on the form prescribed by IDEED. The time frame between final award date and disbursement of funds will generally be one to two months.

**261—60.9(15) Monitoring, reporting, and follow-up.**

**60.9(1) Monitoring.** The IDEED reserves the right to monitor the recipient's records to ensure compliance with the terms of the award. IDEED staff will contact the recipient to arrange such visits at a mutually agreeable time.

**60.9(2) Reporting.** Recipients shall submit to the IDEED reports in the form and on a schedule as required by the department. The department retains the authority to request information on the condition of the business on a more frequent basis at any time during the period of the project.

**60.9(3) Misuse of funds.** Any person receiving funds under the EVA program is subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement to procure economic development assistance from the state.

**ARC 7381A****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 455B.104(3), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

Amendments to Chapter 64 reissue General Permits No. 1 and No. 2 which authorize the discharge of storm water. These general permits were issued in 1992 for a five-year duration and expire on October 1, 1997. This action will renew them, extending their coverage another five years to October 1, 2002. A third general permit which addresses the storm water discharge needs of asphalt plants, concrete batch plants and rock crushing facilities has been added. General permits for storm water discharges are required to be adopted as rules and are therefore included in this Notice. Copies of the proposed revised General Permit No. 1 and General Permit No. 2 as well as the proposed new General Permit No. 3 are available upon request from the Department at the address or telephone number below.

The fee structure has also been simplified for both the general permits and individual permits. The separate application fee has been eliminated leaving a single permit fee for each type.

Any interested party may make written comments on the proposed amendments on or before August 7, 1997. Written comments should be directed to Storm Water Permit Coordinator, Iowa Department of Natural Resources, Wallace State Office Building, 900 E. Grand Avenue, Des Moines, Iowa 50319; fax (515)281-8895. Persons who wish to convey their views orally should contact the Storm Water Permit Coordinator at (515)281-7017 or at the Department's offices on the fifth floor of the Wallace State Office Building.

A public hearing will be held on August 7, 1997, at 1:30 p.m. in the Fifth Floor Conference Room of the Wallace State Office Building, at which time comments may be presented orally or submitted in writing.

ENVIRONMENTAL PROTECTION COMMISSION{567}(cont'd)

Anyone who plans to attend the public hearing and has special requirements such as hearing or mobility impairments should contact the Storm Water Permit Coordinator and advise of the special needs.

These amendments are intended to implement Iowa Code chapter 455B, division I.

The following amendments are proposed.

ITEM 1. Amend paragraph 64.6(1)"a" by adding the following new subparagraph:

(3) General Permit No. 3 "Storm Water Discharge Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants and Rock Crushing Plants," Form 542-1415, containing the information identified for General Permit No. 1 in subparagraph (1) of this paragraph.

ITEM 2. Amend paragraph 64.6(1)"c" by adding the following new subparagraph:

(3) General Permit No. 3 "Storm Water Discharge Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants and Rock Crushing Plants." Public notification requirements for this general permit are the same as those specified for General Permit No. 1 found in subparagraph (1) of this paragraph.

Upon relocation of a facility authorized to discharge under General Permit No. 3, an applicant shall file a complete Notice of Intent by submitting to the department materials required in paragraphs "a" to "c" of this subrule except that the public notice shall be published in one newspaper with the largest circulation in the area in which the facility is to be located or the activity occurs. The newspaper notice shall, at a minimum, contain the information specified in subparagraph 64.6(1)"c"(1). Upon initial issuance of the permit, the public notice shall be published in at least two newspapers with the largest circulation in the area in which the facility is located or the activity will occur.

ITEM 3. Amend subrule 64.6(2) as follows:

64.6(2) Authorization to discharge under a general permit. Upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the department to the contrary. The discharge authorization date for all storm water discharges associated with industrial activity that are in existence on or before October 1, 1992 1997, shall be October 1, 1992 1997. The applicant will receive notification by the department of coverage under the general permit. If any of the items required for filing a Notice of Intent specified in 64.6(1) are missing, the department will consider the application incomplete and will notify the applicant of the incomplete items.

ITEM 4. Amend subrule 64.8(2), introductory paragraph, as follows:

64.8(2) Renewal of coverage under a general permit. Coverage under a general permit will be renewed subject to the terms and conditions in paragraphs "a" to "e d."

ITEM 5. Amend subrule 64.8(2) by adding the following new paragraph:

d. The Notice of Intent requirements shall not include a public notification when a general permit has been reissued or renewed provided the permittee has already submitted a complete Notice of Intent including the public notification requirements of 64.6(1). Another public notice is required when any information, including facility location, in the original public notice is changed.

ITEM 6. Amend rule 567—64.15(455B) as follows:

567—64.15(455B) General permits issued by the department. The following is a list of general permits adopted by the department through the Administrative Procedure Act, Iowa Code chapter 17A, and the term of each permit.

64.15(1) Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective ~~October 1, 1992, to October 1, 1997~~ October 1, 1997, to October 1, 2002. Facilities assigned Standard Industrial Classification codes 2951, 3273, and those facilities assigned Standard Industrial Classification codes 1422 and 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

64.15(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective ~~October 1, 1992, to October 1, 1997~~ October 1, 1997, to October 1, 2002.

64.15(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants and Rock Crushing Plants, NPDES General Permit No. 3, effective October 1, 1997, to October 1, 2002. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, and those facilities assigned Standard Industrial Classifications 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

ITEM 7. Amend subrule 64.16(1) as follows:

64.16(1) A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee and a permit fee as specified in 64.16(3). Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. At the time the application is submitted, the applicant has the option of paying an annual permit fee or ~~either a five-year a~~ multiyear permit fee, ~~whichever is available. The multiyear permit fee provides coverage under the general permit through the expiration date of the general permit.~~

~~Fees are not refundable and are nontransferable; however, if the application is returned to the applicant by the department, the application fee will be retained but the permit fee will be returned.~~ No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate ~~application fee and permit fee~~ renders the application incomplete and the department shall suspend processing of the application until the fee is received.

ITEM 8. Amend subrule 64.16(3) as follows:

64.16(3) Fee schedule. The following fees have been adopted:

a. For coverage under the NPDES General Permit the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Application Fee .....	\$100
and	
Annual Permit Fee .....	\$150 (per year)
or	
Multiyear Five-year Permit Fee .....	\$450 \$600

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Four-year Permit Fee ..... \$450
Three-year Permit Fee ..... \$300
(Coverage provided by the multiyear permit fee expires concurrently with the expiration date of the general permit. Maximum coverage is five years.) (Coverage provided by the five-year, four-year, and three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively.)

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

b. Individual NPDES permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For storm water discharge associated with industrial activity, submitted on Form 2F, where the storm water is composed entirely of storm water or combined with process wastewater or other nonstorm water wastewater.

Application Fee ..... \$150
and
Annual Permit Fee ..... \$300 (per year)
or

Five-year Permit Fee ..... \$1,250

(2) For storm water discharge from large and medium municipal separate storm sewers (systems serving a population of 100,000 or more).

Application Fee ..... \$150
and
Annual Permit Fee ..... \$300 (per year)
or

Five-year Permit Fee ..... \$1,250

(3) For participants in an approved group application and EPA has issued a model general permit and no industry specific general permit is available or being developed.

Application Fee ..... \$150
and
Annual Permit Fee ..... \$300 (per year)
or

Five-year Permit Fee ..... \$1,250

ARC 7383A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 455A.6, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 211, “Grants for Regional Collection Centers of Conditionally Exempt Small

Quantity Generators and Household Hazardous Wastes,” Iowa Administrative Code.

The proposed changes describe the method of dispersing Regional Collection Centers (RCC) funds to eligible operating RCCs in support of their operation. The first change adds a provision for operations support in 567—211.2(455F). The second change describes the process for dispersing the RCC operations support funding to eligible operating RCCs. In this process RCCs are required to use a form, supplied by the Department, to report the waste collected. The Department will calculate the percentage of eligible wastes each RCC collected compared to the total poundage of wastes collected by all operating RCCs. Funds will be allocated in an amount equal to the calculated percentage for RCC operations support. The same process will be used to allocate RCC disposal funding as described in 567—214.11(455F). RCC establishment grant funding will have priority for funding over operations support.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 8, 1997. Such written comments should be directed to Jeff Fiagle, Waste Management Assistance Division, Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact Jeff Fiagle, Waste Management Assistance Division at (515)281-5859 or at the Division offices on the fifth floor of the Wallace State Office Building.

Persons are also invited to present oral or written comments at a public hearing which will be held August 8, 1997, at 9:30 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa. At the hearing persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

These amendments are intended to implement Iowa Code sections 455A.6 and 455F.8A.

The following amendments are proposed.

ITEM 1. Amend 567—211.2(455F) as follows:

567—211.2(455F) Purpose. The purpose of this program is to provide grants to regional governments to cover costs associated with education, operations and the capital outlay for construction or modification of a structure(s) to serve as a regional collection center.

ITEM 2. Amend 567—Chapter 211 by adding the following new rule:

567—211.11(455F) RCC operations support. The department may provide grants to establish RCCs to applicants who have met criteria described in rule 211.8(455F). Funds not obligated for the establishment of RCCs may be dispersed to eligible operating RCCs as operations support. Operations support funding will assist RCCs with the costs associated with day-to-day operations. There shall be no operations support funding awarded to any RCC in excess of actual operations cost as reported on the disposal funding report form as required in rule 214.11(455F). The total operations support funding awarded to all eligible RCCs shall not exceed the amount of available funding.

To be eligible to receive RCC operations support, RCCs must meet the requirements described in rule 214.11(455F). The method to determine the percentage of operations support funds that each eligible RCC may receive is also described in rule 214.11(455F). Funding assistance under this rule may be dispersed to eligible operating RCCs at the same

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

time as the RCC household hazardous material disposal funding, rule 214.11(455F).

Grants to establish RCCs will have priority for funding over operations support.

## ARC 7384A

## ENVIRONMENTAL PROTECTION COMMISSION[567]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 455A.6, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 214, "Household Hazardous Materials Program," Iowa Administrative Code.

The amendments to rule 214.11(455F) include adding conditionally exempt small quantity generators as their wastes are also accepted at RCCs. The second change, for consistency, requires all RCCs to report their specific collection information on a form supplied by the Department. The RCCs have seen, commented on and tested this form. The form used is similar to a form used for national reporting of these statistics. The third change requires the RCCs to report their collection information by September 1 rather than July 1. Changing the reporting date to September 1 will provide the RCCs with a more reasonable time frame to gather their final poundage for the fiscal year before the deadline for submittal of the form. Also, the Department will not know the amount of available funding in the account until September due to the timing by which tonnage fees are submitted to the state.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 8, 1997. Such written comments should be directed to Jeff Fiagle, Waste Management Assistance Division, Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact Jeff Fiagle, Waste Management Assistance Division, at (515)281-5859 or at the Division offices on the fifth floor of the Wallace State Office Building.

Persons are also invited to present oral or written comments at a public hearing which will be held August 8, 1997, at 9:30 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa. At the hearing persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

The following amendments are proposed.

Amend rule 567—214.11(455F) as follows:

**567—214.11(455F) Regional collection center household hazardous material disposal funding.** All RCCs are eligible to receive funding from the department to offset the cost associated with proper disposal of household hazardous waste by a hazardous waste contractor. The ~~additional 3 percent source for this funding~~ is described in Iowa Code Sup-

~~plement section 455E.11(2)"a"(2)(e) is the source for this funding.~~

RCCs will receive a percentage of the total funds accumulated in this account in an amount equal to the percentage each RCC collected compared to the total amount collected by all RCCs in each fiscal year based on the weight of materials collected from urban and rural households *and conditionally exempt small quantity generators*. To be eligible to receive disposal funding assistance, an RCC must report the following information to the department by ~~July 1~~ *September 1* of each year for the fiscal year ending the previous June 30, using a form supplied by the department:

1. Number of households bringing waste to the facility.
2. Poundage of household hazardous waste received.
3. Categories of household hazardous waste received.
4. Number of conditionally exempt small quantity generators bringing waste to the facility.
5. Poundage of hazardous waste received from conditionally exempt small quantity generators.
6. Categories of hazardous waste received from conditionally exempt small quantity generators.

A fiscal year will be from July 1 of the previous year to June 30 of the current year. Water-based paint, waste oil and lead acid battery weights are not considered eligible poundages.

## ARC 7364A

## 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 75, "Conditions of Eligibility," and Chapter 76, "Application and Investigation," and to rescind Chapter 86, "Medically Needy," appearing in the Iowa Administrative Code.

These amendments incorporate the policies of the FIP program into the Medicaid chapters. Additionally, the rules are amended to eliminate the four-month work transition period, exempt earnings of full-time students, move the medically needy policies in Chapter 86 to Chapter 75, and reinsert the definition of "care and services necessary for the treatment of an emergency medical condition."

Until the passage of the Personal Responsibility and Work Opportunity Act of 1996 (PRWOA), persons who were eligible for Family Investment Program (FIP) cash assistance were automatically eligible for Medicaid. However, this bill made sweeping changes to the FIP program by block granting funding and giving states the flexibility to design their own cash assistance programs. In order to ensure that Medicaid eligibility for this population was maintained, regardless of what states did in the cash assistance program, the bill "de-linked" Medicaid from FIP and mandated states to determine Medicaid eligibility according to the rules that were in place as of July 16, 1996.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

An interim rule, 441—75.26(249A), was previously adopted to specify that FIP policies in place as of July 16, 1996, would be used for Medicaid eligibility determinations until the FIP rules could be incorporated into the Medicaid chapters. These amendments incorporate the FIP rules as of July 16, 1996, into the Medicaid chapters, so that FIP policies that were in place at that time will be maintained for Medicaid eligibility determinations regardless of what changes may occur in FIP.

However, for ease of administration and to reduce program complexity, it is desirable to keep Medicaid and FIP policies as closely aligned as possible.

Section 1931 of the PRWOA allows some flexibility in that states can adopt income or resources policies that are more liberal than the policies that were in place as of July 16, 1996, and states can choose to continue or drop waiver policies. These options affect two of the amendments being incorporated into these revisions: (1) Earnings of full-time students, aged 19 or younger, will be exempt when determining eligibility. This policy is being adopted to mirror the FIP policy that was adopted on November 1, 1996. (2) The work transition period (WTP) is being eliminated. WTP is a FIP waiver policy that is being eliminated by FIP in accordance with 1997 Iowa Acts, House File 516, sections 35 and 36, as signed by Governor Branstad on April 18, 1997. The program exempted earnings for the first four months for persons who became employed after applying for FIP and who earned less than \$1,200 in the 12 calendar months before the month the new job begins. Because it is a waiver policy, the WTP can be dropped for Medicaid purposes under the PRWOA. The Department is opting to discontinue the WTP for Medicaid in order to maintain consistent policy between the two programs.

There are some policies for which FIP and Medicaid will not be able to maintain consistency. For example, the FIP rule change which allows a second cousin to be defined as a "specified relative" for the purpose of determining FIP eligibility cannot be applied to Medicaid as a more liberal policy as it is not an income or resource policy.

Finally, the definition of "care and services necessary for the treatment of an emergency medical condition" is being reinserted into the rules after being inadvertently omitted in the last revision.

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 August 6, 1997.

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

Cedar Rapids - August 8, 1997 Cedar Rapids Regional Office Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third St. S. E. Cedar Rapids, Iowa 52401	10 a.m.
Council Bluffs - August 6, 1997 Lower Level Council Bluffs Regional Office 417 E. Kanessville Boulevard Council Bluffs, Iowa 51501	9 a.m.

Davenport - August 7, 1997 Davenport Area Office Bicentennial Building - Fifth Floor Conference Room 3 428 Western Davenport, Iowa 52801	10 a.m.
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Des Moines - August 7, 1997 Des Moines Regional Office City View Plaza Conference Room 104 1200 University Des Moines, Iowa 50314	10 a.m.
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Mason City - August 6, 1997 Mason City Area Office Mohawk Square, Liberty Room 22 North Georgia Avenue Mason City, Iowa 50401	10 a.m.
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Ottumwa - August 6, 1997 Ottumwa Area Office Conference Room 2 120 East Main Ottumwa, Iowa 52501	10 a.m.
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Sioux City - August 6, 1997 Sioux City Regional Office Fifth Floor 520 Nebraska St. Sioux City, Iowa 51101	1 p.m.
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Waterloo - August 6, 1997 Waterloo Regional Office Pinecrest Office Building Conference Room 220 1407 Independence Avenue Waterloo, Iowa 50703	10 a.m.
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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 **441—Chapter 75** by creating a **new** Division I consisting of rules 441—75.1(249A) to 441—75.26(249A) entitled "General Conditions of Eligibility, Coverage Groups, and SSI-Related Programs."

ITEM 2. Amend rule **441—75.1(249A)** as follows:

Amend subrule 75.1(1) as follows:

**75.1(1)** Persons receiving ~~family investment program~~ or refugee cash assistance. Medical assistance shall be available to all recipients of the ~~family investment program~~ or refugee cash assistance. Recipient means a person for whom a ~~family investment program (FIP)~~ or refugee cash assistance (RCA) payment is received and includes persons deemed to be receiving ~~FIP~~ or RCA. Persons deemed to be receiving ~~FIP~~ or RCA are:

a. Persons denied ~~FIP~~ or RCA because the amount of payment would be less than \$10.

b. Persons suspended from ~~FIP~~ or RCA because of ~~recovery of an overpayment~~ a *temporary increase in income expected to last for only one month*, such as five weekly checks received in the budget month instead of the usual four, or *due to recovery of an overpayment*.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

c. Persons who are eligible in every respect for refugee cash assistance (RCA) as provided in 441—Chapter 60, but who do not receive RCA because they did not make application for the assistance.

Rescind and reserve subrule 75.1(2).

Amend subrule 75.1(6) as follows:

**75.1(6)** Persons who would be eligible for ~~cash supplemental security income (SSI), state supplementary assistance (SSA), or the family medical assistance program (FMAP)~~ except for their institutional status. Medicaid shall be available to persons receiving care in a medical institution who would be eligible for ~~the family investment program, supplemental security income SSI, SSA, or state supplementary assistance FMAP~~ if they were not institutionalized.

Amend subrule 75.1(7), paragraph "a," subparagraph (4), and paragraph "b," as follows:

(4) Either meet all supplemental security income (SSI) eligibility requirements except for income or are under age 21 and meet ~~all eligibility~~ *the resource* requirements for of the family investment medical assistance program (FIP FMAP) under 441—Chapters 41 to 49. ~~other than FMAP policies regarding income, age, and deprivation of parental care and support do not apply when determining eligibility for persons under the age of 21.~~

b. For all persons in this coverage group, income shall be ~~counted~~ *considered* as provided for SSI-related coverage groups under subrule 75.13(2). Resources shall be ~~counted~~ *considered* as provided for SSI-related coverage groups under subrule 75.13(2) or FIP FMAP-related coverage groups under subrule 75.13(1) or 75.13(2) depending on ~~whether the person qualifies under SSI or FIP person's categorical relatedness.~~

Rescind and reserve subrule 75.1(11).

Add the following new subrule 75.1(14).

**75.1(14)** Family medical assistance program (FMAP). Medicaid shall be available to children who meet the provisions of rule 441—75.54(249A) and to the children's specified relatives who meet the provisions of subrule 75.54(2) and rule 441—75.55(249A) if the following criteria are met.

a. Resources are considered in accordance with the provisions of rule 441—75.56(249A) and do not exceed the limits established in that rule.

b. Income is considered in accordance with rule 441—75.57(249A) and does not exceed needs standards established in rule 441—75.58(249A).

c. The child is deprived of parental care or support in accordance with subrule 75.54(3).

Amend subrule 75.1(15) as follows:

**75.1(15)** Child medical assistance program (CMAP). Medicaid shall be available to persons under the age of 21 if the following criteria are met:

a. Financial eligibility shall be determined for the family size of which the child is a member using the income and resource standards in effect for the family investment medical assistance program (FIP FMAP) unless otherwise specified. Income shall be considered as provided in subrule 75.13(1) ~~rule 441—75.57(249A).~~ *However* *Additionally*, the earned income disregards as provided in 441—paragraphs 41.27(2) "a," "b," "c," and "d," paragraphs 75.57(2) "a," "b," "c," and "d" shall also be allowed for those persons whose income is considered in establishing eligibility for the persons under the age of 21 and whose needs must be included in accordance with 441—paragraph 41.28(1) "a" paragraph 75.58(1) "a" but who are not included in the Medicaid-eligible group *eligible for Medicaid.* The resource standards of the FIP program FMAP shall be utilized *used* in

determining eligibility for *persons* in this coverage group ~~except as provided in subrule 75.13(1).~~ All persons in the household under the age of 21 shall be considered as though they were dependent children. *Unless a family member is voluntarily excluded in accordance with the provisions of rule 441—75.59(249A), Family family size shall be determined as follows:*

(1) and (2) No change.

(3) ~~Unless otherwise specified, When~~ *when* the person under the age of 21 is living with a parent(s), the family size shall consist of all family members as defined by the FIP family medical assistance program in 441—subrule 41.27(8), paragraph "c" and 441—subrule 41.28(1) ~~except as provided in 75.1(15) "a" (1) and (6) accordance with paragraph 75.57(8) "c" and subrule 75.58(1).~~

Application for Medicaid shall be made by the parent(s) when the person is residing with them. A person shall be considered to be living with the parent(s) when the person is temporarily absent from the parent's(s') home as defined in 441—subrule 41.23(3) ~~subrule 75.53(4).~~ If the person under the age of 21 is married *or has been married*, the needs, income and resources of the person's parent(s) and any siblings in the home shall not be considered in the eligibility determination ~~unless the marriage was annulled.~~

(4) No change.

(5) Siblings under the age of 21 who live together shall be considered in the same filing unit for the purpose of establishing eligibility under this rule unless one sibling is married *or has been married*, in which case, the married sibling shall be considered separately ~~unless the marriage was annulled.~~

(6) When a person is residing in a household in which some members are receiving FIP FMAP and when the person is not included in the ~~assistance FMAP~~ eligible group, the family size shall consist of the person and all other family members as defined by the FIP program *above* except those in the ~~assistance FMAP~~ eligible group.

b. to d. No change.

e. Living with a specified relative *as provided in subrule 75.54(2)* and deprivation *requirements as provided in subrule 75.54(3)* shall not be considered when determining eligibility for persons under this coverage group.

Rescind and reserve subrule 75.1(16).

Amend subrule 75.1(17) as follows:

**75.1(17)** Persons who meet the income and resource requirements of the cash assistance programs. Medicaid ~~assistance~~ shall be available to the following persons who meet the income and resource guidelines of the family investment program, supplemental security income or refugee cash assistance, but who are not receiving cash assistance:

a. Aged and blind persons, as defined at subrule 75.13(2).

b. Disabled persons, as defined at rule 441—75.20(249A).

c. ~~Specified relatives, as listed at 441—subrule 41.22(3) taking care of a child who is determined to be dependent (or would be if needy) because the child is deprived of parental support or care.~~

d. ~~Pregnant women.~~

Amend subrule 75.1(21) as follows:

**75.1(21)** Persons and families ineligible for the family investment medical assistance program (FIP FMAP) in whole or in part because of child or spousal support. Medicaid shall be available for *an additional* four months to persons and families who become ineligible for FIP FMAP because of income from child support, alimony, or contributions from a

## HUMAN SERVICES DEPARTMENT[441](cont'd)

spouse if the person or family member received FIP FMAP in at least three of the six months immediately preceding the month of cancellation.

a. The four months of *extended* Medicaid coverage begin the day following termination of FIP benefits FMAP eligibility.

b. When ineligibility is determined to occur retroactively, the extended Medicaid coverage begins with the first month in which FIP FMAP eligibility was erroneously paid granted.

c. No change.

Rescind and reserve subrule 75.1(26).

Amend subrule 75.1(28) as follows:

**75.1(28)** Pregnant women, infants, and children (*Mothers and Children (MAC)*). Medicaid shall be available to all pregnant women, infants (under one year of age) and children who were born after September 30, 1983, and who have not attained the age of 19 if the following criteria are met:

a. Income.

(1) Family income shall not exceed 185 percent of the federal poverty level for pregnant women when establishing initial eligibility under these provisions and for infants (under one year of age) when establishing initial and ongoing eligibility. Family income shall not exceed 133 percent of the federal poverty level for children who have attained one year of age but who have not attained six years of age. Family income shall not exceed 100 percent of the federal poverty level for children who have attained six years of age but who have not attained 19 years of age. Income to be considered in determining eligibility for pregnant women, infants and children shall be determined according to family investment medical assistance program (FIP FMAP) methodologies except that the three-step process for determining initial eligibility and the two-step process for determining ongoing eligibility, as described at rule 441-75.57(249A), shall not apply. Family income is the income remaining after appropriate disregards and deductions have been applied in accordance with ~~subrule 75.13(1) the provisions of rule 441-75.57(249A).~~

(2) Moneys received as a nonrecurring lump sum, except as specified in ~~subrules 41.26(4) 75.56(4), 41.26(7) 75.56(7), 41.27(8) "b" and 41.27(8) "c," 75.57(8) "b" and "c,"~~ shall be treated in accordance with this subparagraph. Nonrecurring lump sum income shall be considered as income in the budget month and considered in the eligibility determination for the benefit month, unless the income is exempt. Nonrecurring lump sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance, or workers' compensation. The lump sum shall be prorated, and considered in the eligibility determination by dividing the nonrecurring lump sum plus other countable income received in the month the lump sum was received by the standard of need of the aid to dependent children program in effect for the same household size in accordance with ~~subrule 75.58(1).~~ The resulting number of months shall be called the "proration period." Any income remaining after this calculation shall be applied as income to the first month following the proration period and disregarded as income thereafter.

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

~~1. The proration period shall be shortened when the standard of need as defined in subrule 41.28(2) increases.~~

~~2. The proration period shall be shortened by the amount which is no longer available to the household due to a loss, theft or because the person controlling the lump sum no longer resides in the household and the lump sum is no longer available to the remaining household members.~~

~~3. The proration period shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: payments made on medical services for a household member for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over \$25 per incident; the cost of replacement of exempt resources due to fire, tornado, or other natural disaster; or funeral or burial expenses. The expenditure of these funds shall be verified.~~

~~When countable income, including countable prorated lump sum income, exceeds the income limit of the household, eligibility for that household shall be canceled, suspended, or denied.~~

~~When countable income, including countable prorated lump sum income, is less than the income limit for the household, the prorated lump sum income shall be counted as income for the budget month. For purposes of applying the lump sum provision, household size shall be determined according to the policies in effect for the family investment medical assistance program, with consideration of paragraph "e" of this subrule, and rule 441—75.19(249A) unless the person is excluded from the eligible group in accordance with the provisions of rule 441—75.59(249A). During the proration period, persons not considered part of the household at the time the lump sum was received may be eligible for Medicaid as a separate household. Income of this separate household plus income, excluding the prorated lump sum already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility.~~

~~b. to g. No change.~~

~~h. Eligibility under this rule is not dependent upon the The deprivation of a child requirements as specified at subrule 75.54(3) do not apply to children in this coverage group.~~

~~i. No change.~~

~~j. If an infant loses eligibility under this coverage group at the time of the first birthday or a child loses eligibility at the time of the sixth birthday due to an inability to meet the income limit for children under this subrule, but is receiving inpatient services in a medical institution, Medicaid shall continue under this coverage group for the duration of the time continuous inpatient services are provided.~~

~~k. If a child loses eligibility under this coverage group at the time of the sixth birthday due to an inability to meet the income limit for children six years of age or at the time of reaching the maximum age duration of eligibility allowed under this subrule, but is receiving inpatient services in a medical institution, Medicaid shall continue under this coverage group for the duration of the time continuous inpatient services are provided.~~

Amend subrule 75.1(31) as follows:

**75.1(31)** Persons and families terminated from the family investment medical assistance program (FIP FMAP) on or after April 1, 1990, due to the increased earnings of the caretaker specified relative in the eligible group. Medicaid shall be available for a period of up to 12 additional months to persons who are canceled from the FIP program on or after

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~April 1, 1990, FMAP as provided in subrule 75.1(14) because the caretaker specified~~ relative of a dependent child receives increased income from employment. When the increased earnings of a ~~caretaker specified~~ relative who is not included in the eligible group but whose income is considered in the eligibility determination create ineligibility, these provisions shall not apply unless there is also another ~~caretaker specified~~ relative included in the eligible group who is employed.

a. No change.

b. In order to receive transitional Medicaid coverage under these provisions, a ~~FIP FMAP~~ recipient must have received ~~or been deemed to have received FIP benefits FMAP~~ during at least three of the six months immediately preceding the month in which ineligibility occurred.

c. The 12 months' Medicaid *transitional* coverage begins the day following termination of ~~FIP benefits FMAP eligibility~~.

d. When ineligibility is determined to occur retroactively, the transitional Medicaid coverage begins with the first month in which ~~FIP FMAP eligibility~~ was erroneously paid *granted*, unless the provisions of paragraph "f" below apply.

e. A person who returns to the home during the period of transitional Medicaid coverage may be included in the eligible group if the person was included ~~on in the assistance grant eligible group~~ in the last month of ~~FIP FMAP~~ eligibility ~~or deemed eligibility~~.

f. Transitional Medicaid shall not be allowed under these provisions when it has been determined that the recipient received ~~FIP FMAP~~ in any of the six months immediately preceding the month of cancellation as the result of fraud. Fraud shall be defined in accordance with ~~Iowa Code section 239.14 1997 Iowa Acts, Senate File 516, section 15.~~

g. During the transitional Medicaid period, assistance shall be terminated at the end of the first month in which the eligible group ceases to include a child, as defined by the ~~FIP family medical assistance~~ program.

h. No change.

i. Assistance shall be terminated at the close of the first or fourth month of the additional six-month period if any of the following conditions exist:

(1) No change.

(2) The ~~caretaker specified~~ relative had no earnings in one or more of the previous three months, unless the lack of earnings was due to an involuntary loss of employment, illness, or there were instances when problems could negatively impact the client's achievement of self-sufficiency as described at 441—subrule 93.133(4).

(3) It is determined that the family's average gross earned income, minus child care expenses for the children in the eligible group necessary for the employment of the ~~caretaker specified~~ relative, during the immediately preceding three-month period exceeds 185 percent of the federal poverty level as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

j. ~~A caretaker relative shall mean~~ *These provisions apply to specified relatives defined at paragraph 75.55(1) "a," including:*

(1) to (3) No change.

k. No change.

Add the following *new* subrule:

**75.1(35) Medically needy persons.**

a. Coverage groups. Subject to other requirements of this chapter, Medicaid shall be available to the following persons:

(1) Pregnant women. Pregnant women who would be eligible for FMAP-related coverage groups except for excess income or resources. For FMAP-related programs, pregnant women shall have the unborn child or children counted in the household size as if the child or children were born and living with them.

(2) FMAP-related persons under the age of 19. Persons under the age of 19 who would be eligible for an FMAP-related coverage group except for excess income or resources.

(3) CMAP-related persons under the age of 21. Persons under the age of 21 who would be eligible in accordance with subrule 75.1(15) except for excess income or resources.

(4) SSI-related persons. Persons who would be eligible for SSI except for excess income or resources.

(5) FMAP-specified relatives. Persons whose income or resources exceed the family medical assistance program's limit and who are a specified relative as defined at subrule 75.55(1) living with a child who is determined dependent (or would be if needy) because the child is deprived of parental support or care.

b. Resources and income of all persons considered.

(1) Resources and income of all specified relatives and of all potentially eligible individuals living together, except as specified at subparagraph 75.1(35)"b"(2) or who are excluded in accordance with the provisions of rule 441—75.59(249A), shall be considered in determining eligibility.

(2) The amount of income of the responsible relative that has been counted as available to an FMAP household or SSI individual shall not be considered in determining the countable income for the medically needy eligible group.

(3) The resource determination shall be according to subrules 75.5(3) and 75.5(4) when one spouse is expected to reside at least 30 consecutive days in a medical institution.

c. Resources.

(1) The resource limit for SSI-related households shall be \$10,000 per household.

(2) Disposal of resources for less than fair market value by SSI-related applicants or recipients shall be treated according to policies specified in rule 441—75.6(249A).

(3) The resource limit for FMAP- or CMAP-related persons shall be \$10,000 per household. Resources shall be considered according to department of public health subrule 75.4(2) when determining eligibility.

(4) The resources of SSI-related persons shall be treated according to SSI policies.

(5) When a resource is jointly owned by SSI-related persons and FMAP-related persons, the resource shall be treated according to SSI policies for the SSI-related person and according to FMAP policies for the FMAP-related persons.

d. Income. All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted shall be considered in determining initial and continuing eligibility.

(1) Income policies specified in subrules 75.57(1) through 75.57(8), and paragraphs 75.57(9)"c," "g," "h," and "i" regarding treatment of earned and unearned income are applied to FMAP-related and CMAP-related persons when determining initial and continuing eligibility unless otherwise specified. The three-step process for determining initial eligibility and the two-step process for determining ongoing eligibility, as described at rule 441—75.57(249A), shall not apply to medically needy persons.

(2) Income policies as specified in federal SSI regulations regarding treatment of earned and unearned income are

## HUMAN SERVICES DEPARTMENT[441](cont'd)

applied to SSI-related persons when determining initial and continuing eligibility.

(3) The monthly income shall be determined prospective-ly unless actual income is available.

(4) The income for the certification period shall be deter- mined by adding both months' net income together to arrive at a total.

Number of Persons	1	2	3	4	5	6	7	8	9	10
MNIL	\$483	\$483	\$566	\$666	\$733	\$816	\$891	\$975	\$1058	\$1158

Each additional person \$116

(2) When determining household size for the MNIL, all potential eligibles and all individuals whose income is con- sidered as specified in paragraph 75.1(35)"b" shall be in- cluded unless the person has been excluded according to the provisions of rule 441—75.59(249A).

(3) The MNIL for the certification period shall be deter- mined by adding both months' MNIL to arrive at a total.

The MNIL for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

(4) The total net countable income for the certification period shall be compared to the total MNIL for the certifi- cation period based on family size as specified in subparagraph (2).

If the total countable net income is equal to or less than the total MNIL, the medically needy individuals shall be eligible for Medicaid.

If the total countable net income exceeds the total MNIL, the medically needy individuals shall not be eligible for Medicaid unless incurred medical expenses equal or exceed the difference between the net income and the MNIL.

(5) Effective date of approval. Eligibility during the cer- tification period or the retroactive certification period shall be effective as of the first day of the first month of the certi- fication period or the retroactive certification period when the medically needy income level (MNIL) is met.

f. Verification of medical expenses to be used in spend- down calculation. The applicant or recipient shall submit ev- idence of medical expenses that are for noncovered Medic- aid services and for covered services incurred prior to the certification period on the Medical Expense Verification, Form MA-4069, which shall be completed by the medical provider. In cases where the provider is uncooperative or where returning to the provider would constitute an unrea- sonable requirement on the applicant or recipient, the form shall be completed by the worker. Verification of medical expenses for the applicant or recipient that are covered Med- icaid services and occurred during the certification period shall be submitted by the provider to the fiscal agent on a claim form. The applicant or recipient shall inform the pro- vider of the applicant's or recipient's spenddown obligation at the time services are rendered or at the time the applicant or recipient receives notification of a spenddown obligation. Verification of allowable expenses incurred for transporta- tion to receive medical care as specified in rule 441— 78.13(249A) shall be verified on Form MA-3032-1, Medical Transportation Claim.

Applicants who have not established that they met spend- down in the current certification period shall be allowed 35 days following the end of the certification period to submit medical expenses for that period.

g. Spenddown calculation.

(1) Medical expenses that are incurred during the certi- fication period may be used to meet spenddown. Medical ex-

(5) The income for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

e. Medically needy income level (MNIL).

(1) The MNIL is based on 133 1/3 percent of the schedule of basic needs, as provided in subrule 75.58(2), with house- holds of one treated as households of two, as follows:

penses incurred prior to a certification period shall be used to meet spenddown if not already used to meet spenddown in a previous certification period and if all of the following re- quirements are met. The expenses:

1. Remain unpaid as of the first day of the certification period.

2. Are not Medicaid-payable in a previous certification period or the retroactive certification period.

3. Are not incurred during any prior certification period with the exception of the retroactive period in which the per- son was conditionally eligible but did not meet spenddown.

Notwithstanding numbered paragraphs "1" through "3" above, paid medical expenses from the retroactive period can be used to meet spenddown in the retroactive period or in the certification period for the two months immediately fol- lowing the retroactive period.

(2) Order of deduction. Spenddown shall be adjusted when a bill for a Medicaid-covered service incurred during the certification period has been applied to meet spenddown if the bill is subsequently received. Spenddown shall also be adjusted when a bill for a noncovered Medicaid service with a service date prior to the Medicaid-covered service is subse- quently received.

If spenddown has been met and a bill is received with a service date after spenddown has been met, the bill shall not be deducted to meet spenddown.

Incurred medical expenses, including those reimbursed by a state or political subdivision program other than Medic- aid, but excluding those otherwise subject to payment by a third party, shall be deducted in the following order:

1. Medicare and other health insurance premiums, de- ductibles, or coinsurance charges.

EXCEPTION: When some of the household members are eli- gible for full Medicaid benefits under the Health Insurance Premium Payment Program (HIPPP), as provided in rule 441—75.21(249A), the health insurance premium shall not be allowed as a deduction to meet the spenddown obligation of those persons in the household in the medically needy coverage group.

2. An average statewide monthly standard deduction for the cost of medically necessary personal care services pro- vided in a licensed residential care facility shall be allowed as a deduction from income for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eat- ing, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facil- ities participating in the state supplementary assistance pro- gram for a 30.4-day month as computed in the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities (Category: All; Type of Care: Residential;

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Location: All; and Type of Control: All). The average state-wide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months after the release of the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities report.

3. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid.

4. Medical expenses for necessary medical and remedial services that are covered by Medicaid.

(3) When incurred medical expenses have reduced income to the applicable MNIL, the individuals shall be eligible for Medicaid.

(4) Medical expenses reimbursed by a public program other than Medicaid prior to the certification period shall not be considered a medical deduction.

h. Medicaid services. Persons eligible for Medicaid as medically needy will be eligible for all services covered by Medicaid except:

(1) Care in a nursing facility or an intermediate care facility for the mentally retarded.

(2) Care in an institution for mental disease.

(3) Care in a Medicare-certified skilled nursing facility.

(4) Rehabilitative treatment services pursuant to 441—Chapter 185.

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

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

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

(1) The Medically Needy Recertification/State Supplementary and Medicaid Review, Form 470-3118, shall be used to determine eligibility for SSI-related medically needy when an SSI recipient has been determined to be ineligible for SSI due to excess income or resources in one or more of the months after the effective date of the SSI eligibility decision.

(2) All eligibility factors shall be reviewed on recertifications. A face-to-face interview is not required for recertifications if the last face-to-face interview was less than 12 months ago and there has not been a break in assistance. When the length of time between face-to-face interviews would exceed 12 months, a face-to-face interview shall be required.

k. Recertifications. A new application shall be made when the certification period has expired and there has been a break in assistance as defined at rule 441—75.25(249A). When the certification period has expired and there has not been a break in assistance, the person shall use the Medically Needy Recertification/State Supplementary and Medicaid Review, Form 470-3118, to be recertified. This form shall be treated as an application. For cases on the X-PERT system, if an interview is required as specified at subparagraph 75.1(35)“j”(2), the applicant may complete Form 470-3112 or 470-3122 (Spanish). When the applicant completes Form

470-3112 or Form 470-3122 (Spanish), the Summary of Facts, Form 470-3114, shall be completed and attached to the Summary Signature Page, Form 470-3113 or Form 470-3123 (Spanish), which has been signed and returned to the local or area office.

If an interview is not required as specified at subparagraph 75.1(35)“j”(2), when the Application for Assistance, Part 1, Form 470-3112 or 470-3122 (Spanish), is completed, the applicant shall be requested to complete Form 470-3118.

1. Disability determinations. An applicant receiving social security disability benefits under Title II of the Social Security Act or railroad retirement benefits based on the Social Security Act definition of disability by the Railroad Retirement Board shall be deemed disabled without any further determination. In other cases under the medically needy program, the department shall conduct an independent determination of disability unless the applicant has been denied supplemental security income benefits based on lack of disability and does not allege either (1) a disabling condition different from or in addition to that considered by the Social Security Administration, or (2) that the applicant's condition has changed or deteriorated since the most recent Social Security Administration determination.

(1) In conducting an independent determination of disability, the department shall use the same criteria required by federal law to be used by the Social Security Administration of the United States Department of Health and Human Services in determining disability for purposes of supplemental security income under Title XVI of the Social Security Act. The disability determination services bureau of the division of vocational rehabilitation shall make the initial disability determination on behalf of the department.

(2) For an independent determination of disability, a Disability Report, Form 470-2465, must be obtained from the applicant or recipient or the applicant's or recipient's authorized representative. A signed Authorization for Source to Release Information to the Department of Human Services, Form 470-2467, shall be completed for each medical source listed on the disability report.

(3) In connection with any independent determination of disability, the department shall determine whether reexamination of the person's medical condition will be necessary for periodic redeterminations of eligibility.

ITEM 3. Amend subrule 75.10(2), paragraph “b,” subparagraph (3), as follows:

(3) For any other person not in an institution or foster home and not subject to subparagraph (1) or (2) above, the state of residence is determined in accordance with 441—~~subrule 41.23(1)~~ rule 441—75.53(249A).

ITEM 4. Amend rule 441—75.11(249A) as follows:

Amend subrule 75.11(1) by adding the following new definition in alphabetical order:

“Care and services necessary for the treatment of an emergency medical condition” shall mean services provided in a hospital, clinic, office or other facility that is equipped to furnish the required care after the sudden onset of an emergency medical condition, provided the care and services are not related to an organ transplant procedure furnished on or after August 10, 1993. Payment for emergency medical services shall be limited to the day treatment is initiated for the emergency medical condition and the following two days.

Amend subrule 75.11(4) as follows:

75.11(4) *Eligibility for payment of emergency medical services. Aliens who do not meet the provisions of subrule 75.11(2) and who would otherwise qualify except for their*

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*alienage status are eligible to receive Medicaid for emergency medical care as defined in subrule 75.11(1). To qualify under these provisions, the alien must meet all eligibility criteria, including state residence requirements provided at rules 441—75.10(249A) and 441—75.53(249A). However, the requirements of rule 441—75.7(249A) and subrules 75.11(2) and 75.11(3) do not apply to eligibility for aliens seeking the care and services necessary for the treatment of an emergency medical condition not related to an organ transplant procedure furnished on or after August 10, 1993.*

ITEM 5. Amend rule **441—75.13(249A)** as follows:

Rescind subrule 75.13(1) and insert the following **new** subrule in lieu thereof:

**75.13(1)** FMAP-related Medicaid eligibility. Medicaid eligibility for persons who are under the age of 21, pregnant women, children, or specified relatives of dependent children who are not blind or disabled shall be determined using the income criteria in effect for the family medical assistance program (FMAP) as provided in subrule 75.1(14) unless otherwise specified. Income shall be considered prospectively.

Amend subrule 75.13(2), introductory paragraph, as follows:

**75.13(2)** Eligibility for SSI-related Medicaid. *Medicaid eligibility for persons who are 65 years of age or older, blind, or disabled shall be determined using the eligibility requirements in effect governing the supplemental security income (SSI) program in conjunction with the policies found in 441—Chapters 75 and 76. Income shall be considered prospectively.*

ITEM 6. Amend rule **441—75.14(249A)** as follows:

Amend subrule 75.14(1), introductory paragraph and paragraph **"d,"** as follows:

**75.14(1)** As a condition of eligibility, applicants and recipients of Medicaid in households with an absent parent shall cooperate in obtaining medical support for the applicant or recipient as well as for any other person in the household for whom Medicaid is requested and for whom the person can legally assign rights for medical support, except when good cause as defined in 441—subrule 41.22(8) subrule 75.14(8) for refusal to cooperate is established.

d. The applicant or recipient shall cooperate with the child support recovery unit to the extent of supplying all known information and documents pertaining to the location of the absent parent and taking action as may be necessary to secure medical support and payments for medical care or to establish paternity. ~~as specified in 441—paragraph 41.22(6) "d."~~ *This includes completing and signing documents determined to be necessary by the state's attorney for any relevant judicial or administrative process.*

Amend subrules 75.14(2) to 75.14(7) as follows:

**75.14(2)** Failure of the applicant or recipient to cooperate shall result in denial of Medicaid benefits or in cancellation of the person's Medicaid benefits. In FIP family medical assistance program (FMAP)-related Medicaid cases, all deductions and disregards described at 41.27(2) "a," "b," and "e" paragraphs 75.57(2) "a," "b," and "c" shall be allowed when otherwise applicable but income shall not be diverted to meet the needs of the parent who refuses to cooperate without good cause when establishing eligibility for the children as described at 41.27(8) "a"(1). paragraph 75.57(8) "a."

**75.14(3)** Each applicant for or recipient of Medicaid who is required to cooperate with the child support recovery unit

shall have the opportunity to claim good cause for refusing to cooperate in establishing paternity or securing medical support and payments for medical care. The provisions set forth in 441—subrules 41.22(8) to 41.22(12) subrules 75.14(8) to 75.14(12) shall be used when making a determination of the existence of good cause.

**75.14(4)** Each applicant for or recipient of Medicaid shall assign to the department any rights to medical support and payments for medical care from any other person for which the person can legally make assignment. This shall include rights to medical support and payments for medical care ~~in~~ on the applicant's or recipient's own behalf or ~~in~~ on behalf of any other family member for whom the applicant or recipient is applying. An assignment is effective the same date the county office enters the eligibility information into the automated benefit calculation system or into the X-PERT system and is effective for the entire period for which eligibility is granted. Support payments not intended for medical support shall not be assigned to the department.

**75.14(5)** Referrals to the child support recovery unit for Medicaid applicants or recipients shall be made in accordance with 441—subrule 41.22(5). *The county office shall provide prompt notice to the child support recovery unit whenever assistance is furnished with respect to a child whose eligibility is based on the continued absence of a parent from the home or when any member of the eligible group is entitled to support payments.*

*"Prompt notice" means within two working days of the date assistance is approved.*

**75.14(6)** Pregnant women establishing eligibility under the mothers and children (MAC) coverage group as provided at subrule 75.1(28) shall be exempt from the provisions in this rule for any born child for whom the pregnant woman applies for or receives Medicaid. Additionally, any previously pregnant woman eligible for postpartum coverage under the provision of subrule 75.1(24) shall not be subject to the provisions in this rule until after the end of the month in which the 60-day postpartum period expires. Pregnant women establishing eligibility under any other coverage groups except that those set forth in subrule 75.1(24) or 75.1(28) shall be subject to the provisions in this rule when establishing eligibility for born children. A pregnant woman ~~who would be eligible applying for or receiving Medicaid under any coverage group other than the coverage group set forth in 75.1(24) or 75.1(28) if she cooperated which requires her cooperation in establishing paternity and obtaining medical support for born children shall not be eligible under any other coverage group if she fails to cooperate without good cause.~~

**75.14(7)** Notwithstanding subrule ~~75.24(6)~~ 75.14(6), any pregnant woman or previously pregnant woman establishing eligibility under subrule 75.1(28) or 75.1(24) shall not be exempt from the provisions of 75.14(4) and 75.14(5) which require the applicant or recipient to assign any rights to medical support and payments for medical care and to be referred to the child support recovery unit.

Add the following **new** subrules 75.14(8) to 75.14(12):

**75.14(8)** Good cause for refusal to cooperate. Good cause shall exist when it is determined that cooperation in establishing paternity and securing support is against the best interests of the child.

a. The county office shall determine that cooperation is against the child's best interest when the applicant's or recipient's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

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(1) Physical or emotional harm to the child for whom support is to be sought; or

(2) Physical or emotional harm to the parent or specified relative with whom the child is living which reduces the person's capacity to care for the child adequately.

(3) Physical harm to the parent or specified relative with whom the child is living which reduces the person's capacity to care for the child adequately; or

(4) Emotional harm to the parent or specified relative with whom the child is living of a nature or degree that it reduces the person's capacity to care for the child adequately.

b. The county office shall determine that cooperation is against the child's best interest when at least one of the following circumstances exists, and the county office believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

(1) The child was conceived as the result of incest or forcible rape.

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

(3) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption, and the discussions have not gone on for more than three months.

c. Physical harm and emotional harm shall be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm shall be based only upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

d. When the good cause determination is based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the specified relative, the following shall be considered:

(1) The present emotional state of the individual subject to emotional harm.

(2) The emotional health history of the individual subject to emotional harm.

(3) Intensity and probable duration of the emotional impairment.

(4) The degree of cooperation required.

(5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

**75.14(9)** Claiming good cause. Each applicant for or recipient of Medicaid who is required to cooperate with the child support recovery unit shall have the opportunity to claim good cause for refusing to cooperate in establishing paternity or securing support payments.

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

b. The initial notice advising of the right to refuse to cooperate for good cause shall:

(1) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity and securing support.

(2) Advise the applicant or recipient that by law cooperation in establishing paternity and securing support is a condition of eligibility for the Medicaid program.

(3) Advise the applicant or recipient of the sanctions provided for refusal to cooperate without good cause.

(4) Advise the applicant or recipient that good cause for refusal to cooperate may be claimed and that if the county office determines, in accordance with these rules, that there is good cause, the applicant or recipient will be excused from the cooperation requirement.

(5) Advise the applicant or recipient that upon request, or following a claim of good cause, the county office will provide further notice with additional details concerning good cause.

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

(1) Indicates that the applicant or recipient must provide corroborative evidence of good cause circumstance and must, when requested, furnish sufficient information to permit the county office to investigate the circumstances.

(2) Informs the applicant or recipient that, upon request, the county office will provide reasonable assistance in obtaining the corroborative evidence.

(3) Informs the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation when necessary, the county office shall determine whether cooperation would be against the best interests of the child for whom support would be sought.

(4) Lists the circumstances under which cooperation may be determined to be against the best interests of the child.

(5) Informs the applicant or recipient that the child support recovery unit may review the county office's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause.

(6) Informs the applicant or recipient that the child support recovery unit may attempt to establish paternity and collect support in those cases where the county office determines that this can be done without risk to the applicant or recipient if done without the applicant's or recipient's participation.

d. The applicant or recipient who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. Failure to meet these requirements shall constitute a sufficient basis for the county office to determine that good cause does not exist. The applicant or recipient shall:

(1) Specify the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating.

(2) Corroborate the good cause circumstances.

(3) When requested, provide sufficient information to permit an investigation.

**75.14(10)** Determination of good cause. The county office shall determine whether good cause exists for each applicant for or recipient of the Medicaid program who claims to have good cause.

a. The applicant or recipient shall be notified by the county office of its determination that good cause does or does not exist. The determination shall:

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- (1) Be in writing.
  - (2) Contain the county office's findings and basis for determination.
  - (3) Be entered in the case record.
- b. The determination of whether or not good cause exists shall be made within 45 days from the day the good cause claim is made. The county office may exceed this time standard only when:
- (1) The case record documents that the county office needs additional time because the information required to verify the claim cannot be obtained within the time standard, or
  - (2) The case record documents that the claimant did not provide corroborative evidence within the time period set forth in subrule 75.14(11).
- c. When the county office determines that good cause does not exist:
- (1) The applicant or recipient shall be so notified and afforded an opportunity to cooperate, withdraw the application for assistance, or have the case closed; and
  - (2) Continued refusal to cooperate will result in the imposition of sanctions.
- d. The county office shall make a good cause determination based on the corroborative evidence supplied by the applicant or recipient only after it has examined the evidence and found that it actually verifies the good cause claim.
- e. Prior to making a final determination of good cause for refusing to cooperate, the county office shall:
- (1) Afford the child support recovery unit the opportunity to review and comment on the findings and basis for the proposed determination, and
  - (2) Consider any recommendation from the child support recovery unit.
- f. The child support recovery unit may participate in any appeal hearing that results from an applicant's or recipient's appeal of an agency action with respect to a decision on a claim of good cause.
- g. Assistance shall not be denied, delayed, or discontinued pending a determination of good cause for refusal to cooperate when the applicant or recipient has specified the circumstances under which good cause can be claimed and provided the corroborative evidence and any additional information needed to establish good cause.
- h. The county office shall:
- (1) Periodically, but not less frequently than every six months, review those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change.
  - (2) When it determines that circumstances have changed so that good cause no longer exists, rescind its findings and proceed to enforce the requirements pertaining to cooperation in establishing paternity and securing support.
- 75.14(11) Proof of good cause.** The applicant or recipient who claims good cause shall provide corroborative evidence within 20 days from the day the claim was made. In exceptional cases where the county office determines the applicant or recipient requires additional time because of the difficulty in obtaining the corroborative evidence, the county office shall allow a reasonable additional period of time upon approval by the worker's immediate supervisor.
- a. A good cause claim may be corroborated with the following types of evidence.
- (1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape.

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.

(3) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or specified relative.

(4) Medical records which indicate emotional health history and present emotional health status of the specified relative or the children for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the specified relative or the child for whom support would be sought.

(5) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(6) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances which provide the basis for the good cause claim.

b. When, after examining the corroborative evidence submitted by the applicant or recipient, the county office wishes to request additional corroborative evidence which is needed to permit a good cause determination, the county office shall:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed, and

(2) Specify the type of document which is needed.

c. When the applicant or recipient requests assistance in securing evidence, the county office shall:

(1) Advise the applicant or recipient how to obtain the necessary documents, and

(2) Make a reasonable effort to obtain any specific documents which the applicant or recipient is not reasonably able to obtain without assistance.

d. When a claim is based on the applicant's or recipient's anticipation of physical harm and corroborative evidence is not submitted in support of the claim:

(1) The county office shall investigate the good cause claim when the office believes that the claim is credible without corroborative evidence and corroborative evidence is not available.

(2) Good cause shall be found when the claimant's statement and investigation which is conducted satisfies the county office that the applicant or recipient has good cause for refusing to cooperate.

(3) A determination that good cause exists shall be reviewed and approved or disapproved by the worker's immediate supervisor and the findings shall be recorded in the case record.

e. The county office may further verify the good cause claim when the applicant's or recipient's statement of the claim together with the corroborative evidence do not provide sufficient basis for making a determination. When the county office determines that it is necessary, it may conduct an investigation of good cause claims to determine that good cause does or does not exist.

f. When it conducts an investigation of a good cause claim, the county office shall:

(1) Contact the absent parent or putative father from whom support would be sought when the contact is determined to be necessary to establish the good cause claim.

(2) Prior to making the necessary contact, notify the applicant or recipient so the applicant or recipient may present

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additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary, withdraw the application for assistance or have the case closed, or have the good cause claim denied.

**75.14(12)** Enforcement without specified relative's cooperation. When the county office makes a determination that good cause exists, it shall also make a determination of whether or not child support enforcement can proceed without risk of harm to the child or specified relative when the enforcement or collection activities do not involve their participation.

a. Prior to making the determination, the child support recovery unit shall have an opportunity to review and comment on the findings and basis for the proposed determination and the county office shall consider any recommendations from the unit.

b. The determination shall be in writing, contain the county office's findings and basis or the determination, and be entered into the case record.

c. When the county office excuses cooperation but determines that the child support recovery unit may proceed to establish paternity or enforce support, it shall notify the applicant or recipient to enable the individual to withdraw the application for assistance or have the case closed.

ITEM 7. Amend subrule **75.16(1)**, paragraph "a," introductory paragraph, as follows:

a. ~~FIP~~ *FMAP*-related clients. The income of a client and family whose eligibility is ~~FIP~~ *FMAP*-related is not available for client participation when both of the following conditions exist:

ITEM 8. Rescind and reserve rule **441—75.19(249A)**.

ITEM 9. Amend rule **441—75.22(249A)**, catchwords, to read as follows:

**441—75.22(249A)** *AIDS/HIV health insurance premium payment pilot project program.*

ITEM 10. Amend rule **441—75.25(249A)** as follows:

Amend the definition of "Applicant" as follows:

"Applicant" shall mean a person who is requesting assistance, *including recertification under the medically needy program*, on the person's own behalf or on behalf of another person. This *also* includes parents living in the home with the children and the nonparental relative who is requesting assistance for the children.

Delete the definition of "FIP-related."

Add the following new definitions in alphabetical order:

"Break in assistance" for medically needy shall mean the lapse of more than three months from the end of the medically needy certification period to the beginning of the next current certification period.

EXCEPTION: An unemployed parent determination as described at paragraph **75.54(3)"c"** shall be completed when the lapse is one month or more.

"Central office" shall mean the state administrative office of the department of human services.

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

"*C*MAP-related medically needy" shall mean those individuals under the age of 21 who would be eligible for the child medical assistance program except for excess income or resources.

"Conditionally eligible recipient" shall mean a medically needy person who has completed the application process and has been assigned a certification period and spenddown amount but who has not spent down for the certification period.

"Department" shall mean the Iowa department of human services.

"Eligible recipient" under the provisions of the medically needy program shall mean a medically needy person who has income at or less than the medically needy income level (MNIL) or who has reduced excess income through spenddown to the MNIL during the certification period.

"*F*MAP-related medically needy" shall mean those persons who would be eligible for the family medical assistance program except for excess income or resources.

"Incurred medical expenses" for medically needy shall mean (1) medical bills paid by a recipient, responsible relative or state or political subdivision program other than Medicaid during the retroactive certification period or certification period, or (2) unpaid medical expenses for which the recipient or responsible relative remains obligated.

"Medically needy income level (MNIL)" shall mean 133 1/3 percent of the schedule of basic needs based on family size. (See subrule **75.58(2)**.)

"Necessary medical and remedial services" for medically needy shall mean medical services recognized by law which are currently covered under the Iowa Medicaid program.

"Noncovered Medicaid services" for medically needy shall mean medical services that are not covered under Medicaid because the provider was not enrolled in Medicaid, the bill is for a responsible relative who is not in the Medicaid-eligible group or the bill is for services delivered before the start of a certification period.

"Obligated medical expense" for medically needy shall mean a medical expense for which the recipient or responsible relative continues to be legally liable.

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

"Payee" refers to an SSI payee as defined in Iowa Code subsections **633.33(7)** and **633.3(20)**.

"Recertification" in the medically needy coverage group shall mean establishing a new certification period when the previous period has expired and there has not been a break in assistance.

"Responsible relative" for medically needy shall mean a spouse, parent, or stepparent living in the household of the eligible recipient.

"Retroactive certification period" for medically needy shall mean one, two, or three calendar months prior to the date of application. The retroactive certification period begins with the first month Medicaid-covered services were received and continues to the end of the month immediately prior to the month of application.

"Spenddown" shall mean the process by which a medically needy person obligates excess income for allowable medical expenses to reduce income to the appropriate MNIL.

"SSI-related medically needy" shall mean those persons whose eligibility is derived from regulations governing the supplemental security income (SSI) program except for income or resources.

ITEM 11. Rescind and reserve rule **441—75.26(249A)**.

ITEM 12. Reserve rules **441—75.26** to **75.49** as part of Division I.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 13. Amend 441—Chapter 75 by adding the following **new** Division II:

## DIVISION II

ELIGIBILITY FACTORS SPECIFIC TO COVERAGE GROUPS  
RELATED TO THE FAMILY MEDICAL  
ASSISTANCE PROGRAM (FMAP)

**441—75.50(249A) Definitions.**

“Applicant” shall mean a person who is requesting assistance on the person’s own behalf or on behalf of another person, including recertification under the medically needy program. This also includes parents living in the home with the children and the nonparental relative who is requesting assistance for the children.

“Assistance unit” includes any person whose income is considered when determining eligibility.

“Bona fide offer” means an actual or genuine offer which includes a specific wage or a training opportunity at a specified place when used to determine whether the parent has refused an offer of training or employment.

“Budget month” means the calendar month from which the county office uses income or circumstances of the eligible group to calculate eligibility.

“Central office” shall mean the state administrative office of the department of human services.

“Change in income” means a permanent change in hours worked, rate of pay, or beginning or ending income.

“Change in work expenses” means a permanent change in the cost of dependent care or the beginning or ending of dependent care.

“Client” shall mean an applicant or recipient of Medicaid.

“Department” shall mean the Iowa department of human services.

“Income in-kind” is any gain or benefit which is not in the form of money payable directly to the eligible group including nonmonetary benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments which are paid to a third party and not to the eligible group.

“Initial two months” means the first two consecutive months for which eligibility is granted.

“Medical institution,” when used in this division, shall mean a facility which is organized to provide medical care, including nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility’s license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals.
2. Extended care facilities (skilled nursing).
3. Intermediate care facilities.
4. Mental health institutions.
5. Hospital schools.

“Nonrecurring lump sum unearned income” means a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits such as social security, job insurance or workers’ compensation.

“Parent” means the natural or adoptive parent.

“Prospective budgeting” means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances which will exist in that calendar month.

“Recipient” means a person for whom Medicaid is received as well as parents living in the home with the eligible children and other specified relatives as defined in subrule

75.55(1) who are receiving Medicaid for the children. Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.

“Report month” for retrospective budgeting means the calendar month following the budget month. “Report month” for prospective budgeting means the calendar month in which a change occurs.

“Retrospective budgeting” means the calculation of eligibility for a month based on actual income and circumstances which existed in the budget month.

“Schedule of needs” means the total needs of a group as determined by the schedule of living costs, described at subrule 75.58(2).

“Stepparent” means a person who is the legal spouse of the child’s natural or adoptive parent by ceremonial or common-law marriage.

“Suspension” means a month in which an otherwise ineligible household continues to remain eligible for one month when eligibility is expected to exist the following month.

“Unborn child” shall include an unborn child during the entire term of the pregnancy.

“Uniformed service” means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.

**441—75.51(249A) Reinstatement of eligibility.** Eligibility for the family medical assistance program (FMAP) and FMAP-related programs shall be reinstated without a new application when all necessary information is provided at least three working days before the effective date of cancellation and eligibility can be reestablished, except as provided in the transitional Medicaid program in accordance with subparagraph 75.1(31)“j”(2).

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

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

**441—75.52(249A) Continuing eligibility.**

**75.52(1) Reviews.** Eligibility factors shall be reviewed at least every six months for the family medical assistance program and family medical assistance-related programs. A semiannual review shall be conducted using information contained in and verification supplied with Form PA-2140-0, Public Assistance Eligibility Report. A face-to-face interview shall be conducted at least annually at the time of a review using information contained in and verification supplied with Form 470-2881, Review/Recertification Eligibility Document.

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

(1) The assistance unit contains any member with earned income unless the income is exempt under paragraph 75.57(7)“u” or the only earned income is from exempt work study, annualized self-employment, or Job Corps unless the participant is aged 20 or older.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) The assistance unit contains any member with a recent work history. A recent work history means the person received earned income during either one of the two calendar months immediately preceding the budget month, unless the income was exempt under paragraph 75.57(7)"u," or the only earned income was from exempt work study, annualized self-employment, or Job Corps unless the participant is aged 20 or older.

(3) The assistance unit contains any member receiving nonexempt unearned income, the source or amount of which is expected to change more often than once annually, unless the income is from job insurance benefits, interest or educational income as described in paragraph 75.57(1)"b," or unless the assistance unit's adult members are 60 years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; or unless all adults, who would otherwise be members of the assistance unit, are receiving supplemental security income (SSI) including state supplementary assistance (SSA).

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

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

**75.52(2) Additional reviews.** A redetermination of specific eligibility factors shall be made when:

- a. The recipient reports a change in circumstances, or
- b. A change in the recipient's circumstances comes to the attention of a staff member.

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

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

a. The recipient shall cooperate by giving complete and accurate information needed to establish eligibility.

b. The recipient shall complete Form PA-2140-0, Public Assistance Eligibility Report (PAER), or Form 470-2881, Review/Recertification Eligibility Document (RRED), when requested by the county office in accordance with these rules. Either form will be supplied as needed to the recipient by the department. The department shall pay the cost of postage to return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the seventh day after the date it is mailed by the department. The county office shall supply the recipient with a

PAER or a RRED upon request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the first day of the budget month and accompanied by verification as required in paragraphs 75.57(1)"f" and 75.57(2)"1."

c. The recipient, or an individual being added to the existing eligible group, shall timely report any change in the following circumstances:

(1) Income from all sources, including any change in care expenses and any change in full-time or part-time employment status as defined in subparagraph 75.57(2)"b"(2).

(2) Resources.

(3) Members of the household.

(4) School attendance.

(5) Becoming incapacitated or recovery from incapacity.

(6) Change of mailing or living address.

(7) Payment of child support.

(8) Receipt of a social security number.

(9) Payment for child support, alimony, or dependents as defined in paragraph 75.57(8)"b."

d. A report shall be considered timely when made within ten days from:

(1) The receipt of resources, income, or increased or decreased income.

(2) The date care expenses increase or decrease or the date full-time or part-time employment status, as defined in subparagraph 75.57(2)"b"(2), changes.

(3) The date the address changes.

(4) The date the child is officially dropped from the school rolls.

(5) The date the person enters or leaves the household.

(6) The date medical or psychological evidence indicates a person becomes incapacitated or recovers from incapacity.

(7) The date the client increases or decreases child support payments.

(8) The receipt of a social security number.

(9) The date a stepparent described in paragraph 75.57(8)"b" or an underage parent described in paragraph 75.57(8)"c" increases or decreases payments for child support, alimony or dependents.

e. When a change is not timely reported, any excess Medicaid paid shall be subject to recovery.

**75.52(5) Effective date.** After assistance has been approved, eligibility for continuing assistance shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month, subject to timely notice requirements at rule 441—7.6(217) for any adverse actions.

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

b. When the recipient timely reports, as defined in 441—subrule 76.2(5) or paragraph 75.52(4)"d," a change in income or circumstances during the first initial month of eligibility, prospective eligibility for the second initial month shall be determined based on the change.

c. When an individual included in the eligible group becomes ineligible, that individual's needs shall be removed prospectively effective the first of the next month unless the

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action must be delayed due to timely notice requirements at rule 441—7.6(217).

**441—75.53(249A) Iowa residency policies specific to FMAP and FMAP-related coverage groups.** Notwithstanding the provisions of rule 441—75.10(249A), the following rules shall apply when determining eligibility for persons under FMAP or FMAP-related coverage groups.

**75.53(1) Definition of resident.** A resident of Iowa is one:

a. Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A child is a resident of Iowa when living there on other than a temporary basis. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

b. Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed. Under this definition the child is a resident of the state in which the specified relative is a resident.

**75.53(2) Retention of residence.** Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished does not interrupt continuity of residence.

**75.53(3) Suitability of home.** The home shall be deemed suitable until the court has ruled it unsuitable and, as a result of such action, the child has been removed from the home.

**75.53(4) Temporary absence from the home.** The needs of an individual who is temporarily out of the home are included in the eligible group unless the person is in a jail or penal institution, including a work release center, in accordance with the provisions of rule 441—75.12(249A) or is excluded from the eligible group in accordance with the provisions of rule 441—75.59(249A). A temporary absence exists in the following circumstances.

a. An individual is anticipated to be in the medical institution for less than a year, as verified by a physician's statement. Failure to return within one year from the date of entry into the medical institution will result in the individual's needs being removed from the eligible group.

b. When an individual is out of the home to secure education or training, as defined for children in paragraph 75.54(1)"b" and for adults in 441—subrule 93.114(1), first sentence, as long as the specified relative retains supervision of the child.

c. An individual is out of the home for reasons other than reasons in paragraphs "a" and "b" and intends to return to the home within three months. Failure to return within three months from the date the individual left the home will result in the individual's needs being removed from the eligible group.

**441—75.54(249A) Eligibility factors specific to child.**

**75.54(1) Age.** Unless otherwise specified at rule 441—75.1(249A), Medicaid shall be available to a needy child under the age of 18 years without regard to school attendance.

a. A child is eligible for the entire month in which the child's eighteenth birthday occurs, unless the birthday falls on the first day of the month.

b. Medicaid shall also be available to a needy child aged 18 years who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training,

and who is reasonably expected to complete the program before reaching the age of 19 if the following criteria are met.

(1) A child shall be considered attending school full-time when enrolled or accepted in a full-time (as certified by the school or institute attended) elementary, secondary or the equivalent level of vocational or technical school or training leading to a certificate or diploma. Correspondence school is not an allowable program of study.

(2) A child shall also be considered to be in regular attendance in months when the child is not attending because of an official school or training program vacation, illness, convalescence, or family emergency. A child meets the definition of regular school attendance until the child has been officially dropped from the school rolls.

(3) When a child's education is temporarily interrupted pending adjustment of an education or training program, exemption shall be continued for a reasonable period of time to complete the adjustment.

**75.54(2) Residing with a relative.** The child shall be living in the home of one of the relatives specified in subrule 75.55(1). When the mother intends to place her child for adoption shortly after birth, the child shall be considered as living with the mother until the time custody is actually relinquished.

a. Living with relatives implies primarily the existence of a relationship involving an accepted responsibility on the part of the relative for the child's welfare, including the sharing of a common household.

b. Home is the family setting maintained or in the process of being established as evidenced by the assumption and continuation of responsibility for the child by the relative.

**75.54(3) Deprivation of parental care and support.** Medicaid is available to a child of unmarried parents or married parents when all eligibility factors are met. For coverage groups which require that a child be deprived as a condition of eligibility, a child shall be considered as deprived of parental support or care when:

a. A parent is out of the home in which the child lives under the following conditions. When these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously; except that a parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States is not considered absent from the home. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(1) The nature of the absence either interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(2) The known or indefinite duration of the absence precludes relying on the parent to plan for the present support or care of the child.

b. A parent is incapacitated. A parent is considered incapacitated when a clearly identifiable physical or mental defect has a demonstrable effect upon earning capacity or the performance of the homemaking duties required to maintain a home for the child. The incapacity shall be expected to last for a period of at least 30 days from the date of application.

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

(2) When an examination is required and other resources are not available to meet the expense of the examination, the

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physician shall be authorized to make the examination and submit the claim for payment on an Authorization for Examination and Claim for Payment, Form PA-5113-0.

(3) A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of incapacity for family medical assistance program (FMAP) and FMAP-related program purposes.

(4) A parent who is considered incapacitated shall be referred to the department of education, division of vocational rehabilitation services, for evaluation and services. Acceptance of these services is optional.

c. The parent(s) is considered unemployed. A child shall be eligible for assistance on the basis of being deprived of parental care or support by reason of both parents' being considered unemployed as described in subparagraphs (1) and (2) below. If either parent cannot be considered unemployed, then deprivation on the basis of unemployment does not exist.

When deprivation exists because of parental absence or incapacity, that deprivation factor supersedes and the case shall not be processed on the basis of a parent's unemployment.

(1) When both parents of a common child are in the home and neither parent is incapacitated as defined at paragraph 75.54(3)"b," eligibility for assistance shall be determined based on the unemployment of the parent, without regard to either parent's hours of employment, income or resources. Unless the person is excluded in accordance with the provisions of rule 441—75.59(249A), for the purpose of determining eligibility, the eligible group shall include the common child, any parent, and any deprived sibling of the common child living in the home with the common child as described at subrule 75.58(1). Each parent in an unemployed parent case shall meet the following requirements:

1. Both parents shall be unemployed for 30 days prior to receipt of assistance except as described below. Eligibility shall not be established to cover any of the 30-day period unless the provisions of 441—paragraph 76.5(2)"a" apply.

Applicants shall be subject to a 30-day delay in the date that eligibility can be granted based on unemployment of a parent. If either parent is currently working 100 or more hours per month, then the earliest date assistance shall begin is 30 days from the date of application for assistance. If both parents are currently working less than 100 hours per month, the 30-day period shall begin on the date that either parent last worked 100 or more hours. "Currently" means the number of hours worked or expected to be worked in the month of application.

When an existing eligible group reports a change that requires an eligibility redetermination to establish the continued unemployment of the parent, "currently" means the number of hours worked or expected to be worked in the month the change is reported. When the existing eligible group reports an anticipated change that requires an eligibility predetermination under the unemployed parent program, "currently" means the number of hours worked or expected to be worked in the month of report or in the month the change occurred, whichever is later.

When the applicant or recipient is self-employed, the hours of employment shall be established in accordance with either of the methods described below, at option of the applicant or recipient.

The hours of employment may be determined on the basis of the actual hours worked, when the actual hours can be verified by reliable written evidence from a disinterested third

party, for example, the person who contracted the labor of the applicant or recipient.

The hours of employment may be calculated by dividing net income from self-employment by the federal or state minimum wage, whichever is greater. "Net monthly income" means income remaining after deduction of allowable business expenses as described in paragraphs 75.57(2)"f" through "j."

2. The parent who is an applicant and who is out of work due to refusal, without good cause, of a bona fide offer of employment for training or employment shall not be considered unemployed.

(2) After assistance is approved, when either parent is no longer considered unemployed, in accordance with subparagraph 75.53(3)"c"(3) or because of failure to apply for or draw job insurance benefits in accordance with the provisions of rule 441—75.3(249A), ineligibility shall result for those persons whose eligibility is dependent on the unemployment of both parents, for a minimum of one month.

d. When a child is deprived of support or care of a natural parent, the presence of an able-bodied stepparent in the home shall not disqualify a child from assistance, provided that other eligibility factors are met.

**75.54(4) Assistance continued.** For coverage groups which require that a child be deprived as a condition of eligibility, an adjustment period following the incapacitated parent's recovery or the absent parent's return home shall continue for only as long as is necessary to determine whether there is eligibility on the basis of parental unemployment. When deprivation on the basis of unemployment cannot be established, assistance shall be continued for a maximum of three months. When the three-month adjustment period expires, eligibility shall be reexamined in accordance with the automatic redetermination provisions of rule 441—76.11(249A).

#### **441—75.55(249A) Eligibility factors specific to specified relatives.**

##### **75.55(1) Specified relationship.**

a. A child may be considered as meeting the requirement of living with a specified relative if the child's home is with one of the following or with a spouse of the relative even though the marriage is terminated by death or divorce:

Father or adoptive father.

Mother or adoptive mother.

Grandfather or grandfather-in-law, meaning the subsequent husband of the child's natural grandmother, i.e., step-grandfather or adoptive grandfather.

Grandmother or grandmother-in-law, meaning the subsequent wife of the child's natural grandfather, i.e., step-grandmother or adoptive grandmother.

Great-grandfather or great-great-grandfather.

Great-grandmother or great-great-grandmother.

Stepfather, but not his parents.

Stepmother, but not her parents.

Brother, brother-of-half-blood, stepbrother, brother-in-law or adoptive brother.

Sister, sister-of-half-blood, stepsister, sister-in-law or adoptive sister.

Uncle or aunt, of whole or half blood.

Uncle-in-law or aunt-in-law.

Great uncle or great-great-uncle.

Great aunt or great-great-aunt.

First cousins, nephews, or nieces.

b. A relative of the putative father can qualify as a specified relative if the putative father has acknowledged paternity

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ty by the type of written evidence on which a prudent person would rely.

**75.55(2) Liability of relatives.** All appropriate steps shall be taken to secure support from legally liable persons on behalf of all persons in the eligible group, including the establishment of paternity as provided in rule 441—75.14(249A).

a. When necessary to establish eligibility, the county office shall make the initial contact with the absent parent at the time of application. Subsequent contacts shall be made by the child support recovery unit.

b. When contact with the family or other sources of information indicates that relatives other than parents and spouses of the eligible children are contributing toward the support of members of the eligible group, have contributed in the past, or are of such financial standing they might reasonably be expected to contribute, the county office shall contact these persons to verify current contributions or arrange for contributions on a voluntary basis.

**441—75.56(249A) Resources.**

**75.56(1) Limitation.** Unless otherwise specified, an applicant or recipient may have the following resources and be eligible for the family medical assistance program (FMAP) or FMAP-related programs. Any resource not specifically exempted shall be counted toward the applicable resource limit.

a. A homestead without regard to its value. A mobile home or similar shelter shall be considered as a homestead when it is occupied by the recipient. Temporary absence from the homestead with a defined purpose for the absence and with intent to return when the purpose of the absence has been accomplished shall not be considered to have altered the exempt status of the homestead. The net market value of any other real property shall be considered with personal property.

b. Household goods and personal effects without regard to their value. Personal effects are personal or intimate tangible belongings of an individual, especially those that are worn or carried on the person, which are maintained in one's home, and include clothing, books, grooming aids, jewelry, hobby equipment, and similar items.

c. Life insurance which has no cash surrender value. The owner of the life insurance policy is the individual paying the premium on the policy with the right to change the policy as the individual sees fit.

d. An equity not to exceed a value of \$3,000 in one motor vehicle for each adult and working teenage child whose resources must be considered as described in subrule 75.56(2). The disregard shall be allowed when the working teenager is temporarily absent from work. The equity value in excess of \$3,000 of any vehicle shall be counted toward the resource limit in paragraph 75.56(1)"e." When a motor vehicle(s) is modified with special equipment for the handicapped, the special equipment shall not increase the value of the motor vehicle(s).

Beginning July 1, 1994, and continuing in succeeding state fiscal years, the motor vehicle equity value to be disregarded shall be increased by the latest increase in the consumer price index for used vehicles during the previous state fiscal year.

e. A reserve of other property, real or personal, not to exceed \$2,000 for applicant assistance units and \$5,000 for recipient assistance units.

**EXCEPTION:** Applicant assistance units with at least one member who was a recipient in Iowa in the month prior to the month of application are subject to the \$5,000 limit.

Resources of the applicant or the recipient shall be determined in accordance with persons considered, as described at subrule 75.56(2).

f. Money which is counted as income in a month, during that same month; and that part of lump sum income defined at subparagraph 75.57(9)"c"(2) reserved for the current or future month's income.

g. Payments which are exempted for consideration as income and resources under subrule 75.57(6).

h. An equity not to exceed \$1,500 in one funeral contract or burial trust for each member of the eligible group. Any amount in excess of \$1,500 shall be counted toward resource limits unless it is established that the funeral contract or burial trust is irrevocable.

i. One burial plot for each member of the eligible group. A burial plot is defined as a conventional gravesite, crypt, mausoleum, urn, or other repository which is customarily and traditionally used for the remains of a deceased person.

j. Settlements for payment of medical expenses.

k. Life estates.

l. Earned income credit payments in the month of receipt and the following month, regardless of whether these payments are received with the regular paychecks or as a lump sum with the federal income tax refund.

m. The balance in an individual development account (IDA), including interest earned on the IDA.

n. An equity not to exceed \$10,000 for tools of the trade or capital assets of self-employed households.

When the value of any resource is exempted in part, that portion of the value which exceeds the exemption shall be considered in calculating whether the eligible group's property is within the reserve defined in paragraph "e."

**75.56(2) Persons considered.**

a. Resources of persons in the eligible group shall be considered in establishing property limits.

b. Resources of the parent who is living in the home with the eligible children but whose needs are excluded from the eligible group shall be considered in the same manner as if the parent were included in the eligible group.

c. Resources of the stepparent living in the home shall not be considered when determining eligibility of the eligible group, with one exception: The resources of a stepparent included in the eligible group shall be considered in the same manner as a parent.

d. The resources of supplemental security income (SSI) recipients shall not be counted in establishing property limitations. When property is owned by both the SSI beneficiary and a Medicaid recipient in another eligible group, each shall be considered as having a half interest in order to determine the value of the resource, unless the terms of the deed or purchase contract clearly establish ownership on a different proportional basis.

e. The resources of a nonparental specified relative who elects to be included in the eligible group shall be considered in the same manner as a parent.

**75.56(3) Homestead defined.** The homestead consists of the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. When within a city plat, it shall not exceed ½ acre in area. When outside a city plat it shall not contain, in the aggregate, more than 40 acres. When property used as a home exceeds these limitations, the equity value of the excess property shall be determined in accordance with subrule 75.56(5).

**75.56(4) Liquidation.** When proceeds from the sale of resources or conversion of a resource to cash, together with

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other nonexempted resources, exceed the property limitations, the recipient is ineligible to receive assistance until the amount in excess of the resource limitation has been expended unless immediately used to purchase a homestead, or reduce the mortgage on a homestead.

a. Property settlements. Property settlements which are part of a legal action in a dissolution of marriage or palimony suit are considered as resources upon receipt.

b. Mortgages and contracts for the sale of property. The resource value of a mortgage or contract is the gross price for which it can be sold or discounted on the open market, less any legal debts, claims, or liens against the mortgage or contract.

Mortgage or contract payments are exempt as income. The portion of any payment received representing principal is considered a resource upon receipt. The interest portion of the payment is considered a resource the month following the month of receipt.

**75.56(5) Net market value defined.** Net market value is the gross price for which property or an item can currently be sold on the open market, less any legal debts, claims, or liens against the property or item.

**75.56(6) Availability.**

a. A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant or recipient owns the property in part or in full and has control over it. That is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

(2) The applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance.

b. An applicant or recipient shall take all appropriate action to gain title and control of any resource the value of which would affect eligibility.

c. When property is owned by more than one person, unless otherwise established, it is assumed that all persons hold equal shares in the property.

**75.56(7) Damage judgments and insurance settlements.**

a. Payment resulting from damage to or destruction of an exempt resource shall be considered a resource to the applicant or recipient the month following the month the payment was received. When the applicant or recipient signs a legal binding commitment no later than the month after the month the payment was received, the funds shall be considered exempt for the duration of the commitment providing the terms of the commitment are met within eight months from the date of commitment.

b. Payment resulting from damage to or destruction of a nonexempt resource shall be considered a resource in the month following the month in which payment was received.

**75.56(8) Conservatorships.**

a. Conservatorships established prior to February 9, 1994. The department shall determine whether assets from a conservatorship, except one established solely for the payment of medical expenses, are available by examining the language of the order establishing the conservatorship.

Funds clearly conserved and available for care, support, or maintenance shall be considered toward resource or income limitations.

When the county office questions whether the funds in a conservatorship are available, the county office shall refer the conservatorship to central office. When assets in the conservatorship are not clearly available, central office staff may contact the conservator and request that the funds in the

conservatorship be made available for current support and maintenance. When the conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments. Funds in a conservatorship that are not clearly available shall be considered unavailable until the conservator or court actually makes the funds available. Payments received from the conservatorship for basic or special needs are considered income.

b. Conservatorships established on or after February 9, 1994. Conservatorships established on or after February 9, 1994, shall be treated according to the provisions of paragraphs 75.24(1)"e" and 75.24(2)"b."

**75.56(9) Not considered a resource.** Inventories and supplies, exclusive of capital assets, that are required for self-employment shall not be considered a resource. Inventory is defined as all unsold items, whether raised or purchased, that are held for sale or use and shall include, but not be limited to, merchandise, grain held in storage and livestock raised for sale. Supplies are items necessary for the operation of the enterprise, such as lumber, paint, and seed. Capital assets are those assets which, if sold at a later date, could be used to claim capital gains or losses for federal income tax purposes. When self-employment is temporarily interrupted due to circumstances beyond the control of the household, such as illness, inventory or supplies retained by the household shall not be considered a resource.

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

**75.57(1) Unearned income.** Unearned income is any income in cash that is not gained by labor or service. When

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taxes are withheld from unearned income, the amount considered will be the net income after the withholding of taxes (federal Insurance Contribution Act, state and federal income taxes). Net unearned income, from investment and nonrecurring lump sum payments, shall be determined by deducting reasonable income-producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to meet the needs of the eligible group.

a. Social security income is the amount of the entitlement before withholding of a Medicare premium.

b. Financial assistance received for education or training.

(1) Any financial assistance received for the purpose of education or training shall be considered as first available for the educational expenses of tuition; books; transportation to and from school; child care necessary for school attendance; board and room when the student does not live at home; and any other direct verified educational expense. Money left after educational expenses, unless specifically exempt, shall be considered gross income available to meet the needs of the eligible group. When a student has a combination of exempt and nonexempt income for educational purposes, the exempt income shall be considered as first available for the expenses of education.

(2) Transportation shall be considered an educational or training expense only when it is to and from school, including transporting the individual's child or children to and from a child care facility or baby-sitter, and includes parking fees and bridge tolls. The expense is allowable based on the actual cost of bus transportation as charged in the community as reported; the actual cost of cab transportation as verified by the cab company when cab transportation is necessary due to late school hours, remoteness of the home, disability of the person, opening and closing hours of the child care center, or the impossibility of securing other means of transportation; the current mileage rate paid to state employees when a private motor vehicle is used for a reasonable estimate of miles as reported (reasonable shall mean the estimate is within three miles round trip daily when the mileage is calculated from maps or verified by driving the usual route); payment to ride with another person as verified by receipt; parking meter fees as reported; parking lot fees as verified by receipt; and bridge tolls as reported.

(3) Any extended social security benefit received by a parent or nonparental relative, as defined in subrule 75.55(1), conditional to school attendance shall be considered as first available for educational expenses in accordance with subparagraphs 75.57(1)"b" (1) and (2). Money left after educational expenses shall be considered gross income available to meet the needs of the eligible group.

c. When an individual receiving educational assistance from the veterans administration also receives an additional amount for an individual's dependents, the amount for the individual's dependents who are in the eligible group shall be counted as available nonexempt income.

d. When the applicant or recipient sells property on contract, proceeds from the sale shall be considered exempt as income. The portion of any payment that represents principal is considered a resource upon receipt as defined in subrule 75.56(4). The interest portion of the payment is considered a resource the month following the month of receipt.

e. Support payments in cash shall be considered as unearned income in determining initial and continuing eligibility. The first \$50 of assigned support collected periodically which represents monthly support payments made by a le-

gally responsible individual shall be paid to the client without affecting eligibility during the month.

(1) Any nonexempt cash support payment, for a member of the eligible group, made while the application is pending shall be treated as unearned income.

(2) Support payments shall be considered as unearned income in the month in which the IV-A agency (income maintenance) is notified of the payment by the IV-D agency (child support recovery unit).

The amount of income to consider shall be the actual amount paid or the monthly entitlement, whichever is less.

(3) Support payment reported by child support recovery during the budget month shall be used to determine prospective and retrospective eligibility for the corresponding eligibility month.

(4) When the reported support payment, combined with other income, creates ineligibility under the current coverage group, an automatic redetermination of eligibility shall be conducted in accordance with the provisions of rule 441—76.11(249A). Persons receiving Medicaid under the family medical assistance program in accordance with subrule 75.1(14) may be entitled to continued coverage under the provisions of subrule 75.1(21). Eligibility may be reestablished for any month in which the countable support payment combined with other income meets the eligibility test.

f. The applicant or recipient shall cooperate in supplying verification of all unearned income. When the information is available, the county office shall verify job insurance benefits by using information supplied to the department by Iowa workforce development. When the county office uses this information as verification, job insurance benefits shall be considered received the second day after the date the check was mailed by Iowa workforce development. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the county office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. The client must report the discrepancy prior to the eligibility month or within ten days of the date on the Notice of Decision, Form PA-3102-0, applicable to the eligibility month, whichever is later.

**75.57(2) Earned income.** Earned income is defined as income in the form of a salary, wages, tips, bonuses, commission earned as an employee, income from Job Corps, or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of the expenses of employment. With respect to self-employment, earned income means the profit determined by comparing gross income with the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual.

a. Each person in the assistance unit whose gross nonexempt earned income, earned as an employee or net profit from self-employment, considered in determining eligibility is entitled to one 20 percent earned income deduction of nonexempt monthly gross earnings. The deduction is intended to include work-related expenses other than child care. These expenses shall include, but are not limited to, all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

b. Each person in the assistance unit is entitled to a deduction for care expenses subject to the following limitations.

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Persons in the eligible group and excluded parents shall be allowed care expenses for a child or incapacitated adult in the eligible group.

Stepparents as described at paragraph 75.57(8)"b" and self-supporting parents on underage parent cases as described at paragraph 75.57(8)"c" shall be allowed child care expenses for the ineligible dependents of the stepparent or self-supporting parent.

(1) Child care or care for an incapacitated adult shall be considered a work expense in the amount paid for care of an individual, not to exceed \$175, or \$200 in the case of a child under the age of two, per month for a full-time employee and \$174, or \$199 in the case of a child under the age of two, for a part-time employee or the going rate in the community, whichever is less.

(2) Full-time employment shall be defined as employment of 129 or more hours per month. Part-time employment shall be defined as employment of fewer than 129 hours per month. The determination as to whether self-employment income is full-time or part-time shall be made on the basis of whether the average net monthly income from self-employment is at least equal to the state or federal minimum wage, whichever is higher, multiplied by 129 hours a month. "Net monthly income" means income in a month remaining after deduction of allowable business expenses as described at paragraphs 75.57(2)"f" through "j."

(3) The deduction is allowable only when the care covers the actual hours of the individual's employment plus a reasonable period of time for commuting; or the period of time when the individual who would normally care for the child or incapacitated adult is employed at such hours that the individual is required to sleep during the waking hours of the child or incapacitated adult, excluding any hours a child is in school.

(4) Any special needs of a physically or mentally handicapped child or adult shall be taken into consideration in determining the deduction allowed.

(5) The expense shall be verified by receipt or a statement from the provider of care and shall be allowed when paid to any person except a parent or legal guardian of the child or another member of the eligible group, or to any person whose needs are met by diversion of income from any person in the eligible group.

c. After deducting the allowable work expenses as defined at paragraphs 75.57(2)"a" and "b" and income diversions as defined at subrules 75.57(4) and 75.57(8), 50 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose income must be considered is deducted in determining eligibility for the family medical assistance program (FMAP) and those FMAP-related coverage groups subject to the three-step process for determining initial eligibility as described at rule 441—75.57(249A). The 50 percent work incentive deduction is not time-limited. Initial eligibility under the first two steps of the three-step process is determined without the application of the 50 percent work incentive deduction as described at subparagraphs 75.57(9)"a"(2) and (3).

Individuals whose needs have been removed from the eligible group for refusing to cooperate in applying for or accepting benefits from other sources, in accordance with the provisions of rule 441—75.2(249A), 441—75.3(249A), or 441—75.21(249A), are eligible for the 50 percent work incentive deduction but the individual is not eligible for Medicaid.

d. Ineligibility for expenses and disregards.

(1) Except for persons described at paragraphs 75.57(8)"b" and "c," a person whose earned income must be considered is not eligible for the 20 percent earned income deduction or the child or adult care expense described at paragraphs 75.57(2)"a" and "b" for one month if within 30 days preceding the month of application or the report month the individual terminated employment, reduced earned income, or refused to accept a bona fide offer of employment, as defined at rule 441—42.21(239), in which the individual was able to engage, unless the individual has identified problems with participation of a temporary or incidental nature as described at rule 441—93.133(249C) or barriers to participation as described at rule 441—93.134(249C). However, the individual is eligible for the 50 percent work incentive deduction as described at paragraph 75.57(2)"c," if there are earnings to be considered.

(2) Except for persons described at paragraphs 75.57(8)"b" and "c," a person whose earned income must be considered is not eligible for the 20 percent earned income deduction or the care expense described at paragraphs 75.57(2)"a" and "b" for any month in which the individual failed, without good cause, to timely report a change in earned income or to timely report earned income on Form PA-2140-0, Public Assistance Eligibility Report (PAER), or Form 470-2881, Review/Recertification Eligibility Document (RRED). However, the individual is eligible for the 50 percent work incentive deduction described at paragraph 75.57(2)"c." Good cause for not timely returning a PAER or a RRED or timely reporting a change in earned income shall be limited to circumstances beyond the control of the individual, such as, but not limited to, a failure by the department to provide needed assistance when requested, to give needed information, to follow procedure resulting in a delay in the return of the PAER or the RRED, or when conditions require the forms to be mailed other than with the regular end-of-the-month mailing. Good cause shall also include, but not be limited to, circumstances when the individual was prevented from reporting by a physical or mental disability, death or serious illness of an immediate family member, or other unanticipated emergencies, or mail was not delivered due to a disruption of regular mail delivery. The applicant or recipient who returns the PAER or the RRED listing earned income by the sixteenth day of the report month shall be considered to have good cause for not timely returning the PAER or the RRED.

e. A person is considered self-employed when the person:

(1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.

(2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

f. The net profit from self-employment income in a nonhome-based operation shall be determined by deducting only the following expenses that are directly related to the production of the income:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees of the self-employed.

(3) The cost of shelter in the form of rent, the interest on mortgage or contract payments; taxes; and utilities.

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(4) The cost of machinery and equipment in the form of rent or the interest on mortgage or contract payments.

(5) Insurance on the real or personal property involved.

(6) The cost of any repairs needed.

(7) The cost of any travel required.

(8) Any other expense directly related to the production of income, except the purchase of capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

g. When the client is renting out apartments in the client's home, the following shall be deducted from the gross rentals received to determine the profit:

(1) Shelter expense in excess of that set forth on the chart of basic needs components at subrule 75.58(2) for the eligible group.

(2) That portion of expense for utilities furnished to tenants which exceeds the amount set forth on the chart of basic needs components at subrule 75.58(2).

(3) Ten percent of gross rentals to cover the cost of upkeep.

h. In determining profit from furnishing board, room, operating a family life home, or providing nursing care, the following amounts shall be deducted from the payments received:

(1) \$41 plus an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder and roomer or an individual in the home to receive nursing care, or \$41 for a roomer, or an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder.

(2) Ten percent of the total payment to cover the cost of upkeep for individuals receiving a room or nursing care.

i. Gross income from providing child care in the applicant's or recipient's own home shall include the total payments received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children. In determining profit from providing child care services in the applicant's or recipient's own home, 40 percent of the total gross income received shall be deducted to cover the costs of producing the income, unless the individual requests to have actual expenses in excess of the 40 percent considered. When the applicant or recipient requests to have expenses in excess of the 40 percent considered, profit shall be determined in the same manner as specified at paragraph 75.57(2)"j."

j. In determining profit for a self-employed enterprise in the home other than providing room and board, renting apartments or providing child care services, the following expenses shall be deducted from the income received:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees.

(3) The cost of machinery and equipment in the form of rent; or the interest on mortgage or contract payment; and any insurance on such machinery equipment.

(4) Ten percent of the total gross income to cover the costs of upkeep when the work is performed in the home.

(5) Any other direct cost involved in the production of the income, except the purchase of capital equipment and payment on the principal of loans for capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

k. Income in-kind received in payment for work shall be given the same consideration as cash. Except in unusual circumstances, the cash value of the income in-kind is the amount the client would pay in cash for the service or product if the work were not performed. Unusual circumstances include situations which are very unfair to the client or the department.

l. The applicant or recipient shall cooperate in supplying verification of all earned income. A self-employed individual shall keep any records necessary to establish eligibility.

**75.57(3) Shared living arrangements.** When an applicant or recipient shares living arrangements with another family or person, funds combined to meet mutual obligations for shelter and other basic needs are not income. Funds made available to the applicant or recipient, exclusively for the applicant's or recipient's needs, are considered income.

**75.57(4) Diversion of income.**

a. Nonexempt earned and unearned income of the parent shall be diverted to meet the unmet needs of the dependent, but ineligible children of the parent living in the family group. Income of the parent shall be diverted to meet the unmet needs of the ineligible children of the parent and a companion in the home only when the income and resources of the companion and the children are within family medical assistance program standards. The maximum income that shall be diverted to meet the needs of the dependent, but ineligible children shall be the difference between the needs of the eligible group if the ineligible children were included and the needs of the eligible group with the ineligible children excluded, except as specified at paragraph 75.57(8)"b."

b. Nonexempt earned and unearned income of the parent shall be diverted to permit payment of court-ordered support to children not living with the parent when the payment is actually being made.

**75.57(5) Income of unmarried specified relatives under the age of 19.**

a. Income of the unmarried specified relative under the age of 19 when that specified relative lives with a parent who receives coverage under family medical assistance-related programs or lives with a nonparental relative or in an independent living arrangement.

(1) The income of the unmarried, underage specified relative who is also an eligible child in the eligible group of the specified relative's parent shall be treated in the same manner as that of any other child. The income for the unmarried, underage specified relative who is not an eligible child in the eligible group of the specified relative's parent shall be treated in the same manner as though the specified relative had attained majority.

(2) The income of the unmarried, underage specified relative living with a nonparental relative or in an independent living arrangement shall be treated in the same manner as though the specified relative had attained majority.

b. Income of the unmarried specified relative under the age of 19 who lives in the same home as a self-supporting parent. The income of the unmarried specified relative under the age of 19 living in the same home as a self-supporting parent shall be treated in accordance with subparagraphs (1), (2), and (3) below.

(1) When the unmarried specified relative is under the age of 18 and not a parent of the dependent child, the income of the specified relative shall be exempt.

(2) When the unmarried specified relative is under the age of 18 and a parent of the dependent child, the income of the specified relative shall be treated in the same manner as

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though the specified relative had attained majority. The income of the specified relative's self-supporting parents shall be treated in accordance with paragraph 75.57(8)"c."

(3) When the unmarried specified relative is 18 years of age, the specified relative's income shall be treated in the same manner as though the specified relative had attained majority.

75.57(6) Exempt as income and resources. The following shall be exempt as income and resources:

a. Food reserves from home-produced garden products, orchards, domestic animals, and the like, when used by the household for its own consumption.

b. The value of the coupon allotment in the food stamp program.

c. The value of the United States Department of Agriculture donated foods (surplus commodities).

d. The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

e. Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

f. Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.

g. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

h. Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe. When the payment, in all or part, is converted to another type of resource, that resource is also exempt.

i. Payments to volunteers participating in the Volunteers in Service to America (VISTA) program, except that this exemption will not be applied when the director of ACTION determines that the value of all VISTA payments, adjusted to reflect the number of hours the volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the state where the volunteers are serving, whichever is greater.

j. Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

k. Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

l. Experimental housing allowance program payments made under annual contribution contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1936 as amended.

m. The income of a supplemental security income recipient.

n. Income of an ineligible child.

o. Unearned income in-kind.

p. Family support subsidy program payments.

q. Grants obtained and used under conditions that preclude their use for current living costs.

r. Any grant to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education.

s. All earned income of the undergraduate student in a college work-study program administered by the United States Secretary of Education.

t. Any income restricted by law or regulation which is paid to a representative payee, living outside the home, other than a parent who is the applicant or recipient, unless the in-

come is actually made available to the applicant or recipient by the representative payee.

u. The first \$50 received by the eligible group which represents a current monthly support obligation or a voluntary support payment, paid by a legally responsible individual, but in no case shall the total amount exempted exceed \$50 per month per eligible group.

v. Bona fide loans. Evidence of a bona fide loan may include any of the following:

(1) The loan is obtained from an institution or person engaged in the business of making loans.

(2) There is a written agreement to repay the money within a specified time.

(3) If the loan is obtained from a person not normally engaged in the business of making a loan, there is borrower's acknowledgment of obligation to repay (with or without interest), or the borrower expresses intent to repay the loan when funds become available in the future, or there is a timetable and plan for repayment.

w. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

x. The income of a person ineligible due to receipt of state-funded foster care, IV-E foster care, or subsidized adoption assistance.

y. Payments for major disaster and emergency assistance provided under the Disaster Relief Act of 1974 as amended by Public Law 100-707, the Disaster Relief and Emergency Assistance Amendments of 1988.

z. Payments made to certain United States citizens of Japanese ancestry and resident Japanese aliens under Section 105 of Public Law 100-383, and payments made to certain eligible Aleuts under Section 206 of Public Law 100-383, entitled "Wartime Relocation of Civilians."

aa. Payments received from the Radiation Exposure Compensation Act.

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

75.57(7) Exempt as income. The following are exempt as income.

a. Reimbursements from a third party.

b. Reimbursement from the employer for a job-related expense.

c. The following nonrecurring lump sum payments:

(1) Income tax refund.

(2) Retroactive supplemental security income benefits.

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- (3) Settlements for the payment of medical expenses.
- (4) Refunds of security deposits on rental property or utilities.
- (5) That part of a lump sum received and expended for funeral and burial expenses.
- (6) That part of a lump sum both received and expended for the repair or replacement of resources.
- d. Payments received by the family for providing foster care when the family is operating a licensed foster home.
- e. A small monetary nonrecurring gift, such as a Christmas, birthday or graduation gift, not to exceed \$30 per person per calendar quarter.

When a monetary gift from any one source is in excess of \$30, the total gift is countable as unearned income. When monetary gifts from several sources are each \$30 or less, and the total of all gifts exceeds \$30, only the amount in excess of \$30 is countable as unearned income.

- f. Earned income credit.
- g. Supplementation from county funds, providing:
  - (1) The assistance does not duplicate any of the basic needs as recognized by the chart of basic needs components in accordance with subrule 75.58(2), or
  - (2) The assistance, if a duplication of any of the basic needs, is made on an emergency basis, not as ongoing supplementation.
- h. Any payment received as a result of an urban renewal or low-cost housing project from any governmental agency.
- i. A retroactive corrective payment.
- j. The training allowance issued by the division of vocational rehabilitation, department of education.
- k. Payments from the PROMISE JOBS program.
- l. The training allowance issued by the department for the blind.
- m. Payments from passengers in a car pool.
- n. Support refunded by the child support recovery unit for the first month of termination of eligibility and the family does not receive the family investment program.
- o. Support refunded by the child support recovery unit or otherwise paid to or for the recipient for a month of suspension. The maximum exempt payment shall be the amount of the monthly support entitlement. The payment shall never exceed the amount of support collected for the month of suspension.
- p. Retrospective income received by an individual, whose needs are prospectively removed from the eligible group or who is no longer a member of the household, except nonrecurring lump sum income that causes a period of ineligibility and the income of a parent or stepparent who remains in the home.
- q. Income of a nonparental relative as defined at subrule 75.55(1) except when the relative is included in the eligible group.
- r. The retrospective income of individuals who are prospectively added to an eligible group for the initial two months of eligibility unless retrospective budgeting is required by subparagraph 75.57(9)"a"(5).
- s. Compensation in lieu of wages received by a child under the Job Training Partnership Act of 1982.
- t. Any amount for training expenses included in a payment issued under the Job Training Partnership Act of 1982.
- u. Earnings of an applicant or recipient aged 19 or younger who is a full-time student as defined at subparagraphs 75.54(1)"b"(1) and (2). The exemption applies through the entire month of the person's twentieth birthday.

**EXCEPTION:** When the twentieth birthday falls on the first day of the month, the exemption stops on the first day of that month.

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

w. Incentive payments received from participation in the adolescent pregnancy prevention programs.

x. Payments received from the comprehensive child development program, funded by the Administration for Children, Youth, and Families, provided the payments are considered complimentary assistance by federal regulation.

y. Incentive allowance payments received from the work force investment project, provided the payments are considered complimentary assistance by federal regulation.

z. Interest and dividend income.

aa. Terminated income of recipient households who are subject to retrospective budgeting beginning with the calendar month the source of the income is absent, provided the absence of the income is timely reported as described at 441—subrule 76.2(5) and subparagraph 75.52(4)"d"(1).

**EXCEPTION:** Income that terminated in one of the two initial months occurring at time of an initial application that was not used prospectively shall be considered retrospectively as required by subparagraph 75.57(9)"b"(1). This subrule shall not apply to nonrecurring lump sum income defined at subparagraph 75.57(9)"c"(2).

ab. Honorarium income. All moneys paid to an eligible household in connection with the welfare reform demonstration longitudinal study or focus groups shall be exempted.

ac. Income that an individual contributes to a trust as specified at paragraph 75.24(3)"b" shall not be considered for purposes of determining eligibility for the family medical assistance program (FMAP) or FMAP-related Medicaid coverage groups.

ad. Benefits paid to the eligible household under the family investment program (FIP).

**75.57(8)** Treatment of income in excluded parent cases, stepparent cases, and underage parent cases.

a. Treatment of income in excluded parent cases. A parent who is living in the home with the eligible children but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, child care expenses for children in the eligible group, the 50 percent work incentive deduction described at paragraphs 75.57(2)"a," "b," and "c," and diversions described at subrule 75.57(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at subrule 75.57(10). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group. Excluded parents are subject to the earned income sanctions at subparagraphs 75.57(2)"d"(1) and (2). The 20 percent earned income deduction and child care expenses described at paragraphs 75.57(2)"a" and "b" shall not be allowed for sanctioned earnings. However, the 50 percent work incentive deduction as at paragraph 75.57(2)"c" and diversions at subrule 75.57(4) shall be allowed.

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b. Treatment of income in stepparent cases. The income of a stepparent who is not included in the eligible group, but is living with the parent in the home of the eligible children, shall be given the same consideration and treatment as that of a natural parent subject to the limitations of subparagraphs (1) through (11) below.

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, shall receive a 20 percent earned income deduction.

(2) The stepparent's monthly nonexempt earned income remaining after the 20 percent earned income deduction shall be allowed child care expenses for the stepparent's ineligible dependents in the home, subject to the restrictions described at subparagraphs 75.57(2)"b"(1) through (5).

(3) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed or could be claimed by the stepparent as dependents for federal income tax purposes, shall be deducted from nonexempt monthly earned and unearned income of the stepparent.

(4) The stepparent shall also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(5) Except as described at subrule 75.57(10), the nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions at subparagraphs 75.57(8)"b"(1) through (4) above shall be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims or could claim the dependents for federal income tax purposes. These needs shall be determined in accordance with the schedule of needs for a family group of the same composition in accordance with subrule 75.58(2).

(6) The stepparent shall be allowed the 50 percent work incentive deduction from monthly earnings. The deduction shall be applied to earnings that remain after all other deductions at subparagraphs 75.57(8)"b"(1) through (5) have been subtracted from the earnings. However, the 50 percent work incentive deduction is not allowed when determining initial eligibility as described at subparagraphs 75.57(9)"a"(2) and (3).

(7) The deductions described in subparagraphs (1) through (6) shall first be subtracted from earned income in the same order as they appear above.

When the stepparent has both nonexempt earned and unearned income and earnings are less than the allowable deductions, then any remaining portion of the deductions in subparagraphs (3) through (5) shall be subtracted from unearned income. Any remaining income shall be applied as unearned income to the needs of the eligible group.

If the stepparent has earned income remaining after allowable deductions, then any nonexempt unearned income shall be added to the earnings and the resulting total counted as unearned income to the needs of the eligible group.

(8) A nonexempt nonrecurring lump sum received by a stepparent shall be considered as income in the budget month and counted in computing eligibility. Any portion of the nonrecurring lump sum retained by the stepparent in the month following the month of receipt shall be considered a resource to the stepparent.

(9) When the income of the stepparent, not in the eligible group, is insufficient to meet the needs of the stepparent and the stepparent's dependent but ineligible children living in the home, the income of the parent may be diverted to meet

the unmet needs of the children of the current marriage except as described at subrule 75.57(10).

(10) When the needs of the stepparent, living in the home, are not included in the eligible group, the eligible group and any dependent but ineligible children of the parent shall be considered as one unit, and the stepparent and the stepparent's dependents, other than the spouse, shall be considered a separate unit.

(11) The earned income sanctions described at subparagraphs 75.57(2)"d"(1) and (2) do not apply to earnings of the stepparent.

c. Treatment of income in underage parent cases. In the case of a dependent child whose unmarried parent is under the age of 18 and living in the same home as the unmarried, underage parent's own self-supporting parents, the income of each self-supporting parent shall be considered available to the eligible group after appropriate deductions unless the provisions of rule 441—75.59(249A) apply. The deductions to be applied are the same as are applied to the income of a stepparent pursuant to subparagraphs 75.57(8)"b"(1) through (7). Child care expenses at subparagraph 75.57(8)"b"(2) shall be allowed for the self-supporting parent's ineligible children. Nonrecurring lump sum income received by the self-supporting parent(s) shall be treated in accordance with subparagraph 75.57(8)"b"(8).

When the self-supporting spouse of a self-supporting parent is also living in the home, the income of that spouse shall be attributable to the self-supporting parent in the same manner as the income of a stepparent is determined pursuant to subparagraphs 75.57(8)"b"(1) through (7) unless the provisions of rule 441—75.59(249A) apply. Child care expenses at subparagraph 75.57(8)"b"(2) shall be allowed for the ineligible dependents of the self-supporting spouse who is a stepparent of the minor parent. Nonrecurring lump sum income received by the spouse of the self-supporting parent shall be treated in accordance with subparagraph 75.57(8)"b"(8). The self-supporting parent and any ineligible dependents of that person shall be considered as one unit. The self-supporting spouse and the spouse's ineligible dependents, other than the self-supporting parent, shall be considered a separate unit.

The earned income sanctions described at subparagraphs 75.57(2)"d"(1) and (2) do not apply to earnings of self-supporting parents and their spouses.

#### 75.57(9) Budgeting process.

##### a. Initial eligibility.

(1) At the time of application all earned and unearned income received and anticipated to be received by the eligible group during the month the decision is made shall be considered to determine eligibility, except income which is exempt. When income is prorated in accordance with subparagraph 75.57(9)"c"(1) and paragraphs 75.57(9)"g" and "i," the prorated amount is counted as income received in the month of decision. Allowable work expenses during the month of decision shall be deducted from earned income, except when determining eligibility under the 185 percent test defined at rule 441—75.57(249A). The determination of eligibility in the month of decision is a three-step process as described at rule 441—75.57(249A).

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

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

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

When the countable net income in the month of decision is less than the payment standard for the eligible group, the application shall be approved.

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

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

(6) Income considered for prospective budgeting shall be the best estimate, based on knowledge of current and past circumstances and reasonable expectations of future circumstances.

(7) Work expense for care, as defined at paragraph 75.27(2)“b,” shall be the allowable care expense expected to be billed or otherwise expected to become due during the budget month. The 20 percent earned income deduction for each wage earner, as defined at paragraph 75.57(2)“a,” and the 50 percent work incentive deduction, as defined at paragraph 75.57(2)“c,” shall be allowed.

b. Ongoing eligibility.

(1) After the initial two months, eligibility shall be based retrospectively on income and other circumstances in the budget month. However, when the income was considered prospectively in the initial application and is not expected to continue, it shall not be considered again.

(2) When a change in eligibility factors occurs, the local office shall prospectively compute eligibility based on the change, effective no later than the month following the month the change occurred. If eligibility continues, no action is taken. If ineligibility exists, assistance shall be canceled or suspended. Continuing eligibility under the 185 percent eligibility test (Test 1), defined at rule 441—75.57(249A), shall be computed prospectively and retrospectively.

(3) Income considered for retrospective budgeting shall be the actual income received in the budget month, except for the income described at subparagraph 75.57(9)“c”(1) and paragraphs 75.57(9)“g” and 75.57(9)“i.” A payroll check will be considered received the date the employer distributes payroll checks to employees.

(4) Work expense for care, as defined at paragraph 75.57(2)“b,” shall be the allowable care expense expected to be billed or which otherwise became due in the budget month. The 20 percent earned income deduction for each wage earner, as defined at paragraph 75.57(2)“a,” and the 50 percent work incentive disregard, as defined at paragraph 75.57(2)“c,” shall be allowed.

c. Lump sum income.

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

(2) Nonrecurring lump sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 75.56(4) and 75.56(7) and at paragraphs 75.57(8)“b” and “c,” shall be treated in accordance with this rule. Nonrecurring lump sum income shall be considered as income in the budget month and counted in computing eligibility in the benefit month, unless the income is exempt. When countable income exclusive of the family investment program grant but including countable lump sum income exceeds the needs of the eligible group under their current coverage group, the countable lump sum income shall be prorated. The number of full months for which a monthly amount of the lump sum shall be counted as income in the eligibility determination is derived by dividing the income by the schedule of living costs, as identified at subrule 75.58(2), for the eligible group. This period of time is referred to as the period of proration. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter.

The period of proration shall be shortened when the schedule of living costs as defined at subrule 75.58(2) increases.

The period of proration shall be shortened by the amount which is no longer available to the eligible group due to a loss, a theft or because the person controlling the lump sum no longer resides with the eligible group and the lump sum is no longer available to the eligible group.

The period of proration shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82, and 85 at the time the expense is

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reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over \$25 per incident; cost of replacement of exempt resources as defined in subrule 75.56(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

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

d. The third digit to the right of the decimal point in any calculation of income, hours of employment and work expenses for care, as defined at paragraph 75.57(2)"b," shall be dropped.

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

f. Suspension. Medicaid shall continue for one month when income or circumstances in the retrospective budget month cause ineligibility under the current coverage group and the local office has knowledge or reason to believe that ineligibility under the current coverage group will exist for only one month.

g. Lump sum nonexempt financial assistance for education or training shall be prorated over the period it is intended to cover after deducting allowable expenses of education or training. This is true when the income is received prior to the month of decision and covers a period of time extending beyond the month of decision, is expected to continue, and covers a period of time extending beyond the month of decision; or is received in the month of decision; or is received or is anticipated to be received after the approval of assistance.

h. Income from self-employment received on a regular weekly, biweekly, semimonthly or monthly basis shall be budgeted in the same manner as the earnings of an employee. The countable income shall be the net income.

i. Income from self-employment not received on a regular weekly, biweekly, semimonthly or monthly basis that represents an individual's annual income shall be averaged over a 12-month period of time, even if the income is received within a short period of time during that 12-month pe-

riod. Any change in self-employment shall be handled in accordance with subparagraphs (3) through (5) below.

(1) When a self-employment enterprise which does not produce a regular weekly, biweekly, semimonthly or monthly income has been in existence for less than a year, income shall be averaged over the period of time the enterprise has been in existence and the monthly amount projected for the same period of time. If the enterprise has been in existence for such a short time that there is very little income information, the worker shall establish, with the cooperation of the client, a reasonable estimate which shall be considered accurate and projected for three months, after which the income shall be averaged and projected for the same period of time. Any changes in self-employment shall be considered in accordance with subparagraphs (3) through (5) below.

(2) These policies apply when the self-employment income is received before the month of decision and the income is expected to continue, in the month of decision, after assistance is approved.

(3) A change in the cost of producing self-employment income is defined as an established permanent ongoing change in the operating expenses of a self-employment enterprise. Change in self-employment income is defined as a change in the nature of business.

(4) When a change in operating expenses occurs, the county office shall recalculate the expenses on the basis of the change.

(5) When a change occurs in the nature of the business, the income and expenses shall be computed on the basis of the change.

**75.57(10) Restriction on diversion of income.** No income may be diverted to meet the needs of a person living in the home who has been sanctioned under subrule 75.14(2) or who is required to be included in the eligible group according to paragraph 75.58(1)"a" and has failed to cooperate. This restriction applies to paragraph 75.57(4)"a" and subrule 75.57(8).

**75.57(11) Divesting of income.** Assistance shall not be approved when an investigation proves that income was divested and the action was deliberate and for the primary purpose of qualifying for assistance or increasing the amount of assistance paid.

#### **441—75.58(249A) Need standards.**

**75.58(1) Definition of eligible group.** The eligible group consists of all eligible persons living together, except when one or more of these persons have elected to receive supplemental security income under Title XVI of the Social Security Act or are voluntarily excluded in accordance with the provisions of rule 441—75.59(249A). There shall be at least one child, which may be an unborn child, in the eligible group except when the only eligible child is receiving supplemental security income.

a. The following persons shall be included (except as otherwise provided in these rules):

(1) The dependent child and any sibling of the child, of whole or half blood or adoptive, if the sibling is living in the same home as the dependent child and if the sibling meets the eligibility requirements of age and school attendance specified at subrule 75.54(1). When eligibility is being established under subrule 75.1(14), subparagraph 75.1(35)"a"(2), or 75.1(35)"a"(5), the child must be deprived as specified at subrule 75.54(3).

(2) Any natural or adoptive parent of such child, if the parent is living in the same home as the dependent child.

b. The following persons may be included:

(1) The needy relative who assumes the role of parent.

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(2) The needy relative who acts as caretaker when the parent is in the home but is unable to act as caretaker.

(3) The incapacitated stepparent, upon request, when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common-law marriage and the stepparent does not have a child in the eligible group.

(4) The stepparent who is not incapacitated when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common-law marriage and the stepparent is required in the home to care for the dependent children. These services must be required to the extent that if the stepparent were not available, it would be necessary to allow for care as a deduction from earned income of the parent or educational income of the parent.

75.58(2) Schedule of needs. The schedule of living costs represents 100 percent of the basic needs. The schedule of

living costs is used to determine the needs of individuals when these needs must be determined in accordance with the schedule of needs defined at rule 441—75.50(249A). The 185 percent schedule is included for the determination of eligibility in accordance with rule 441—75.57(249A). The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in the eligible group. The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the eligible group. The percentage of basic needs paid to one or more persons as compared to the schedule of living costs is shown on the chart below:

## SCHEDULE OF NEEDS

Number of Persons	1	2	3	4	5	6	7	8	9	10	Each Additional Person
Test 1 185% of Living Costs	675.25	1330.15	1570.65	1824.10	2020.20	2249.60	2469.75	2695.45	2915.60	3189.40	320.05
Test 2 Schedule of Living Costs	365	719	849	986	1092	1216	1335	1457	1576	1724	173
Test 3 Schedule of Basic Needs	183	361	426	495	548	610	670	731	791	865	87
Ratio of Basic Needs to Living Costs	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18

## CHART OF BASIC NEEDS COMPONENTS

(all figures are on a per-person basis)

Number of Persons	1	2	3	4	5	6	7	8	9	10 or More
Shelter	77.14	65.81	47.10	35.20	31.74	26.28	25.69	22.52	20.91	20.58
Utilities	19.29	16.45	11.77	8.80	7.93	6.57	6.42	5.63	5.23	5.14
Household Supplies	4.27	5.33	4.01	3.75	3.36	3.26	3.10	3.08	2.97	2.92
Food	34.49	44.98	40.31	39.11	36.65	37.04	34.00	33.53	32.87	32.36
Clothing	11.17	11.49	8.70	8.75	6.82	6.84	6.54	6.39	6.20	6.10
Personal Care & Supplies	3.29	3.64	2.68	2.38	2.02	1.91	1.82	1.72	1.67	1.64

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Medicine Chest Supplies	.99	1.40	1.34	1.13	1.15	1.11	1.08	1.06	1.09	1.08
Communications	7.23	6.17	3.85	3.25	2.50	2.07	1.82	1.66	1.51	1.49
Transportation	25.13	25.23	22.24	21.38	17.43	16.59	15.24	15.79	15.44	15.19

a. The definitions of the basic need components are as follows:

- (1) Shelter: Rental, taxes, upkeep, insurance, amortization.
- (2) Utilities: Fuel, water, lights, water heating, refrigeration, garbage.
- (3) Household supplies and replacements: Essentials associated with housekeeping and meal preparation.
- (4) Food: Including school lunches.
- (5) Clothing: Including layette, laundry, dry cleaning.
- (6) Personal care and supplies: Including regular school supplies.
- (7) Medicine chest items.
- (8) Communications: Telephone, newspapers, magazines.
- (9) Transportation: Including bus fares.

b. Special situations in determining eligible group:

(1) The needs of a child or children in a nonparental home shall be considered a separate eligible group when the relative is receiving Medicaid for the relative's own children.

(2) When the unmarried specified relative under the age of 19 is living in the same home with a parent or parents who receive Medicaid, the needs of the specified relative, when eligible, shall be included in the same eligible group with the parents. When the specified relative is a parent, the needs of the eligible children for whom the unmarried parent is caretaker shall be included in the same eligible group. When the specified relative is a nonparental relative, the needs of the eligible children for whom the specified relative is caretaker shall be considered a separate eligible group.

When the unmarried specified relative under the age of 19 is living in the same home as a parent who receives Medicaid but the specified relative is not an eligible child, need of the specified relative shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative under the age of 19 is living with a nonparental relative or in an independent living arrangement, need shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative is under the age of 18 and living in the same home with a parent who does not receive Medicaid, the needs of the specified relative, when eligible, shall be included in the eligible group with the children when the specified relative is a parent. When the specified relative is a nonparental relative as defined at subrule 75.55(1), only the needs of the eligible children shall be included in the eligible group. When the unmarried specified relative is aged 18, need shall be determined in the same manner as though the specified relative had attained majority.

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

(4) When two individuals, married to each other, are living in a common household and the children of each of them are recipients of Medicaid, the eligibility shall be computed on the basis of their comprising one eligible group. This rule shall not be construed to require that an application be made

for children who are not the natural or adoptive children of the applicant.

**441—75.59(249A) Persons who may be excluded from the eligible group when determining eligibility for the family medical assistance program (FMAP) and FMAP-related coverage groups.**

**75.59(1)** Exclusions from the eligible group. In determining eligibility under the family medical assistance program (FMAP) or any FMAP-related Medicaid coverage group in this chapter, the following persons may be excluded from the eligible group when determining Medicaid eligibility of other household members.

a. Siblings (of whole or half blood, or adoptive) of eligible children.

b. Self-supporting parents of minor unmarried parents.

c. Stepparents of eligible children.

d. Children living with a specified relative, as listed at subrule 75.55(1), who are dependent due to deprivation of parental support or care.

**75.59(2)** Needs, income, and resource exclusions. The needs, income, and resources of persons who are excluded shall also be excluded. If the income of the self-supporting parents of a minor unmarried parent is excluded, then the needs of the minor unmarried parent shall also be excluded. However, the income and resources of the minor unmarried parent shall not be excluded. If the income of the stepparent is excluded, the need of the natural or adoptive parent shall also be excluded.

**75.59(3)** Medicaid entitlement. Persons whose needs are excluded from the eligibility determination shall not be entitled to Medicaid under this or any other coverage group.

**75.59(4)** Situations where parent's needs are excluded. In situations where the parent's needs are excluded but the parent's income and resources are considered in the eligibility determination (e.g., minor unmarried parent living with self-supporting parents), the excluded parent shall be allowed the earned income deduction, child care expenses and the 50 percent work incentive disregard as provided at paragraphs 75.57(2) "a," "b," and "c."

**75.59(5)** Situations where child's needs, income, and resources are excluded. In situations where the child's needs, income, and resources are excluded from the eligibility determination pursuant to subrule 75.59(1), and the child's income is not sufficient to meet the child's needs, the parent shall be allowed to divert income to meet the unmet needs of the excluded child. The maximum amount to be diverted shall be the difference between the schedule of basic needs of the eligible group with the child included and the schedule of basic needs with the child excluded, in accordance with the provisions of subrule 75.58(2), minus any countable income of the child.

**441—75.60(249A) Pending SSI approval.** When a person who would ordinarily be in the eligible group has applied for supplemental security income benefits, the person's needs may be included in the eligible group pending approval of supplemental security income.

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

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ITEM 14. Amend rule 441—76.1(249A) as follows:

**441—76.1(249A) Application.** An application for ~~FIP-related family medical assistance-related~~ Medicaid programs shall be submitted on the Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), the Health Services Application, Form 470-2927, or the Application for Assistance, Part 1, Form 470-3112 or Form 470-3122 (Spanish). *The Medically Needy Recertification/State Supplementary and Medicaid Review, Form 470-3118, shall be used instead of Form 470-3112 or 470-3122 (Spanish) for persons applying for assistance under the medically needy program as provided at 441—subrule 75.1(35) if an interview is not required.*

An application for SSI-related Medicaid shall be submitted on the Application for Medical Assistance or State Supplementary Assistance, Form PA-1107, or Application for Assistance, Part 1, Form 470-3112 or Form 470-3122 (Spanish). *The Medically Needy Recertification/State Supplementary and Medicaid Review, Form 470-3118, shall be used instead of Form 470-3112 or 470-3122 (Spanish) for persons applying for assistance under the medically needy program as provided at 441—subrule 75.1(35) if an interview is not required.*

A person who is a recipient of supplemental security income (SSI) benefits shall not be required to complete a separate Medicaid application. If the county office does not have all the information necessary to establish that an SSI recipient meets all Medicaid eligibility requirements, the SSI recipient may be required to complete Form 470-2304 or 470-0364, Medicaid Information Questionnaire for SSI Persons, and may be required to attend an interview to clarify information on this form.

~~Applicants whose cases are selected for the X-PERT system but whose eligibility cannot be determined through X-PERT may be requested to complete Form PA-2207-0, Form PA-2230-0 (Spanish), Form 470-2927, or Form PA-1107-0.~~

An application for Medicaid for persons in foster care shall be submitted on Form 470-2779, Foster Care Medicaid Application.

~~Applicants whose cases are selected for the X-PERT system but whose eligibility cannot be determined through X-PERT may be requested to complete Form PA-2207-0, Form PA-2230-0 (Spanish), Form 470-2927, or Form PA-1107-0.~~ For cases selected for the X-PERT system, and whose eligibility is determined through X-PERT, Part 2 of the application is the Summary of Facts, Form 470-3114, produced at the interview. The Summary of Facts, Form 470-3114, is attached to the Summary Signature Page, Form 470-3113 or Form 470-3123 (Spanish). Eligibility cannot be approved until the Summary Signature Page, Form 470-3113 or Form 470-3123 (Spanish), is signed by the persons as prescribed in subrule 76.1(2) and received by the local or area office within five working days of the request.

**76.1(1) Place of filing.** An application should be filed in a local or area office of the department or directly with an income maintenance worker at a satellite office of the department or in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. *The Health Services Application, Form 470-2927, may also be filed at the office of a qualified provider of presumptive Medicaid eligibility for pregnant women, at a WIC office, at a maternal health clinic, or at a well child clinic.* The disproportionate share hospital, federally qualified health center or other facility will forward the application to the department office which is responsible for the completion of the eligibility determination. Those per-

sons eligible for supplemental security income and those who would be eligible if living outside a medical institution may make application at the social security district office.

**76.1(2) to 76.1(4)** No change.

**76.1(5)** Application not required. For ~~FIP-related Medicaid family medical assistance-related~~ programs, a new application is not required when an eligible person is added to an existing eligible group or when a responsible relative becomes a member of a Medicaid-eligible household ~~in accordance with FIP policy found at 441—subrules 40.2(4) and 40.22(4).~~ *This person is considered to be included in the application that established the existing eligible group. However, in these instances the date of application to add a person is the date the change is reported. When it is reported that a person is anticipated to enter the home, the date of application to add the person shall be no earlier than the date of entry or the date of report, whichever is later.*

a. *In those instances where a person previously excluded from the eligible group for failure to cooperate in obtaining support or establishing paternity as described at 441—subrule 75.14(2) is to be added to the eligible group, the date of application to add the person is the date the person cooperates.*

b. *When adding a person who was previously excluded from the eligible group for failing to comply with rule 441—75.7(249A), the date of application to add the person is the date the social security number or proof of application for a social security number is provided.*

c. *In those instances where a person who has been excluded from the eligible group in accordance with the provisions of rule 441—75.59(249A) is being added to the eligible group, the date of application to add the person is the date the household requests that the person no longer be excluded.*

**76.1(6)** Right to withdraw application. After an application has been filed, the applicant may withdraw the application at any time prior to the eligibility determination. The applicant may request that the application be withdrawn entirely or may, prior to the date the application is processed, request withdrawal for any month covered by the application process except as provided in 441—~~Chapter 86~~ *the medically needy program in accordance with the provisions of 441—subrule 75.1(35).* Requests for voluntary withdrawal of the application shall be documented in the case record and a notice of decision, Form PA-3102-0 or PA-3159-0, shall be sent to the applicant confirming the request.

**76.1(7)** Responsible persons and authorized representatives.

a. Responsible person. If the applicant or recipient is unable to act on the applicant's or recipient's behalf because the applicant or recipient is incompetent, *physically incapacitated*, or deceased, a responsible person may act responsibly for the applicant or recipient. The responsible person shall be a family member, friend or other person who has knowledge of the applicant's or recipient's financial affairs and circumstances and a personal interest in the applicant's or recipient's welfare or legal representative such as a conservator, guardian, executor or someone with power of attorney. The responsible person shall assume the applicant's or recipient's position and responsibilities during the application process or for ongoing eligibility. The responsible person may designate an authorized representative as provided for in paragraph 76.1(7)"b" to represent the incompetent, *physically incapacitated*, or deceased applicant's or recipient's position and responsibilities during the application process or for ongoing eligibility. This authorization does not relieve the re-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

sponsible person from assuming the incompetent, *physically incapacitated*, or deceased applicant's or recipient's position and responsibilities during the application process or for ongoing eligibility.

(1) When there is no person as described above to act on the incompetent, *physically incapacitated*, or deceased applicant's or recipient's behalf, any individual or organization shall be allowed to act as the responsible person if the individual or organization conducts a diligent search and completes Form 470-3356, Inability to Find a Responsible Person, attesting to the inability to find a responsible person to act on behalf of the incompetent, *physically incapacitated*, or deceased applicant or recipient.

(2) and (3) No change.

b. No change.

ITEM 15. Amend rule 441—76.2(249A) as follows:

Amend subrule 76.2(1) by relettering paragraphs "b" and "c" as "c" and "d," respectively, and adding the following new paragraph "b."

b. For SSI-related Medicaid, an interview may be required at the time of review.

Further amend subrule 76.2(1), relettered paragraph "d," as follows:

d. Failure of the applicant or recipient to attend the an interview shall serve as a basis for rejection of an application or cancellation of assistance.

Amend subrule 76.2(2) as follows:

76.2(2) Choice of coverage groups. An applicant who meets the eligibility requirements of more than one coverage group shall be given the choice of ~~under which~~ coverage group *under which* eligibility shall be determined.

Add the following new subrules:

76.2(4) Monthly reporting. The applicant who is subject to monthly reporting as described at 441—subrule 75.52(1) shall become responsible for completing Form PA-2140-0, Public Assistance Eligibility Report, after the time of the face-to-face interview. This form shall be issued and returned according to the requirements at paragraph 75.52(4)"b." The application process shall continue in regard to the initial two months of eligibility, but eligibility for the third month and those following are dependent on the proper return of these forms. The county office shall explain to the applicant at the time of the face-to-face interview the applicant's responsibility to complete and return this form.

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

ITEM 16. Amend rule 441—76.3(249A) as follows:

Amend the introductory paragraph and subrule 76.3(1) as follows:

**441—76.3(249A) Investigation Time limit for decision.** Applications ~~will~~ shall be investigated by the county department of human services. *The applicant shall receive a written notice of approval, conditional eligibility, or denial as soon as possible, but no later than and a decision rendered regarding eligibility within 30 days of the date of filing the application unless one or more of the following conditions exist.*

76.3(1) The application is being processed for eligibility under the medically needy coverage group as defined in rule 441—86.4(249A) 441—subrule 75.1(35). Applicants for medically needy shall receive a written notice of approval,

*conditional eligibility, or denial as soon as possible, but no later than 45 days from the date the application was filed.*

Add the following new subrule:

76.3(6) Unusual circumstances exist which prevent a decision from being made within the specified time limit. Unusual circumstances include those situations where the county office and the applicant have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit has expired or because of emergency situations such as fire, flood, or other conditions beyond the administrative control of the department.

ITEM 17. Amend rule 441—76.5(249A) as follows:

Rescind and reserve subrule 76.5(1), paragraph "e."

Amend subrule 76.5(2), paragraph "a," as follows:

a. For persons approved for the family investment program or programs related to the family investment program medical assistance-related programs, medical assistance benefits shall be effective on the first day of a month when eligibility was established anytime during the month.

Further amend subrule 76.5(2) by adding the following new paragraph "d."

d. When a request is made to add a person to the eligible group who previously was excluded, in accordance with the provisions of rule 441—75.59(249A), assistance shall be effective no earlier than the first of the month following the month in which the request was made.

ITEM 18. Amend rule 441—76.7(249A) as follows:

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

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

Eligibility criteria for persons whose eligibility for Medicaid is related to the family investment medical assistance program shall be reviewed according to policies governing monthly and nonmonthly reporters found in 441—subrule 40.27(1) rule 441—75.52(249A) except for pregnant women who establish eligibility under 441—subrule 75.1(15), 75.1(26), or 75.1(28), or rule 441—75.18(249A). These pregnant women shall be exempt from the policies found in 441—subrule 40.27(1) 441—subrule 75.52(1) as a condition of eligibility.

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

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

ITEM 19. Amend rule 441—76.10(249A) as follows:

Amend subrule 76.10(2) as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**76.10(2)** An applicant or recipient eligible for Medicaid because of the family investment medical assistance program (FIP) (FMAP) income and resource policies shall be expected to report changes in accordance with FIP policy found in 441—subrule 40.24(1) subrule 76.2(5) and 441—subrule 40.27(4), paragraphs “e” and “f,” respectively. 441—paragraphs 75.52(5) “a” and “b.” After assistance has been approved, changes occurring during the month are effective the first day of the next calendar month, provided the notification requirements at rule 441—76.4(249A) can be met.

Add the following new subrule:

**76.10(5)** Effective date of change. When a request is made to add a new person to the eligible group, and that person meets the eligibility requirements, assistance shall be effective the first day of the month in which the request was made unless otherwise specified at rule 441—76.5(249A). After assistance has been approved, changes reported during the month shall be effective the first day of the next calendar month, unless:

- a. Timely notice of adverse action is required as specified in 441—subrule 7.7(1).
- b. The certification has expired for persons receiving assistance under the medically needy program in accordance with the provisions of 441—subrule 75.1(35).
- c. The household is subject to the retrospective budgeting provisions in accordance with 441—subrule 75.52(5).

ITEM 20. Rescind and reserve 441—Chapter 86.

## ARC 7362A

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 234.6, the Department of Human Services proposes to amend Chapter 93, “PROMISE JOBS Program,” appearing in the Iowa Administrative Code, and to adopt Chapter 94, “Iowa Transitional Assistance for Direct Education Costs Program,” Iowa Administrative Code.

These amendments terminate PROMISE JOBS funding for direct education costs for FIP participants who were already participating in a PROMISE JOBS-funded training plan on March 1, 1997, and establish a new program to provide for state-only funding for these costs. This program was previously funded as part of the PROMISE JOBS program and financed using state and federal dollars. If adopted, this new program will be implemented retroactive to March 1, 1997.

Earlier revisions to rule 441—93.114(249C) which were effective March 1, 1997, eliminated PROMISE JOBS assistance with direct education costs for all FIP participants who begin a postsecondary education or training plan after March 1, 1997. In addition, child care and transportation were made

available to all participants in a postsecondary education or training plan without regard to available student financial aid. The revisions allowed payment of direct education costs for those who were active in postsecondary education or training on March 1, 1997, and who do not have enough student financial aid to cover them. This allowed PROMISE JOBS to honor the commitment made to participants who began to receive funding for their postsecondary education or training plan before the March 1, 1997, policy change. (See ARC 6964A published in the January 1, 1997, Iowa Administrative Bulletin.)

Those revisions were made to bring the PROMISE JOBS program into compliance with an interpretation of the Higher Education Act which implies that the state cannot use student financial aid administered through the federal Department of Education to reduce benefits of child care and transportation for Family Investment Program (FIP) participants in a work and training program.

These proposed changes are a further attempt to ensure that the PROMISE JOBS program is not in conflict with an even more stringent interpretation of the Higher Education Act by the University of Iowa Law Clinic with whom a class-action lawsuit is currently pending. This more stringent interpretation would require Iowa to ignore the amount of the participants' federal student financial aid to determine how much assistance to make available for direct education costs. The basis for the interpretation is a federal law which prohibits its states from using certain kinds of student financial aid when determining eligibility and benefits for other federal programs.

The Department believes that creation of the Iowa Transitional Assistance for Direct Education Costs Program (ITADEC) will allow the state to continue to honor that commitment by using state-only funds, involving no other federal funds, in the payment of any direct education costs for participants who receive federal student financial aid. PROMISE JOBS participants and field staff will see no difference in the receipt of assistance and administration of the program.

The Department considered eliminating all assistance with direct education costs for current as well as future participants who receive federal student financial aid. This may have been the surest way to ensure that the state is considered in compliance with the strictest interpretation of the Higher Education Act. The Department believes it is important to honor commitments made to those who were already participating on March 1, 1997.

However, if it becomes apparent as the lawsuit proceeds that continuing to fund direct education costs for FIP participants who were already participating in a PROMISE JOBS-funded training plan on March 1, 1997, will jeopardize funding for the PROMISE JOBS program, it will be necessary to discontinue direct education funding for the grandfathered participants entirely and not adopt the proposed 441—Chapter 94. This would result in loss of direct education assistance for approximately 420 participants.

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 August 6, 1997.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Cedar Rapids - August 8, 1997 11:30 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 - August 6, 1997 11 a.m.  
Lower Level  
Council Bluffs Regional Office  
417 E. Kaneshville Boulevard  
Council Bluffs, Iowa 51501
- Davenport - August 7, 1997 11:30 a.m.  
Davenport Area Office  
Bicentennial Building - Fifth Floor  
Conference Room 3  
428 Western  
Davenport, Iowa 52801
- Des Moines - August 7, 1997 1 p.m.  
Des Moines Regional Office  
City View Plaza  
Conference Room 104  
1200 University  
Des Moines, Iowa 50314
- Mason City - August 7, 1997 10 a.m.  
Mason City Area Office  
Mohawk Square, Liberty Room  
22 North Georgia Avenue  
Mason City, Iowa 50401
- Ottumwa - August 6, 1997 11:30 a.m.  
Ottumwa Area Office  
Conference Room 2  
120 East Main  
Ottumwa, Iowa 52501
- Sioux City - August 6, 1997 2 p.m.  
Sioux City Regional Office  
Fifth Floor  
520 Nebraska St.  
Sioux City, Iowa 51101
- Waterloo - August 6, 1997 1 p.m.  
Waterloo Regional Office  
Pinecrest Office Building  
Conference Room 220  
1407 Independence Avenue  
Waterloo, Iowa 50703

portation; enrollment, school testing or school application fees; educational grant or scholarship application fees; certification and testing fees, travel costs required for certification or testing; and certain practicum expenses as described in 93.114(12)"a"(4). ~~Payment for specific supplies related to obtaining credit for a course and required of all students in a course and required uniforms shall be authorized only when all educational awards received by the participant have been used for those expenses or other direct education costs.~~

In addition, participants enrolled in high school completion, GED, ABE, ESL, or short-term training which does not qualify for federal or state financial aid, or already participating in an approvable postsecondary vocational classroom training plan on March 1, 1997, programs of 29 weeks or less shall be eligible for consideration of payment for any direct education costs. ~~Payment shall be authorized only when all educational awards received by the participant have been used for those expenses.~~ Direct education costs are tuition, books, fees including graduation, basic school supplies, specific supplies related to obtaining credit for a course and required of all students in a course, and required uniforms.

PROMISE JOBS is authorized to provide payment for expenses allowable under these rules to the training facility for the educational expenses of tuition and fees and books and supplies which are provided by the facility and billed to the PROMISE JOBS participant. Payment may also be made to the client in those situations where this is determined to be appropriate by the PROMISE JOBS worker.

Further amend subrule 93.114(12), paragraph "a," by rescinding and reserving subparagraph (1) and amending subparagraphs (2) and (3) as follows:

(2) Tuition allowances for all other programs (*high school completion, GED, ABE, ESL, or short-term training programs of 29 weeks or less*) shall not exceed the rate charged by the state of Iowa area school located nearest to the participant's residence which offers a course program comparable to the one in which the participant plans to enroll. If an area school in Iowa does not offer a comparable program, the maximum tuition rate payment shall not exceed the Iowa resident rate charged by the area school located nearest to the participant's residence.

(3) A standard allowance of \$10 per term or actual cost, whichever is higher, for basic school supplies shall be allowed for those participants who request it ~~and who do not have sufficient educational financial awards to cover purchase of basic supplies or who must purchase basic school supplies before educational awards are received or are made available.~~ A claim for actual costs higher than \$10 must be verified by receipts.

Further amend subrule 93.114(12), paragraph "c," as follows:

c. Participants shall furnish receipts for expenditures which they pay, except for transportation allowances ~~and items purchased with the \$10 standard allowance for basic school supplies, unless issued in accordance with 93.114(12)"a"(3), within ten days of receipt of allowances.~~ Failure to provide receipts will preclude additional payments.

ITEM 2. Amend 441—Chapter 93, implementation clause, to read as follows:

These rules are intended to implement ~~Iowa Code sections 239.2 and 239.5 and chapter 249C 1997 Iowa Acts, Senate File 516, sections 18 to 23.~~

ITEM 3. Adopt the following new Chapter 94:

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 1997 Iowa Acts, Senate File 516, sections 18 to 23.

The following amendments are proposed.

ITEM 1. Amend rule 441—93.114(249C) as follows:

Rescind and reserve subrule 93.114(10), paragraph "c."

Amend subrule 93.114(12), first three paragraphs, as follows:

93.114(12) Participation allowances. An allowance shall be made for certain expenses of training. Participants enrolled in high school completion, GED, ABE, ESL, or an approvable postsecondary vocational classroom training plan shall be eligible for payment for the following expenses of training when required for participation: child care; trans-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

## CHAPTER 94

IOWA TRANSITIONAL ASSISTANCE FOR DIRECT  
EDUCATION COSTS PROGRAM

## PREAMBLE

This chapter implements the Iowa transitional assistance for direct education costs program (ITADEC). ITADEC provides state-only funding to allow the state to continue to provide assistance with certain costs of postsecondary education to family investment program (FIP) participants who were enrolled and participating in a PROMISE JOBS-funded postsecondary vocational classroom training plan on March 1, 1997.

The program assigns responsibility for the provision of services to the department of workforce development, known as Iowa workforce development (IWD), to be provided by IWD employees or subcontractor employees as appropriate, using the PROMISE JOBS service delivery process and program policies as described in 441—Chapter 93.

**441—94.1(77GA,SF516) Program scope.** On a statewide basis, the Iowa transitional assistance for direct education costs (ITADEC) program provides state-funded assistance with direct education costs for certain FIP participants.

**441—94.2(77GA,SF516) Provision of services.** The department of workforce development, known as Iowa workforce development (IWD), shall provide ITADEC services as part of the contract described at rule 441—93.103(249C), with services to be provided by IWD employees or subcontractor employees as appropriate, using the PROMISE JOBS service delivery process and program policies as described at rule 441—93.114(249C).

**441—94.3(77GA,SF516) Participant eligibility.** To be eligible for ITADEC, a FIP participant must meet two criteria: The participant must have been enrolled and participating in a PROMISE JOBS-funded postsecondary vocational classroom training plan on March 1, 1997; and the participant must continue to carry out the training plan according to the steps of the family investment agreement (FIA) as developed by PROMISE JOBS and according to the postsecondary vocational classroom training policies as described at rule 441—93.114(249C).

**441—94.4(77GA,SF516) Eligible costs.** FIP participants eligible for ITADEC shall be considered for training allowances for direct education costs. Direct education costs are tuition, books, fees including graduation, basic school supplies, and specific supplies related to obtaining credit for a course and required of all students in a course, and required uniforms.

**441—94.5(77GA,SF516) Educational financial awards.** For each academic year of participation in postsecondary vocational classroom training, FIP participants eligible for ITADEC shall apply for and accept all available educational financial awards for which they are eligible, including grants and scholarships, but excluding educational loans which require repayment.

**94.5(1) Authorization of training allowances.** For FIP participants eligible for ITADEC, training allowances for direct education costs shall be authorized only when all educational awards received by the client have been used or allocated, on a month-by-month basis, for allowable training costs in the following payment order: tuition, fees including graduation, books, basic school supplies, and specific supplies (including tools and uniforms) related to obtaining credit for a course and required of all students in a course.

**94.5(2) Use of awards.**

a. Use of educational awards to pay tuition shall be limited to the actual cost of tuition.

b. Use of awards to pay fees, books, and supplies shall be limited to that amount that otherwise would be paid by the program.

c. FIP participants eligible for ITADEC who pursue non-PROMISE JOBS-authorized electives which are related to but not required for their major and who qualify for financial awards solely as a result of taking these electives shall use the awards to cover allowable costs of the electives which include tuition, fees, books and supplies. Remaining award moneys shall then be used to pay tuition, fees, books and supplies of PROMISE JOBS-approved courses taken during the same term.

d. FIP participants who are eligible for ITADEC are authorized to decline any financial aid that would result in a reduction of the client's FIP assistance.

e. FIP participants who are eligible for ITADEC and are attending private training facilities where the tuition exceeds the amount the program can pay shall retain award moneys to pay the annual difference between actual tuition cost and the maximum tuition amount the department can pay.

f. FIP participants who are eligible for ITADEC who elect to accept educational loan moneys in any amount may use these moneys at their discretion.

**441—94.6(77GA,SF516) Payment of eligible costs.** ITADEC payments for expenses allowable under these rules shall be made to the training facility for the educational expenses of tuition and fees and books and supplies which are provided by the facility and billed to the PROMISE JOBS participant. Payment may also be made to the client in those situations where this is determined to be appropriate by the PROMISE JOBS worker.

**441—94.7(77GA,SF516) Establishing need for payments.**

**94.7(1) Initiation of allowances.** Participants shall submit Form PA-8121-5, Estimate of Cost, to initiate allowances for direct education costs.

**94.7(2) Receipts.** Participants shall furnish receipts for expenditures which they pay, except for items purchased with the \$10 standard allowance for basic school supplies, unless issued in accordance with rule 441—94.9(77GA,SF516), within ten days of receipt of allowances. Failure to provide receipts will preclude additional payments.

Receipts may be requested for allowances paid directly to the training provider if the ITADEC worker determines it is appropriate.

**441—94.8(77GA,SF516) Use of payments.** Participants shall use ITADEC allowances which they receive to pay authorized expenses.

**441—94.9(77GA,SF516) Limits on allowances.** ITADEC allowances for postsecondary classroom training are limited as follows:

**94.9(1) Baccalaureate degree programs.** Tuition allowance for baccalaureate degree programs shall not exceed the maximum undergraduate Iowa resident rate charged by a state university in Iowa.

**94.9(2) Nonbaccalaureate degree programs.** Tuition allowances for all other programs shall not exceed the rate charged by the state of Iowa area school located nearest to the participant's residence which offers a course program comparable to the one in which the participant plans to enroll. If an area school in Iowa does not offer a comparable

## HUMAN SERVICES DEPARTMENT[441](cont'd)

program, the maximum tuition rate payment shall not exceed the Iowa resident rate charged by the area school located nearest to the participant's residence.

**94.9(3) Basic school supplies.** A standard allowance of \$10 per term or actual cost, whichever is higher, for basic school supplies shall be allowed for those participants who request it and who do not have sufficient educational financial awards to cover purchase of basic supplies or who must purchase basic school supplies before educational awards are received or are made available. A claim for actual costs higher than \$10 must be verified by receipts.

**94.9(4) Items for which earnings are being diverted.** No allowance shall be made for any item that is being paid for through earnings that are diverted for that purpose.

**441—94.10(77GA,SF516) Maximum limit on ITADEC funding.** FIP participants eligible for ITADEC who developed one or more PROMISE JOBS FIAs on or after July 1, 1996, shall be eligible for consideration for allowances for direct education costs allowable under these rules for no more than 24 consecutive months of PROMISE JOBS and ITADEC combined.

For purposes of this rule, an FIA is considered to be developed when it is signed by a FIP participant who has never before signed an FIA or who must sign another FIA because FIP eligibility has been reestablished after FIP reapplication with a break in FIP assistance of more than one month.

The period of 24 consecutive months begins with the first month that the participant was eligible for consideration for PROMISE JOBS expense allowances. It is not altered by breaks in FIP assistance or breaks from the postsecondary vocational classroom training activity.

A month is considered ITADEC-funded or PROMISE JOBS-funded even if no allowance is issued because the client has no expense in a month or due to educational financial awards policies as described at rule 441—94.4(77GA,SF516) above or similar policies previously in effect under the PROMISE JOBS program.

**441—94.11(77GA,SF516) Completion or termination of a training plan.**

**94.11(1) Successful completion of plan.** Participants who successfully complete their training plans may keep any books or supplies, including tools, which were purchased with ITADEC funds.

**94.11(2) Unsuccessful completion of plan.** Participants who do not complete their training programs and do not obtain training-related employment within 60 days of leaving training shall return all reusable supplies, including books and tools, but not clothing, purchased by ITADEC.

a. Staff are authorized to donate to nonprofit organizations any items which they determine are unusable by the program.

b. When tools are not returned, the amount of the ITADEC payment shall be considered an overpayment unless the participant verifies theft of the tools through documentation of timely report to a law enforcement agency.

**94.11(3) Training plan policies.** FIP participants eligible for ITADEC are covered by PROMISE JOBS completion or termination of training plan policies found at 441—paragraphs 93.114(14)"c" through "g."

**94.11(4) Abuse of program.**

a. Participants who choose the limited benefit plan (LBP) as described at 441—subparagraphs 93.114(14)"f"(6) and (7), or participants who fail to return supplies, when required, shall not be eligible for consideration for future ITADEC allowances.

b. Future classroom training services shall not be approved unless receipts for previous allowances are provided; ITADEC-funded items, when required, are returned; or the value of the items is refunded.

c. When the amount of the ITADEC payment for tools has been considered an overpayment as described at paragraph 94.11(2)"b," the participant may refund the claim balance as recorded in the overpayment recovery system to meet this requirement.

**441—94.12(77GA,SF516) Recovery of ITADEC expense allowances.** When a participant or a provider receives an ITADEC expense allowance greater than allowed under these rules or a duplicate payment, an overpayment is considered to have occurred and recovery is required. Staff shall use the overpayment notification and recovery policies as described at rule 441—93.151(249C).

**441—94.13(77GA,SF516) Right of appeal.** Appeal policies described at rule 441—93.140(249C) apply to ITADEC participants.

**441—94.14(77GA,SF516) Confidentiality.** Confidentiality policies described at rule 441—93.143(249C) apply to ITADEC participants.

These rules are intended to implement 1997 Iowa Acts, Senate File 516, sections 18 to 23.

ARC 7363A

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 234.6, the Department of Human Services proposes to amend Chapter 130, "General Provisions," and Chapter 170, "Child Day Care Services," appearing in the Iowa Administrative Code.

These amendments implement the following changes to day care policy:

- Families currently receiving day care services who were receiving child day care services as of June 30, 1993, will no longer be grandfathered in at 155 percent of the federal poverty level when determining their financial eligibility. Their financial eligibility will be determined at 125 percent of the federal poverty level.

- Policy governing financial eligibility of families with protective needs is removed from the Preamble to 441—Chapter 170 and added to 441—paragraph 130.3(1)"e."

- The number of hours an employed parent must work to receive day care services is increased from 20 hours per week to 28 hours per week. Raising the hours a parent must work is more reflective of the hours a parent must work in order to become self-sufficient. Language is changed to require that parents provide documentation of job search activities.

- The definition of a child with protective needs is revised to conform with current child abuse terminology.

HUMAN SERVICES DEPARTMENT[441](cont'd)

◦ The time a parent can receive subsidized child care while participating in academic or vocational training is limited to a 24-month lifetime limit. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the 24-month limit. PROMISE JOBS child care allowances provided while the parent is a recipient of the Family Investment Program and participating in PROMISE JOBS components in postsecondary education or training shall count toward the 24-month lifetime limit.

At the present time families are approved for child day care services while attending school only when they are under age 21 because of the priority group requirements. Adoption of these rules will eliminate use of the priority group requirements established by the General Assembly unless funds are later determined insufficient and waiting lists are implemented.

◦ Subsidy under the Child Care Assistance program is denied to families on a PROMISE JOBS waiting list for the hours in academic or vocational training. Since both child care programs are now funded under the Federal Child Care and Development Fund, it is illogical to continue a policy that previously resulted in shifting the cost from one program to another.

◦ The provision of protective child day care services is limited to licensed and registered providers.

The changes in hours of work, limits on subsidy during participation in approved education or training programs, and eligible protective care providers were recommended by the Child Care Work Group of the Welfare Reform Advisory Group and accepted by the State Child Day Care Advisory Council.

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 August 6, 1997.

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

Cedar Rapids - August 8, 1997 1 p.m.  
Cedar Rapids Regional Office  
Iowa Building - Suite 600  
Sixth Floor Conference Room  
411 Third St. S. E.  
Cedar Rapids, Iowa 52401

Council Bluffs - August 6, 1997 10 a.m.  
Lower Level  
Council Bluffs Regional Office  
417 E. Kanessville Boulevard  
Council Bluffs, Iowa 51501

Davenport - August 6, 1997 9 a.m.  
Davenport Area Office  
Bicentennial Building - Fifth Floor  
Conference Room 5  
428 Western  
Davenport, Iowa 52801

Des Moines - August 6, 1997 10 a.m.  
Des Moines Regional Office  
City View Plaza  
Conference Room 104  
1200 University  
Des Moines, Iowa 50314

Mason City - August 6, 1997 1 p.m.  
Mason City Area Office  
Mohawk Square, Liberty Room  
22 North Georgia Avenue  
Mason City, Iowa 50401

Ottumwa - August 7, 1997 10 a.m.  
Ottumwa Area Office  
Conference Room 3  
120 East Main  
Ottumwa, Iowa 52501

Sioux City - August 8, 1997 9 a.m.  
Sioux City Regional Office  
Fifth Floor  
520 Nebraska St.  
Sioux City, Iowa 51101

Waterloo - August 7, 1997 10 a.m.  
Waterloo Regional Office  
Pinecrest Office Building  
Conference Room 220  
1407 Independence Avenue  
Waterloo, Iowa 50703

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

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Amend subrule 130.3(1) as follows:

Amend paragraph "d," subparagraph (2), last paragraph, as follows:

Column C is used to determine ongoing income eligibility for families receiving child day care services as of June 30, 1993, to determine income eligibility for families with children with special needs applying for child day care services, and for families who have received transitional child care for 24 consecutive months.

Amend paragraph "e" as follows:

e. Certain services are provided without regard to income which means family income is not considered in determining eligibility. The services provided without regard to income are information and referral, child abuse investigation, child abuse treatment, child abuse prevention services, including protective child day care services, family-centered services, dependent adult abuse evaluation, dependent adult abuse treatment, dependent adult abuse prevention services, and purchased adoption services to individuals and families referred by the department.

ITEM 2. Amend the Preamble to 441—Chapter 170 as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child day care services. Child day care services are for children of low-income parents who are in academic or vocational training; or employed 20 hours or more per week or looking for employment; or for a limited period of time, when the caring person is absent due to hospitalization, physical or mental illness, or death; or for needing protective services without regard to income to prevent or alleviate child abuse or neglect; or for a parent looking for employment. Services may be provided in a licensed child care center, a registered group day care home, a registered

## HUMAN SERVICES DEPARTMENT[441](cont'd)

family day care home, the home of a relative, the child's own home, a nonregistered family day care home, or in a facility exempt from licensing or registration.

ITEM 3. Amend rule 441—170.1(234), definition of "Child with protective needs," as follows:

"Child with protective needs" means a child who has a case plan that identifies protective child day care as a required service and who is a member of a family with one of the following:

1. A ~~founded or undetermined~~ *confirmed* case of child abuse.
2. Episodes of family or domestic violence or substance abuse which place the child at risk of abuse or neglect and have resulted in a service referral to family preservation or family-centered services.

ITEM 4. Amend rule 441—170.2(234) as follows:

## 441—170.2(234) Eligibility.

170.2(1) No change.

170.2(2) General eligibility requirements. *In addition to meeting financial requirements, the child needing services must meet age requirements and each parent in the household must have at least one need for service. When funds are insufficient, families applying for services must meet the specific requirements found in subrule 170.2(4) of the priority group for which applications are being taken. Families approved when applications are being taken for priority groups are not required to meet the requirements in paragraph 170.2(2) "b" except at review or redetermination.*

a. Age. Child day care shall be provided only to children up to age 13, unless they are children with special needs in which case child care shall be provided up to age 19.

~~170.2(3) b. Need for service. The need for child day care services shall be established through the assessment process as set forth in 441—Chapter 131. The child or parents of the child Each parent in the household shall meet one or more of the following requirements in order to be eligible for child day care services:~~

a. (1) ~~The parent or parents are~~ *is* in academic or vocational training. *Child care provided while the parent participates in postsecondary education or vocational training shall be limited to a 24-month lifetime limit. A month is defined as a fiscal month or part thereof and shall generally have starting and ending dates falling within two calendar months but shall only count as one month. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the 24-month limit. PROMISE JOBS child care allowances provided while the parent is a recipient of the family investment program and participating in PROMISE JOBS components in postsecondary education or training shall count toward the 24-month lifetime limit.*

b. (2) The parent is employed ~~20~~ 28 or more hours per week, or ~~is employed~~ an average of ~~20~~ 28 or more hours per week during the month. Child care services may be provided for the hours of employment of a single parent or the coinciding hours of employment of both parents in a two-parent home, and for actual travel time between home, child care facility, and place of employment.

~~e. Rescinded IAB 11/10/93, effective 12/1/93.~~

d. (3) ~~Day~~ *The parent needs* day care is as part of a protective service plan to prevent or alleviate child abuse or neglect.

e. (4) The person who normally cares for the child is absent from the home due to hospitalization, physical or mental illness, or death. Care under this paragraph is limited to a

maximum of one month, unless extenuating circumstances are justified and approved after case review by the ~~district regional~~ administrator.

f. (5) ~~The parent or parents are~~ *is* looking for employment. Child care for job search shall be limited to only those hours the parent is actually looking for employment including travel time. A job search plan shall be approved by the department and limited to a maximum of 30 working days in a 12-month period. Child care in two-parent families may be provided only during the coinciding hours of both parents looking for employment, or during one parent's employment and one parent's looking for employment. Documentation of job search contacts shall be furnished to the department ~~upon request~~. The department may enter into a nonfinancial coordination agreement for information exchange concerning job search documentation.

~~g. The parent or parents have entered a self-initiated program for training approved under JOBS.~~

~~h. Rescinded IAB 7/6/94, effective 7/1/94.~~

~~170.2(4) 170.2(3)~~ Priority for service. Funds available for child day care services shall first be used to continue services to families *currently* receiving child day care services ~~as of June 30, 1993~~, and to families with protective child care needs. As funds are determined available, families shall be served on a statewide basis from a regionwide waiting list based on the following schedule in descending order of prioritization. Applications for child day care services shall be taken only for the priority groupings for which funds have been determined available.

a. to g. No change.

~~170.2(5) 170.2(4)~~ Prioritization within child care subsidized programs.

a. No change.

b. Any recipient of the family investment program who is in academic or vocational training *and on a PROMISE JOBS waiting list for expense allowances including child care* shall ~~have the service worker verify that PROMISE JOBS funding is not available before the recipient can receive assistance not be eligible for subsidy for the hours in academic or vocational training under a the child care subsidized assistance program.~~

ITEM 5. Amend subrule 170.4(3), introductory paragraph, as follows:

170.4(3) Method of provision. The department shall issue the Child Care Certificate, Form 470-2959, to the client to select a child day care provider. Parents shall be allowed to exercise their choice for in-home care, *except when the parent meets the need for service under subparagraph 170.2(2) "b"(3), as long as the conditions in paragraph 170.4(7) "d" are met. When the child meets the need for service under paragraph 170.2(3) "d," 170.2(2) "b"(3),* parents shall be allowed to exercise their choice of *licensed or registered* child care provider except when the department service worker determines it is not in the best interest of the child.

ITEM 6. Amend rule 441—170.8(234), introductory paragraph, as follows:

441—170.8(234) Allocation of funds. The department shall allocate funds for child day care services to the regional offices of the department to ensure that the current need and projected growth in services to families *currently* receiving child day care services ~~as of June 30, 1993~~, and to families with protective child care needs are met. The funds for non-protective child day care services shall be allocated based on the expenditures of the regional office proportional to the total state expenditures for nonprotective child day care ser-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

VICES. The funds for protective child day care services shall be allocated based on historical data, with 60 percent of the total allocation to the regional office based on the number of founded child abuse cases in the state, and 40 percent of the total allocation to the regional office based on the number of child abuse reports in the region proportional to the total number of child abuse reports in the state. The department may redistribute any unobligated funds from the original allocation to the regional offices based on the number of children living in the region whose family income is at or below 100 percent of the federal poverty guidelines.

## ARC 7370A

## INSURANCE DIVISION[191]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 505.8 and 1997 Iowa Acts, House File 701, sections 1, 34, and 41, the Insurance Commissioner proposes to amend Chapter 35, "Accident and Health Insurance," Chapter 71, "Small Group Health Benefit Plans," and Chapter 75, "Iowa Individual Health Benefit Plans," Iowa Administrative Code.

The amendments relate to state conformance with federal legislation, "The Health Insurance Portability and Availability Act of 1996" along with two studies conducted by the Division in the area of health care coverage in the basic and standard health care plans pursuant to 1995 Iowa Acts, chapter 204, section 14, and 1996 Iowa Acts, chapter 1219, section 52.

Any interested person may make written suggestions or comments on these proposed rules by August 5, 1997. Written comments should be directed to Susan E. Voss, Iowa Insurance Division, Lucas State Office Building, Des Moines, Iowa 50319, or fax (515)281-3059.

There will be a public hearing on Wednesday, August 6, 1997, at 1 p.m. in the offices of the Insurance Division, Sixth Floor, Lucas State Office Building, at which time persons may present their views either orally or in writing. Any person wishing to speak at the public hearing should contact Susan E. Voss no later than Monday, August 4, 1997, at (515)281-5705.

These amendments are intended to implement 1997 Iowa Acts, House File 701.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7371A**. The content of that submission is incorporated by reference.

## ARC 7377A

NATURAL RESOURCE  
COMMISSION[571]

## 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 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

These rules establish the conditions under which the DNR will refund fees submitted with applications for special deer or turkey permits or accommodate related requests.

Any interested person may make written suggestions or comments on the proposed amendment on or before August 5, 1997. Such written material should be directed to the License Bureau, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, fax (515)281-6794. Persons who want to convey their views orally should contact Richard Smith at (515)281-8679 or at the offices of the License Bureau on the fourth floor of the Wallace State Office Building.

A public hearing will be held August 5, 1997, at 11 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views 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 rule.

Any person who intends to attend a public hearing and has special requirements to accommodate conditions such as hearing or mobility impairments should contact the Iowa Department of Natural Resources and advise of specific needs.

This rule is intended to implement Iowa Code sections 483A.9.

The following rule is proposed.

Amend 571—Chapter 15 by adding the following new rule:

**571—15.11(483A) Refunds or changes for special deer and turkey permits and general licenses.**

**15.11(1)** Invalid applications. Deer and turkey permit applications that are received too late for processing after the closing date for acceptance of applications or applications that are invalid on their face will be returned unopened to the applicant. Permit fees related to applications which are determined to be invalid by computer analysis or other analysis after the applications have been processed will be refunded to the applicant, less a \$10 invalid application fee to compensate for the additional processing cost related to an invalid application.

**15.11(2)** Death of applicant. Deer or turkey permit fees will be refunded to the applicant's estate when the permittee's death predates the season for which the permit was issued and a written request is received from the permittee's spouse, executor or estate administrator within 90 days of the last date for which the permit was issued.

**15.11(3)** National or state emergency. Deer or turkey permit fees will be refunded if the permittee is a member of the

## NATURAL RESOURCE COMMISSION[571](cont'd)

National Guard or a reserve unit that is activated for a national or state emergency which occurs during the season for which the permit was issued. A written refund request must be received by the DNR within 90 days of the last date of the season for which the permit was issued.

**15.11(4) Permit changes.** The DNR will attempt to change an applicant's choice of season or type of permit if a written or telephone request is received by the license bureau in sufficient time, usually 20 days, prior to printing the permit, and if the requested change does not result in disadvantage to another applicant. The agency's ability to accommodate requests to change season or permit type is dependent on workload and processing considerations. If the agency cannot accommodate a request to change a season or type choice, the permit will be issued as originally requested by the applicant. No refund will be allowed. The agency will not change the name on the permit from that submitted on the application.

**15.11(5) General hunting and fishing licenses duplicate purchase.** Upon a showing of sufficient documentation, usually a photocopy of the licenses, that more than one hunting or fishing license was purchased by or for a single person, the agency will refund the amount related to the duplicate purchase. A written refund request, with supporting documentation, must be received by the license bureau within 90 days of the date on the face of the duplicate licenses.

**15.11(6) Other refund requests.** Except as previously described, the DNR will not issue refunds for any licenses, stamps or permits related to fishing and hunting.

This rule is intended to implement Iowa Code section 483A.9.

## ARC 7387A

NATURAL RESOURCE  
COMMISSION[571]

## 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 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 19, and adopt in lieu thereof a new Chapter 19, "Sand and Gravel Permits," Iowa Administrative Code.

This action will rescind Chapter 19 and replace it with new rules describing the procedures and methods to be followed by the Iowa Department of Natural Resources and by private individuals and aggregate processing businesses to remove sand and gravel from state-owned lands and waters under the jurisdiction of the Department.

The new rules are intended to simplify royalty calculations and improve the language and organization of the rules to make them easier for the public to understand and utilize.

Any interested person may make written suggestions or comments on these proposed rules on or before August 5, 1997. Such written material should be directed to the Land Acquisition and Management Bureau, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, fax (515)281-6794. Persons who wish to con-

vey their views orally should contact Eileen Bartlett at (515)281-5728 or Gregory Jones at (515)281-5806 in the offices of the Land Acquisition and Management Bureau on the fourth floor of the Wallace State Office Building.

A public hearing will be held August 5, 1997, at 11 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

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

These rules are intended to implement Iowa Code sections 461A.52, 461A.53 and 461A.55 to 461A.57.

The following chapter is proposed.

Rescind 571—Chapter 19 and insert the following new chapter in lieu thereof:

## CHAPTER 19

## SAND AND GRAVEL PERMITS

**571—19.1(461A) Purpose.** This chapter provides the procedures for individuals and businesses to obtain a permit for removal of sand and gravel from state-owned lands and waters under the jurisdiction of the department of natural resources and the rules associated with the holding of a permit. The purpose of these rules is to ensure that the waterways are protected from permanent damage, that they remain ecologically intact, and that public recreational use is not adversely affected.

**571—19.2(461A) Definitions.**

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or a designee.

"Exclusive permit" means a permit issued for a described area which gives the permit holder sole and superior right to conduct activities as stated in this rule.

"Material" means any size particle of sand, gravel or stone.

"Nonexclusive permit" means a permit issued for a described area that does not give the permit holder sole right to conduct activities as described in this rule, and which may be superseded by the issuance of an exclusive permit.

"State-owned lands and waters" means lands and waters acquired by the state by fee title and sovereign lands and waters.

"Watercraft" means any vessel which through the buoyant force of water floats upon the water and is capable of carrying one or more persons.

**571—19.3(461A) Permit applications.** Applications shall be submitted to the department for nonexclusive or exclusive permits.

**19.3(1) Application procedures.** Applications shall be submitted on a form provided by the department and shall include the following:

a. A fee of \$100 for the cost of inspection and issuance of each permit.

b. A map of the specific area or segment of the river or stream to be included under the permit indicating the section, township, range, location of the processing plant and material stockpiles, the location shape, and size of existing or pro-

## NATURAL RESOURCE COMMISSION[571](cont'd)

posed tailing ponds for washing operations, and the method of material removal.

c. A statement certifying that, if necessary, access over privately owned land to the permit site has been secured by the applicant for the use of the department personnel for inspection purposes.

**19.3(2) Nonexclusive permits.** Applications for nonexclusive permits may be submitted, for the current calendar year, at any time. Nonexclusive permits are subject to issuance of exclusive permits. In the event an exclusive permit is issued for a site covered by an existing nonexclusive permit, the nonexclusive permit shall be terminated in the same manner as termination for cause.

**19.3(3) Exclusive permits.** Applications for exclusive permits may be submitted, for the current calendar year, at any time. Applications for exclusive permits for the following calendar year shall only be accepted after November 15. In the event an application is received for an area covered by an existing nonexclusive permit, the holder of the existing permit shall be notified within 20 days and invited to submit an application for an exclusive permit. If more than one application for an exclusive permit site is received, issuance will be determined by written sealed bids. Bids shall be based on royalty rates. Bids submitted with a royalty rate less than 25 cents per ton shall not be accepted. The permit shall be issued to the applicant submitting the highest royalty rate bid.

**19.3(4) Application approval.** Each application will be reviewed by the department and a permit shall be issued unless it is determined that the proposed activity will result in significant temporary or permanent ecological damage or result in significant adverse effects on public recreational use.

**19.3(5) Insurance.** Prior to issuance of permits, approved applicants shall provide the department a certificate of insurance, covering the entire permit term, to jointly and severally indemnify and hold harmless the state of Iowa, its agencies, officials and employees from and against all liability, loss, damage or expense which may arise in consequence of issuance of the permit.

**19.3(6) Surety bonds.** Prior to issuance of permits, approved applicants shall provide to the department a surety bond in the amount of \$5,000, covering the term of the permit. The surety bond shall guarantee payment to the state of Iowa for all material removed under the permit within 60 days after expiration of the permit, unless the permit holder renews the permit within 30 days of said expiration date.

#### **571—19.4(461A) Permit conditions and operating procedures.**

**19.4(1) Permit term.** Permits shall expire on December 31 of each calendar year.

**19.4(2) Permit area.** The size and configuration of permit sites shall be as designated by the director. The maximum continuous length of a river or stream covered by each permit shall be 4,500 lineal feet.

**19.4(3) Disturbance of bank.** Removal operations authorized by permits shall not be performed within 30 feet of the existing bank or breach the bank at any location along any lake, stream or river unless written permission is obtained from the director prior to performance of such operations.

**19.4(4) Water flow and watercraft obstruction.** Removal operations authorized by permits shall not obstruct the flow of water to the extent of preventing its ultimate passage to its usual course below the lands and waters covered by the permits and shall not prevent movement of watercraft through such waters.

**19.4(5) Waterway marking.** All equipment at permit sites that is on the surface of water or above or under the water shall be marked to be visible 24 hours per day. Any structure or other device below the water must be marked to indicate to watercraft operators where safe passage may occur. All markings shall conform to the uniform waterway marking system and be provided and installed by permit holders.

**19.4(6) Termination for cause.** Permits may be terminated by the director at any time if a permit holder fails to fulfill the obligations under the permit in a timely and proper manner, or if a permit holder violates any of the terms and conditions of the permit. In the event of termination the director shall serve a notice of termination to the permit holder in person or to any agent of the permit holder at or near the operation site or by certified mail at the address indicated on the permit. The permit shall be considered terminated as of the date of service of the notice. In the event of termination, no refund of royalty or application fees will be paid. Upon service of the notice of termination, the permit holder shall immediately stop all removal operations and remove all equipment from the lands and waters covered by the permit within ten days after the date of the notice of termination. In the event of failure of the permit holder to remove all equipment from the premises within such time period, the director shall have the right to remove the equipment at the expense of the permit holder.

**19.4(7) Inspections.** Permit sites may be inspected by the director at any time during the permit term in order to verify compliance with permit terms and conditions, or thereafter until final payment is made under a terminated permit. Permit holders shall keep a daily record of the amount of material removed in the manner described by the director. All such records shall be open to inspection by the director at all times.

**19.4(8) Reporting procedures.** Permit holders shall furnish an itemized statement of material removal operations to the director within ten days after the last day of each calendar month. Statements shall also be filed in months when no materials are removed. Reporting procedures may be modified on a case-by-case basis at the discretion of the director, to accommodate differences in material removal or operation methods. However, reporting periods shall not be greater than one-month intervals. Permit holders shall notify the department ten days prior to the initial start of removal operations or whenever the previous monthly statement indicated no materials removed. Each cubic yard of sand, gravel, and stone removed under permits shall be considered to weigh 3000 pounds. Statements shall be submitted on forms furnished by the department and shall indicate the following:

a. Hours of removal operations performed each day on lands and waters covered by the permit.

b. Tons of material removed from the lands and waters covered by the permit each day.

c. Tons of material, from all sources, stockpiled at the operations site at the end of the month.

**19.4(9) Royalty payments.** Permit holders shall make royalty payments on a monthly basis for all material removed from permit sites within ten days after the last day of each calendar month. Monthly royalty payments shall be calculated using the tonnage of material removed as reported on the monthly statement. The royalty rate shall be 25 cents per ton. Exclusive permit holders shall pay an annual minimum royalty fee of \$10,000, to be paid upon issuance of the permit. Exclusive permit holders shall receive royalty credit for materials removed to a maximum of \$5,000 annually.

## NATURAL RESOURCE COMMISSION[571](cont'd)

These rules are intended to implement Iowa Code sections 461A.52, 461A.53, and 461A.55 to 461A.57.

## ARC 7385A

NATURAL RESOURCE  
COMMISSION[571]

## 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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, "Deer Hunting," Iowa Administrative Code.

These rules give the seasons for hunting deer during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take and transportation tag requirements. The proposed amendment specifies the required procedures for issuing additional deer licenses and shooting permits to reduce damage from deer to agricultural and horticultural crops.

Any interested person may make written suggestions or comments on this proposed amendment on or before August 19, 1997. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on August 19, 1997, at 10 a.m. in the Fourth Floor Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following amendment is proposed.

Rescind rule 571—106.11 and insert the following new rule in lieu thereof:

**571—106.11(481A) Deer depredation management.** Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

**106.11(1) Method of take and other regulations.** Legal weapons and restrictions will be governed by 571—106.7(481A).

Deer may be taken from one-half hour before sunrise to one-half hour after sunset regardless of weapon used. The producer or designee must meet the deer hunters' orange apparel requirements in Iowa Code section 481A.122.

**106.11(2) Eligibility.** Producers growing typical agricultural crops (such as corn, soybeans, hay and oats, and tree farms and other forest lands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nurseries, and commercial nut growers) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding \$1,500 in a single growing season, or the likelihood that damage will exceed \$1,500 if preventive action is not taken, or a documented history of at least \$1,500 damage annually in previous years.

**106.11(3) Depredation management plans.** Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by the field employee in consultation with the producer.

a. The goal of the management plan will be to reduce damage below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of these measures, plus permanent fencing where necessary.

(3) Depredation permits to shoot deer may be issued to temporarily reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the field employee of the wildlife bureau and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

**106.11(4) Depredation permits.** Two types of depredation permits may be issued under a depredation management plan.

a. Deer depredation licenses. Extra paid licenses may be sold to hunters for the regular deer license fee to be used during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No in-

## NATURAL RESOURCE COMMISSION[571](cont'd)

dividual may obtain more than two depredation licenses. Licenses will be sold by designated department field employees.

(3) Depredation licenses issued to the producer or producer's family member may be the one free license for which the producer family is eligible annually.

(4) Depredation licenses will be valid only for antlerless deer, unless otherwise specified in the management plan, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(5) Hunters may keep any deer legally tagged with a depredation license.

(6) All other regulations for the hunting season specified on the license will apply.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued only to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation).

(1) Deer shooting permits will be issued at no cost to the producer.

(2) The producer or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking antlered deer, antlerless deer or any deer, depending on the nature of the damage.

(4) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(5) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

(6) Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

c. Deer depredation licenses and shooting permits will be valid only on the land where damage is occurring or the immediately adjacent property. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

d. Depredation licenses and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

e. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd.

**106.11(5) Disposal.** It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate disposal of deer offered to the public through the local conservation officer. Charitable organizations will have the first opportunity to take deer offered to the public. No producer can keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

ARC 7386A

## NATURAL RESOURCE COMMISSION[571]

## 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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter and Spotted Skunk Seasons," Iowa Administrative Code.

These rules give the regulations for taking furbearers (except groundhog) and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 14, 1997. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on August 14, 1997, at 2 p.m. in the Fourth Floor Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

This amendment is intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87 and 481A.90.

The following amendment is proposed.

Amend subrule 108.7(2) as follows:

**108.7(2) Trapping near beaver lodges and dens.** There will be no trapping within ten yards of active or inactive beaver lodges or dens in certain areas described as follows: *those portions of the Cedar River and Indian Creek floodplains enclosed by Highways 30, 151, Business 151 and I-380 in Linn County.*

~~a. Area one. All federal and state owned lands or waters of the Red Rock Reservoir in Marion, Polk, and Warren Counties.~~

~~b. Area two. That portion of the Middle Raccoon River floodplain in Guthrie County bounded by State Highway 141 on the north and State Highway 44 on the south.~~

~~c. Area three. That portion of the Iowa River floodplain in Tama, Benton, and Iowa counties bounded by U.S. Highway 63 on the west and State Highway 21 on the east.~~

~~d. Area four. Those portions of the Boone and Des Moines River floodplain in Webster and Hamilton counties bounded by U.S. Highway 20 on the north and State Highway 175 on the south.~~

## NATURAL RESOURCE COMMISSION[571](cont'd)

e. ~~Area five. All federal and state owned lands or waters of Rathbun Reservoir in Appanoose, Lucas, Monroe and Wayne counties, including Brown's Slough and Colyn areas in Lucas county.~~

f. ~~Area six. That portion of the Little Sioux River floodplain in Cherokee, Clay and Buena Vista counties bounded by Cherokee County Road C16 on the west and south and U.S. Highway 71 on the east.~~

g. ~~Area seven. That portion of the Wapsipinicon River floodplain in Bremer County bounded by U.S. Highway 63 on the north and U.S. Highway 3 on the south, and the public lands associated with the Sweet Marsh Wildlife Management Area.~~

h. ~~Area eight. That portion of the Wapsipinicon River floodplain in Linn and Jones counties bounded by Cass County Road N28 on the north and Montgomery County Road H46 on the south.~~

i. ~~Area nine. That portion of the Nodaway River floodplain in Cass and Montgomery counties bounded by Cass County Road N28 on the north and Montgomery County Road H46 on the south.~~

j. ~~Area ten. That portion of the Cedar River floodplain between State Highway 9 and the Iowa-Minnesota state line.~~

k. ~~Area eleven. That portion of the Winnebago River floodplain between Cerro Gordo County Road S18 and U.S. Highway 18.~~

## ARC 7366A

## PHARMACY EXAMINERS BOARD[657]

### 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 124.301, 147.76, and 155A.13, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to rescind Chapter 6, "General Pharmacy Licenses," and adopt a new Chapter 6, "General Pharmacy Licenses," Iowa Administrative Code.

The rules were approved at the June 10, 1997, regular meeting of the Iowa Board of Pharmacy Examiners.

The rules identify requirements for pharmacy personnel and their responsibilities, equipment, space, and reference requirements, record-keeping and record retention requirements, and drug procurement, storage, and security requirements in a general pharmacy setting.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on August 5, 1997. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code sections 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.31, 155A.32, and 155A.35.

The following rules are proposed.

Rescind 657—Chapter 6 and adopt the following new chapter in lieu thereof:

## CHAPTER 6

## GENERAL PHARMACY LICENSES

**657—6.1(155A) Applicability.** A general pharmacy is a location where a pharmacist practices in accordance with pharmacy laws. This chapter does not apply to hospital pharmacy licenses issued pursuant to 657—Chapter 7.

**657—6.2(155A) Personnel.**

**6.2(1) Pharmacist in charge.** Each pharmacy shall have one pharmacist in charge who is responsible for, at a minimum, the following:

- a. Ensuring that a pharmacist performs prospective drug review as specified in rule 657—8.19(155A);
- b. Ensuring that a pharmacist provides patient counseling as specified in rule 657—8.20(155A);
- c. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling of the drug;
- d. Delivering drugs to the patient or the patient's agent;
- e. Ensuring that patient medication records are maintained as specified in rule 657—8.18(155A);
- f. Training pharmacy technicians and supportive personnel;
- g. Establishing policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;
- h. Disposing of and distributing drugs from the pharmacy;
- i. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations;
- j. Establishing and maintaining effective controls against the theft or diversion of prescription drugs and records for such drugs;
- k. Legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, or regulations governing the practice of pharmacy.

**6.2(2) Pharmacists.** The pharmacist in charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the pharmacy competently, safely, legally, and adequately to meet the needs of the patients of the pharmacy.

a. Pharmacists shall assist the pharmacist in charge in meeting the responsibilities identified in subrule 6.2(1).

b. Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties pursuant to 657—Chapter 22 and rule 657—8.1(155A).

c. All pharmacists shall be responsible for complying with state and federal laws or rules governing the practice of pharmacy.

**6.2(3) Other personnel.**

a. Pharmacist-interns, pursuant to the requirements and limitations contained in 657—Chapter 4, shall assist the pharmacist in charge in meeting the responsibilities identified in subrule 6.2(1).

b. Pharmacy technicians and other support personnel, pursuant to the requirements and limitations contained in 657—Chapter 22, shall assist the pharmacist in charge in meeting the responsibilities identified in subrule 6.2(1).

## PHARMACY EXAMINERS BOARD[657](cont'd)

**657—6.3(155A) Reference library.** References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following:

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
  - United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
  - Facts and Comparisons Patient Drug Facts; or
  - Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
  - Phillip D. Hansten's Drug Interactions; or
  - Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
  - Facts and Comparisons with current supplements;
  - United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
  - American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
  - Approved Drugs Products With Therapeutic Equivalence Evaluations (FDA Orange Book);
  - ABC - Approved Bioequivalency Codes; or
  - USP DI, Volume III.
6. Basic antidote information and the telephone number of the nearest regional poison control center.
7. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

**657—6.4(155A) Prescription department equipment.** The prescription department shall have, as a minimum, the following:

1. Measuring devices such as syringes or graduates capable of measuring 1 ml. to 250 ml.;
2. Suitable refrigeration unit. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration;
3. Other equipment as necessary for the particular practice of pharmacy.

**657—6.5(155A) Environment.**

**6.5(1)** Space, equipment, and supplies. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy.

**6.5(2)** Clean and orderly. The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner.

**6.5(3)** Sink. A pharmacy shall have a sink with hot and cold running water within the prescription department, available to all pharmacy personnel, and maintained in a sanitary condition.

**6.5(4)** Counseling area. A pharmacy shall contain an area which is suitable for confidential patient counseling. Such area shall:

- a. Be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;
- b. Be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

**6.5(5)** Lighting and ventilation. The pharmacy shall be properly lighted and ventilated.

**6.5(6)** Temperature. The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

**657—6.6(155A) Security.** Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

**6.6(1)** The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in subrule 6.6(2).

**6.6(2)** In the temporary absence of the pharmacist, only the pharmacist in charge may designate persons who may be present in the prescription department to perform functions designated by the pharmacist in charge. Activities identified in subrule 6.6(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours, during which time the prescription department is closed.

**6.6(3)** Activities which shall not be designated and shall not be performed during the temporary absence of the pharmacist include:

- a. Dispensing or distributing any prescription medication to patients or others.
- b. Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.
- c. Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.19(155A).
- d. Providing patient counseling, consultation, or patient-specific drug information.
- e. Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.
- f. Prescription transfers to or from other pharmacies.

**657—6.7(155A) Procurement and storage of drugs.** The pharmacist in charge shall have the responsibility for the procurement and storage of drugs.

**6.7(1)** Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a secure storage area.

**6.7(2)** All drugs shall be stored at the proper temperature, as defined by the following terms:

- a. Controlled room temperature — temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);
- b. Cool — temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit) which may, alternatively, be stored in a refrigerator unless otherwise specified on the labeling;
- c. Refrigerate — temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and
- d. Freeze — temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

**6.7(3)** Out-of-date drugs or devices.

a. Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

b. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are disposed of properly.

## PHARMACY EXAMINERS BOARD[657](cont'd)

**657—6.8(155A) Records.** Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or 657—Chapter 6 shall be kept at the licensed location of the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as otherwise required in this rule. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:

**6.8(1)** Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances;

**6.8(2)** Records of controlled substances in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V and all other records;

**6.8(3)** A Schedule V nonprescription registry book shall be maintained in accordance with 657—subrule 10.13(13).

**6.8(4)** Invoices involving the distribution of Schedule III, IV, or V controlled substances to another pharmacy or practitioner must show the actual date of distribution; the name, strength, and quantity of controlled substances distributed; the name, address, and DEA registration number of the distributing pharmacy and of the practitioner or pharmacy receiving the controlled substances;

**6.8(5)** Copy 1 of DEA order form 222, furnished by the pharmacy or practitioner to whom Schedule II controlled substances are distributed, shall be maintained by the distributing pharmacy and shall show the quantity of controlled substances distributed and the actual date of distribution;

**6.8(6)** Copy 3 of DEA order form 222 shall be properly dated, initialed, and filed and shall include all copies of each unaccepted or defective order form and any attached statements or other documents;

**6.8(7)** If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable from all other items appearing on the records;

**6.8(8)** Suppliers' invoices of prescription drugs and controlled substances shall clearly record the actual date of receipt by the pharmacist or other responsible individual;

**6.8(9)** Suppliers' credit memos for controlled substances and prescription drugs shall be maintained;

**6.8(10)** A biennial inventory of controlled substances shall be maintained for a minimum of four years from the date of the inventory;

**6.8(11)** Reports of theft or significant loss of controlled substances shall be maintained;

**6.8(12)** Reports of surrender or destruction of controlled substances shall be maintained.

**6.8(13)** Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. The records maintained in the alternative system contain all of the information required on the manual record; and

b. The data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

**657—6.9(126) Return of drugs and appliances.** For the protection of the public health and safety, prescription drugs shall not be returned, exchanged, or resold unless, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised. Pre-

scription drugs may, however, be returned and reused as authorized in 657—subrule 8.9(6). No items of personal contact nature which have been removed from the original package or container after sale shall be accepted for return, exchanged, or resold by any pharmacist.

These rules are intended to implement Iowa Code sections 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.31, 155A.32, and 155A.35.

ARC 7367A

## PHARMACY EXAMINERS BOARD[657]

### 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 155A.13, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 7, "Hospital Pharmacy Licenses," Iowa Administrative Code.

The amendment was approved at the June 10, 1997, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendment revises the list of required references to be maintained by the pharmacy, providing options for the format (printed or electronic) of the various references and permitting the pharmacist in charge more latitude to determine preferred references appropriate to the needs of the practice.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on August 5, 1997. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code section 155A.31.

The following amendment is proposed.

Rescind rule 657—7.3(155A) and adopt the following **new** rule in lieu thereof:

**657—7.3(155A) Reference library.** References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following:

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
  - United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
  - Facts and Comparisons Patient Drug Facts; or
  - Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
  - Phillip D. Hansten's Drug Interactions; or
  - Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:

## PHARMACY EXAMINERS BOARD[657](cont'd)

- Facts and Comparisons with current supplements;
  - United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
  - American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
- Approved Drugs Products With Therapeutic Equivalence Evaluations;
  - ABC - Approved Bioequivalency Codes; or
  - USP DI, Volume III.
6. A current IV mixing guide such as:
- Betty Gahart's Intravenous Medications; or
  - Trissel's Handbook on Injectable Drugs.
7. A current drug identification reference such as:
- Genorex;
  - Ident-a-Drug; or
  - Other drug identification reference to enable identification of drugs brought into the facility by patients.
8. Basic antidote information and the telephone number of the nearest regional poison control center.
9. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

## ARC 7368A

PHARMACY EXAMINERS  
BOARD[657]Notice of Termination  
and  
Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 124.301, 124.306, 147.76, 155A.13, and 155A.35, the Iowa Board of Pharmacy Examiners hereby gives Notice of Termination and Notice of Intended Action to adopt Chapter 21, "Confidential and Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The Iowa Board of Pharmacy Examiners hereby terminates the rule making initiated by its Notice of Intended Action published in the January 1, 1997, Iowa Administrative Bulletin as ARC 6951A. Due to public comment regarding that Notice of Intended Action, the Board made substantive changes to the language of the originally proposed chapter.

These rules were approved at the June 10, 1997, regular meeting of the Iowa Board of Pharmacy Examiners.

The new chapter provides for the security, operational procedures, and minimum requirements in pharmacies utilizing electronic processing and exchange of data and defines and delineates confidential data in the practice of pharmacy.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on August 5, 1997. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, Executive

Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code sections 124.306, 124.308, 155A.27, and 155A.35.

The following new chapter is proposed.

## CHAPTER 21

CONFIDENTIAL AND ELECTRONIC DATA  
IN PHARMACY PRACTICE

**657—21.1(124,155A) Definitions.** For the purpose of this chapter, the following definitions shall apply:

"Confidential information" means information accessed or maintained by the pharmacy in the patient's records which contains personally identifiable information including but not limited to prescription and medication information, prescriber name and address, diagnosis, allergies, disease state, and drug interactions, regardless of whether such information is communicated to or from the patient, is in the form of paper, is preserved on microfilm, or is stored on electronic media.

"Electronic signature" means a confidential personalized digital key, code, or number used for secure electronic data transmissions which identifies and authenticates the signatory.

"Electronic transmission" means the transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment. Electronic transmission includes but is not limited to transmission by facsimile machine and transmission by computer link, modem, or other computer communication device.

"Personally identifiable information" means any information contained in the patient record which could identify the patient including but not limited to name, address, telephone number, and social security number.

"Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient that is communicated to a pharmacy.

**657—21.2(124,155A) Confidentiality and security of patient records and prescription drug orders.**

**21.2(1) Confidential information.** As provided in 657—subrule 8.5(5), confidential information in the patient record, including the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber, may be released only as follows:

- a. Pursuant to the express written consent or release of the patient or the order or direction of a court.
- b. To the patient or the patient's authorized representative.
- c. To the prescriber or other licensed practitioner then caring for the patient.
- d. To another licensed pharmacist where the best interests of the patient require such release.
- e. To the board or its representative or to such other persons or governmental agencies duly authorized by law to receive such information.

A pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any persons requesting confidential patient information pursuant to this rule are entitled to receive that information.

**21.2(2) Exceptions.** Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

## PHARMACY EXAMINERS BOARD[657](cont'd)

a. Transferring a prescription to another pharmacy.  
 b. Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is marked "For Information Purposes Only."

c. Providing drug therapy information to physicians or other authorized prescribers for their patients.

**21.2(3) Storage system security and safeguards.** To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders. Once a drug has been dispensed, any alterations in either the prescription drug order data or the patient record shall be documented and shall include the identification of all pharmacy personnel who were involved in making the alteration as well as the responsible pharmacist.

**657—21.3(124,155A) Manner of issuance of a prescription drug order.** A prescription drug order may be transmitted from a prescriber to a pharmacy in written form, orally including telephone voice communication, or by electronic transmission in accordance with applicable federal and state law and rules or guidelines of the board.

**21.3(1) Verification of prescription drug order.** The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription drug order consistent with federal and state law and rules and guidelines of the board. In exercising professional judgment, the prescribing practitioner and the pharmacist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

**21.3(2) Transmitting agent.** The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order orally or by electronic transmission provided that the identity of the transmitting agent is included in the order.

**657—21.4(124,155A) Computer-to-computer transmission of a prescription.** All prescription drug orders, excluding controlled substances, which are communicated directly from a prescriber's computer to a pharmacy's computer by electronic transmission shall:

**21.4(1)** Be sent only to the pharmacy of the patient's choice with no unauthorized intervening person or other entity controlling, screening, or otherwise manipulating the prescription drug order or having access to it.

**21.4(2)** Identify the transmitter's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state law or rules or guidelines of the board.

**21.4(3)** Be transmitted only by an authorized prescriber or the prescriber's agent and shall include the prescriber's electronic signature.

**21.4(4)** Be deemed the original prescription drug order provided it meets the requirements of this rule.

**657—21.5(124,155A) Facsimile transmission of a prescription.** A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription transmitted to the pharmacy by the prescribing practitioner or the practitioner's agent.

**21.5(1) Prescription requirements.** The transmitted prescription drug order:

a. Shall serve as the original prescription.

b. Shall be maintained for a minimum of two years from the date of last fill or refill.

c. Shall contain all information required by Iowa Code section 155A.27.

**21.5(2) Legitimate purpose.** The pharmacist shall ensure that the prescription has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice.

**21.5(3) Verifying authenticity of a transmitted prescription.** The pharmacist shall ensure the validity of the prescription as to its source of origin. Measures to be considered in authenticating prescription drug orders received via electronic transmission include:

a. Maintenance of a practitioner's facsimile number reference or other electronic signature file.

b. Verification of the telephone number of the originating facsimile equipment.

c. Telephone verification with the practitioner's office that the prescription was both written by the practitioner and transmitted by the practitioner or the practitioner's authorized agent.

d. Other efforts which, in the professional judgment of the pharmacist, may be necessary to ensure the transmission was initiated by the prescriber.

**657—21.6(124,155A) Prescription drug orders for Schedule II controlled substances.** A pharmacist may dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of a written, signed prescription from the prescribing practitioner or the practitioner's agent provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance. The original prescription shall be verified against the transmission at the time the substance is actually dispensed, shall be properly annotated, and shall be retained for filing.

**657—21.7(124,155A) Prescription drug orders for Schedule II controlled substances—emergency situations.** A pharmacist may, in an emergency situation as defined in 657—subrule 10.13(5), dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of a written, signed prescription from the prescribing practitioner or the practitioner's agent pursuant to the requirements of 657—10.13(124). The facsimile or a print of the electronic transmission shall serve as the temporary written record required in 657—subrule 10.13(2).

**657—21.8(124,155A) Facsimile transmission of a prescription for Schedule II narcotic substances—infusion.** A prescription for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to a home infusion pharmacy via facsimile.

**21.8(1)** The facsimile serves as the original written prescription.

**21.8(2)** This rule applies only to Schedule II narcotic prescription drug infusion orders for patients who reside in a long-term care facility, a private residence, or a hospice setting.

**21.8(3)** The facsimile transmission of a prescription drug order for oral dosage units of Schedule II narcotic substances is not authorized by this rule.

**657—21.9(124,155A) Facsimile transmission of Schedule II controlled substances—long-term care facility patients.** A prescription for any Schedule II controlled sub-

## PHARMACY EXAMINERS BOARD[657](cont'd)

stance for a resident of a long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy via facsimile.

**21.9(1)** The facsimile serves as the original written prescription.

**21.9(2)** The patient's address on the prescription shall indicate that the addressed location is a long-term care facility.

**657—21.10(124,155A) Facsimile transmission of Schedule II controlled substances—hospice-resident patients.** A prescription for any Schedule II controlled substance for a resident of a hospice certified by Medicare under Title XVIII or licensed pursuant to Iowa Code chapter 135J may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy via facsimile.

**21.10(1)** The facsimile serves as the original written prescription.

**21.10(2)** The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

These rules are intended to implement Iowa Code sections 124.306, 124.308, 155A.27, and 155A.35.

## ARC 7389A

PROFESSIONAL LICENSURE  
DIVISION[645]

## BOARD OF RESPIRATORY CARE 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 Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 260, "Respiratory Care Practitioners," Iowa Administrative Code.

The proposed amendments define terms, establish language for temporary and permanent licensure, renewals, reinstatements, and continuing education. The amendments add language for fees, organization and proceedings of the board office, hours, and availability of information.

Any interested person may make written comments on the proposed amendments no later than August 7, 1997, addressed to Marge Bledsoe, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on August 7, 1997, from 9 to 11 a.m. in the Fourth Floor Conference Room, Side 1, 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 proposed amendments are intended to implement Iowa Code chapters 17A, 22, 147, 152B and 272C.

The following amendments are proposed.

Rescind rules **645—260.1(152B)** to **645—260.17(152B)** and adopt new rules **645—260.1(152B)** to **645—260.17(152B)** as follows:

**645—260.1(152B) Definitions.**

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

"Accredited sponsor number" means the number assigned by the board which identifies an accredited sponsor.

"Administrator" means the administrator of the board of respiratory care examiners.

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

"Board" means the board of respiratory care examiners.

"Department" means the Iowa department of public health.

"Hour" of continuing education means 50 minutes of didactic instruction or independent study.

**645—260.2(152B) Availability of information.** All information regarding rules, forms, time and place of meetings, minutes of meetings, and records of hearings is available to the public between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Written information may be obtained from: Iowa Board of Respiratory Care Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Inquires may be made by E-mail address for the board of respiratory care examiners to [Khoover@idph.state.ia.us](mailto:Khoover@idph.state.ia.us).

**645—260.3(147,152B) Organization and proceedings.**

**260.3(1)** The board consists of five members appointed by the governor and confirmed by the senate. The board shall include one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the society for respiratory care, and one member who is not licensed to practice medicine or respiratory care and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

**260.3(2)** A chairperson, vice chairperson, and secretary shall be elected at the first meeting after April 30 of each year.

**260.3(3)** The board shall hold at least an annual meeting and may hold additional meetings called by the chairperson or by a majority of its members. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert's Revised Rules of Order at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

**645—260.4(152B) Requirements for temporary licensure.**

**260.4(1)** Applicants who have not passed the registry examination for respiratory therapists administered by the National Board for Respiratory Care or an entry level certification examination for respiratory therapy technicians administered by the National Board for Respiratory Care shall meet the following requirements prior to receiving a temporary license:

a. The applicant shall complete and submit to the board the application form provided by the board.

b. The applicant shall verify on a form provided by the board that the applicant is presently functioning in the capac-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ity of a respiratory care practitioner as defined by Iowa Code chapter 152B.

**260.4(2)** Temporary licenses expire on July 1, 1999. An applicant must receive a permanent license on or before July 1, 1999, in order to continue to practice respiratory care.

**260.4(3)** Applicants who receive a temporary license are subject to all board rules, including continuing education requirements and disciplinary procedures.

**645—260.5(152B) Requirements for permanent licensure.** An applicant for a license to practice as a respiratory care practitioner shall meet the following requirements:

1. The applicant shall complete and submit to the board the application form provided by the board.

2. The applicant shall satisfactorily complete the registry examination for respiratory therapists or respiratory therapy technician administered by the National Board for Respiratory Care.

3. The applicant shall have successfully completed a respiratory care education program for training respiratory therapists.

**645—260.6(152B) Application.**

**260.6(1)** The application form shall be completed in accordance with the instructions contained in the application.

**260.6(2)** Each application shall be accompanied by a check or money order in the amount required payable to the Iowa Board of Respiratory Care Examiners. This fee is non-refundable.

**260.6(3)** No application will be considered by the board until official copies of academic transcripts, supporting documentation and fee(s) have been received by the board.

**260.6(4)** Applications for licensure which do not meet the minimum criteria for licensure shall be retained by the professional licensure division for a maximum of three years from the date the application was received. Persons whose applications for licensure are more than three years old must submit a new application and applicable fee(s).

**260.6(5)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing to the board within 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at the hearing.

**645—260.7(152B) License renewal.**

**260.7(1)** The biennial license renewal period shall extend from January 1 of each even-numbered year through December 31 of the next odd-numbered year.

**260.7(2)** At least two months prior to the expiration of the license, the board office shall mail a renewal application and continuing education report form to the licensee. Failure to receive the notice shall not relieve the licensee holder of the obligation to pay biennial renewal fees on or before the renewal date.

a. The licensee shall submit to the board office, 30 days before licensure expiration, the application and continuing education report form with the renewal fee as specified in rule 260.11(152B).

b. When the licensee has satisfactorily completed the requirements for renewal 30 days in advance of the expiration of the previous license, a renewal license shall be issued and mailed to the licensee before expiration of the previous license.

**260.7(3)** When the licensee has not satisfactorily completed the requirements for renewal before the previous li-

cence expired and prior to its becoming delinquent, the licensee shall be assessed a late fee, as specified in rule 260.11(152B).

**260.7(4)** If the renewal fees are not received by the board within 60 days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee in addition to the renewal fee and the penalty fee outlined in subrule 260.7(1) and rule 260.11(152B).

**645—260.8(152B) Inactive license.** Licensees who do not practice respiratory care may be granted a waiver of compliance with continuing education requirements. The licensees shall apply in writing to the board requesting such status. The request shall contain a statement that the licensees will not hold themselves out to the public as being licensed respiratory care practitioners or practice respiratory care during the time the waiver is in effect. Inactive licensees shall pay the reinstatement fees as provided in subrule 260.11(5).

**645—260.9(152B) Reinstatement of an inactive license.**

**260.9(1)** Inactive licensure reinstatement. Inactive practitioners who have been granted a waiver of compliance as provided in rule 260.8(152B) shall, prior to practicing respiratory care in the state of Iowa, satisfy the following requirements for reinstatement.

a. Submit written application for reinstatement on a form provided by the board.

b. Furnish, in addition to the application, evidence of one of the following:

(1) The full-time practice of respiratory care in another state of the United States or District of Columbia and completion of continuing education for each year of inactive status substantially equivalent as determined by the board to that required under these rules; or

(2) Completion of a total number of hours of approved continuing education computed by multiplying 15 by the number of years the inactive status has been in effect not to exceed 75 hours; or

(3) Successful completion of the approved entry level examination conducted within one year prior to filing of the application for reinstatement; or

(4) Successful completion of a minimum 75-hour refresher course from a school accredited by the Joint Review Committee for Respiratory Care Education within one year prior to filing of the application for reinstatement.

c. Payment of the current biennial license renewal fee and reinstatement fee when applying for reinstatement of an inactive license as provided in rule 260.11(152B).

**260.9(2)** Reserved.

**645—260.10(152B) Reinstatement of lapsed licenses.**

**260.10(1)** A license shall be considered lapsed if not renewed within 30 days of the renewal date.

**260.10(2)** A licensee who wishes to reinstate a lapsed license shall pay past due renewal fees to a maximum of four years, a reinstatement fee and penalty fees.

**260.10(3)** Continuing education requirements for the period of time the license was lapsed are not waived.

**260.10(4)** Application for reinstatement shall be made on a form provided by the board.

**645—260.11(152B) Fees.**

**260.11(1)** Application fee for a license to practice as a respiratory care practitioner is \$75.

**260.11(2)** Biennial renewal fee for a license to practice as a respiratory care practitioner is \$50.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**260.11(3)** Penalty fee for late payment of renewal fee is \$25.

**260.11(4)** Penalty fee for earning continuing education late is \$25.

**260.11(5)** Reinstatement fee is \$25.

**260.11(6)** Fee for duplicate license is \$10.

**260.11(7)** Fee for verification of licensure is \$10.

**260.11(8)** All fees are nonrefundable.

**645—260.12(152B) Students/graduates.**

**260.12(1)** A student enrolled in a respiratory therapy training program who is employed in an organized training program in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for a limited period as follows:

1. For the duration of the respiratory therapist program, not to exceed four years.

2. For the duration of the respiratory technician program, not to exceed two years.

**260.12(2)** A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in Iowa Code sections 152B.2 and 152B.3 under the direction and immediate supervision of a respiratory care practitioner for one year. The graduate shall be identified as a "respiratory care practitioner-license applicant."

**645—260.13(152B) Continuing education requirements for licensees.**

**260.13(1)** The biennial compliance period shall extend from January 1 of each even-numbered year to December 31 of each odd-numbered year. Compliance with the requirement of continuing education is a prerequisite for license renewal to practice as a respiratory care practitioner in each subsequent licensee renewal period.

**260.13(2)** Thirty continuing education hours shall be required for renewal of a license.

**260.13(3)** Continuing education hours shall be completed in the license period for which the license was issued. Hours of continuing education shall not be carried over into the next continuing education compliance period. Credit will not be accepted for a duplication of continuing education activities within a license period.

**260.13(4)** It is the responsibility of licensees to finance their own costs of continuing education.

**260.13(5)** If a licensee is first licensed during the first 12 months of the continuing education compliance period, the licensee shall complete at least 15 hours of continuing education for the first renewal. If a licensee is first licensed during the second 12 months of the continuing education compliance period, the licensee is not required to complete continuing education for the first renewal.

**260.13(6)** Licensees will be allowed no more than ten hours of approved independent study for continuing education requirements in a given compliance period. Independent, unsupervised self-study must have a posttest to receive credit.

**260.13(7)** Program presenters will not receive continuing education credit for programs presented. Presenters may request independent study credit for preparation as stated in 260.13(6).

**260.13(8)** Licensees shall submit a completed report form which documents the completion of continuing education requirements.

**645—260.14(152B) Approval of continuing education programs and activities.**

**260.14(1)** A continuing education program shall be eligible for approval if the board determines that the program complies with the following:

Is an organized program of learning; pertains to subject matters which integrally relate to the practice of a respiratory care practitioner; contributes to the professional competency of the licensee; and is conducted by individuals who have education, training, or experience and are considered qualified to present the subject matter of the program, and provides the attendee with a certificate of attendance at the completion of the program.

**260.14(2)** Continuing education credit may be granted for the successful completion of academic courses which apply to the field of respiratory care. An official transcript indicating successful completion of the course is required to obtain continuing education credit. One academic semester hour equals 15 continuing education hours of credit; one academic quarter hour equals 10 hours of continuing education credit.

**645—260.15(152B) Procedures for approval of continuing education programs.**

**260.15(1)** Prior approval of continuing education programs. An organization, educational institution, agency, individual, or licensee that desires approval of a continuing education program prior to its presentation shall apply for approval to the respiratory care office at least 30 days in advance of the commencement of the program on a form provided by the department, including a time schedule, outline and the qualifications of the instructors. The respiratory care office shall approve or deny the application in writing.

**260.15(2)** Review of continuing education programs. The board may monitor and review any continuing education program already approved. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

**260.15(3)** Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 30 days after completion of such activity, an application for credit. This shall include a brief résumé of the activity, its dates, time, subjects, instructors and their qualifications, and the number of credit hours requested and certificate of attendance. A licensee not complying with the requirements of this rule may be denied credit for such activity.

**260.15(4)** Retention of records. The licensee shall maintain a record of verification of attendance for at least four years from the date of completion of the continuing education program.

**260.15(5)** Approval of accredited sponsors.

a. An institution, organization, agency or individual desiring to be designated as an approved, accredited sponsor of continuing education activities shall apply on a form provided by the board. If approved by the board, such institution, organization, agency or individual shall be designated as an approved, accredited sponsor of continuing education activities; and the activities of such an approved sponsor which are relevant to respiratory care shall be deemed automatically approved for continuing education credit. Each accredited sponsor will be assigned a number for identification.

b. All approved, accredited sponsors shall issue a certificate of attendance to each licensee who attends a continuing education activity. The certificate shall include sponsor name and number; date of program; name of participant; to-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tal number of clock hours excluding introductions, breaks, and meals; program title and presenter; program site; and whether the program is approved for respiratory care.

c. All approved, accredited sponsors shall maintain a copy of the continuing education activity, a list of attendees, license number, and number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

**260.15(6)** Report of licensee. Each licensee shall file, if requested, a certificate of attendance form signed by the educational institution or organization sponsoring the continuing education. The report shall be sent to the Board of Respiratory Care Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**645—260.16(152B)** Hearings regarding continuing education. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for a continuing education activity, the applicant or licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board. The final decision shall be rendered by the board.

**645—260.17(152B)** Disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. A written request for waiver or extension of time shall be submitted by the licensee and shall be accompanied by a verifying document signed by a physician licensed by the board of medical examiners or a licensed psychologist. Waivers of the minimum educational requirements or extensions of time within which to fulfill the same may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee must reapply for the waiver or extension. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by the board.

group homes for mentally retarded persons. When this rule was originally developed, it applied to residential homes used to house mentally retarded individuals in a demonstration project; the Code provisions direct that rules "no more restrictive" than those developed for the demonstration project should apply to all facilities in this classification. These amendments broaden the applicability of the rules in a manner consistent with the statutory provision.

A public hearing on these proposed amendments will be held on August 6, 1997, at 10 a.m., in the Third Floor Conference Room of the 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](mailto: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, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the 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 section 135C.2.

The following amendments are proposed.

ITEM 1. Amend rule 661—5.620(100), introductory paragraph, as follows:

**661—5.620(100,135C)** General requirements for small group homes (specialized licensed facilities) ~~for the mentally retarded licensed pursuant to Iowa Code section 135C.2.~~

ITEM 2. Amend subrule 5.620(1) as follows:

**5.620(1)** Scope. This rule applies to specialized licensed facilities licensed under the provisions of Iowa Code section 135C.2 and having three to five beds ~~for the mentally retarded individuals who are infirm, convalescent, or mentally or physically dependent. with three to five beds.~~

## ARC 7393A

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

The amendments proposed here would clarify that fire safety requirements for small group homes specified in rule 661—5.620(100) apply to all such facilities licensed pursuant to Iowa Code section 135C.2, and not only to small

## ARC 7396A

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 691.6, the Department of Public Safety hereby gives Notice of Intended Action to rescind Chapter 21, "State Medical Examiner," and to adopt a new Chapter 70, "State Medical Examiner," Iowa Administrative Code.

The State Medical Examiner has statutory authority to regulate medical examiner investigations of deaths which occur in Iowa. These proposed rules are intended to imple-

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ment that authority, including specific areas of regulation which are enumerated in Iowa Code section 691.6, which include the conduct of autopsies, nature of medical examiner investigations, and the format and content of medical examiner reports.

A public hearing on these proposed rules will be held on August 6, 1997, at 9:30 a.m. in the Third Floor Conference Room of the 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; or by telephone at (515)281-5524; or by electronic mail via the Internet at [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) at least one day prior to the public hearing. Any written comments or information about these proposed rules 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 may be 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 rules are intended to implement Iowa Code sections 331.801 to 331.805, 691.5, and 691.6

The following rules are proposed.

Rescind **661—Chapter 21** and adopt the following new chapter:

CHAPTER 70  
STATE MEDICAL EXAMINER

**661—70.1(691) State medical examiner division.** The office of the state medical examiner, created by Iowa Code section 691.5, is established as a division of the Iowa department of public safety.

**70.1(1) State medical examiner.** The division is headed by the state medical examiner of the state of Iowa. The state medical examiner is appointed by and under the supervision of the commissioner of public safety and shall be a physician or surgeon or osteopathic physician or surgeon, licensed to practice in the state of Iowa, and possessing special knowledge of forensic pathology.

**70.1(2) Principal office, address.** The principal office of the division is in the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Mail can be addressed to the division at that address. The division can also be contacted by electronic mail via the Internet at [isme@dps.state.ia.us](mailto:isme@dps.state.ia.us).

**661—70.2(691) Autopsies.**

**70.2(1) Authorization.**

a. Autopsies may be authorized by the state medical examiner, county medical examiner for the county in which death occurred or was pronounced, or the county attorney who would have jurisdiction in criminal proceedings related to the death. When any of these agencies authorize an autopsy, authorization forms prescribed and distributed by the state medical examiner division (Form ME-3) shall be completed by the person authorizing the autopsy and shall suffice to authorize fully the performance of that autopsy.

b. County attorneys may authorize that postmortem radiographs, including but not restricted to routine X-rays and computerized tomography scans, be obtained for homicides

or where foul play is suspected in the death. The costs of these examinations shall be borne by the county served.

**70.2(2) Manner and techniques to be employed while conducting autopsies.**

a. An "autopsy" shall include external and internal examination of a person's body following death. Internal examination includes, but is not restricted to, opening the body cavities (i.e., chest, abdomen and head) for direct visual and physical examination. External examination or inspection of a body does not constitute an autopsy, even if toxicology samples (e.g., blood, urine or vitreous fluid) are obtained.

b. Autopsies shall be performed by trained physicians or pathologists, or by trained individuals working under the direct supervision of a pathologist.

c. Autopsies performed pursuant to these rules shall be performed utilizing techniques meeting the standards of the National Association of Medical Examiners, as published in "Standards for Inspection and Accreditation of a Modern Medicolegal Investigative System Prepared and Sponsored by National Association of Medical Examiners," second edition, published by the National Association of Medical Examiners, 1402 South Grand Boulevard, St. Louis, Missouri, February 1988.

d. In the case of a known or suspected homicide, the medical examiner shall authorize a complete postmortem examination, including at least full autopsy examination of the head, chest and abdomen, and toxicological examination.

e. If requested to do so by family members of the deceased on the basis of religious objections or wishes, the medical examiner or pathologist may omit some parts of the autopsy, but the medical examiner or pathologist must obtain prior approval by the state medical examiner and must clearly document in the autopsy report the reasons for the omission and that the omission did not compromise the examination and investigation.

**70.2(3) Autopsies shall be authorized on all deaths meeting the guidelines outlined for autopsies in Appendix B of the Iowa State Medical Examiner-County Medical Examiner's Handbook.** The most current edition of this publication is available from the state medical examiner division.

**70.2(4) Reimbursement.**

a. The pathologist or other physician performing an autopsy under medical examiner authorization shall be paid for these services by the county whose medical examiner or county attorney requested and authorized the autopsy. If the county of residence of the decedent is different from the county of death, then the county of death may file a claim for reimbursement for those autopsy-related charges to the county of residence for that decedent.

b. Reimbursements for autopsies and related services performed by the state medical examiner. Autopsies performed by the state medical examiner division are provided on a fee-for-service basis. Costs of autopsies and related services and expenses are the responsibility of the county of residence of the deceased when requested by a public agency and of the person requesting the autopsy when the request is made by a private party. The estate of the deceased shall be responsible for payment of these fees and expenses when the request for an autopsy is made by the executor of the estate on behalf of the estate.

(1) Fee schedule. The following fees shall apply to autopsies conducted by the state medical examiner division:

1. Autopsy \$1000
2. Copies of reports \$ 20

EXCEPTIONS: A copy of the autopsy report is included in the autopsy fee. A single copy of an autopsy report may be

**PUBLIC SAFETY DEPARTMENT[661](cont'd)**

provided to a family member of the deceased without fee. Copies of autopsy reports may be provided to public officials for official purposes without fee.

(2) Expense reimbursement. Other laboratory services associated with an autopsy, which shall include, but not be limited to, photography, toxicology, radiology, microbiology, and morgue fees, shall be billed by the department to the county of residence of the deceased or to the private individual requesting the autopsy at the cost to the department of the service. Moneys collected pursuant to this subrule shall be paid by the department to the laboratory or other entity providing the service.

(3) State medical examiner acting as county medical examiner. When the state medical examiner acts in the capacity of county medical examiner, the fee for each individual deceased person for whom a county medical examiner report is prepared shall be \$100, payable by the county in which the death occurred.

**70.2(5) Autopsies for sudden infant deaths—reimbursement.**

a. Autopsies performed on infants under two years of age when the circumstances surrounding the death indicate that the cause of death may be sudden infant death syndrome or undetermined shall include a full scene visit report, utilizing Form ME-5A, Report of Infant Death Scene Investigation by Medical Examiner and an autopsy report, utilizing Form ME-5B, State of Iowa Autopsy Protocol for Sudden Unexpected Infant Deaths.

b. When the autopsy is mandated by Iowa Code section 331.802, subsection 3, paragraph “j,” the autopsy shall be performed by the pathologist who shall submit a statement for services to the county served. The county may then file a claim for payment with the Iowa department of public health for reimbursement directly to that county. Counties shall be reimbursed the actual cost of each autopsy including, but not restricted to, associated toxicology, microbiology, radiology and other laboratory charges, if any.

c. County auditors should submit a copy of the bill and the autopsy report to:

Iowa SIDS Program  
Iowa Department of Public Health  
Lucas State Office Building  
Des Moines, Iowa 50319

d. A bill must be submitted within 90 days after the autopsy is completed.

**70.2(6) Timeliness of reports.**

a. Any pathologist or physician who performs an autopsy under medical examiner jurisdiction shall file a written report of the preliminary findings within 14 days of the completion of the initial gross examination, with the full autopsy report to be completed and filed within 60 days following the initial gross examination. The reports filed shall include all diagrams and transcriptions of the autopsy observations and opinions. The pathologist or physician performing the autopsy shall file the complete record of the findings with the state medical examiner and with the county medical examiner of the county where the death occurred and with the county attorney of the county where any injury contributing to or causing the death was sustained.

b. When the death occurs in the manner specified in Iowa Code section 331.802, subsection 3, paragraph “j,” the pathologist or physician who performed the autopsy shall also prepare a summary of the findings resulting from the autopsy and shall forward that summary report to the parent, guardian or custodian of the child through the attention of the county medical examiner or designee or through the infant’s

attending physician. The summary shall be completed within 14 days of the initial gross examination of the decedent. If further studies are outstanding at that time, a report shall be made; but additional information shall be added to the summary report within 14 days of the time that the additional information becomes available.

**661—70.3(691) Medical examiner investigations and reports of investigations.**

**70.3(1)** Any death falling under medical examiner jurisdiction must be investigated by the county medical examiner or state medical examiner, a duly appointed deputy of the county medical examiner or state medical examiner, or a county medical examiner of a county other than the one in which the death occurred acting pursuant to subrule 70.4(3). The medical examiner may perform or authorize performance of any scientific study to assist in identifying the cause, circumstances and manner of death. Any additional costs of these investigations shall be borne by the county served. The medical examiner shall cooperate with other involved investigating agencies and shall share reports, information and conclusions with these agencies.

**70.3(2)** A completed Medical Examiner Report of Investigation (Form ME-1) shall suffice as the “examination certificate” documenting the medical examiner’s actions. These forms must be completed as fully as possible and must be signed by the physician medical examiner, with additional records and documents appended, as needed. Any additional records submitted will not replace the completed Medical Examiner Report of Investigation form.

a. If the cause or manner of death, identity of the decedent, or other information is unknown or pending at the time of filing, “unknown” or “pending” shall be written in the appropriate area of the form, and the form shall be filed as above. As information becomes available to complete the form, the form shall be amended by forwarding this information in written form to the state medical examiner division which shall make revisions in the permanent records on file. These amendments shall be made within 14 calendar days of the discovery of the additional information.

b. The investigation report shall include at least the information outlined on the Medical Examiner Report of Investigation (Form ME-1), plus a copy of the autopsy report (if performed), toxicology reports (if any), and any other studies requested by or authorized for the medical examiner investigation. These forms shall be completed as fully as possible prior to being filed with the state medical examiner.

c. Copies of the Medical Examiner Report of Investigation will be made, with the originals being sent to the state medical examiner and a copy to the county attorney involved in the investigation, within 14 calendar days of the discovery of the death. Copies may be distributed to the county attorney in the county of death and investigating law enforcement agency, within 14 calendar days of the discovery of the death.

**661—70.4(691) County medical examiners.**

**70.4(1) Designation.** The board of supervisors of each county shall designate one physician as the county medical examiner. If no physician within that county is available or willing to serve, the board of supervisors may appoint an available physician from outside the county to serve as the county medical examiner. In the absence of a designated county medical examiner, the state medical examiner shall be deemed the county medical examiner for that county.

**70.4(2) Deputy county medical examiners.** Counties are encouraged to appoint deputy county medical examiners.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Prior to assuming any medical examiner duties, physicians nominated for this position shall have their names and credentials forwarded to the state medical examiner division by the county medical examiner. The state medical examiner shall respond in writing to the board of supervisors and county medical examiner regarding any actions or recommendations pursuant to these applications. A physician may not serve as a deputy county medical examiner without prior approval by the state medical examiner.

**70.4(3) Medical examiner coverage.**

a. When an individual is required to report a death to a medical examiner and the county medical examiner, the state medical examiner or the state medical examiner's designated appointee cannot be located, the individual shall contact the county medical examiner from any adjacent Iowa county to investigate the circumstances of death and to prepare a written report in accordance with Iowa Code section 331.802. The responding medical examiner shall have full authority to conduct any procedures necessary to the investigation of the cause and manner of death.

b. The responding medical examiner shall be reimbursed by the county for which the service is provided for the investigation, mileage and expenses as is customary for the medical examiner's home county or at a rate agreed upon by the medical examiner and the board of supervisors of the county for which the service is provided.

**661—70.5(691) Medical examiner investigators.**

**70.5(1) Authority to appoint investigators.** County medical examiners and the state medical examiner may utilize nonphysicians for assistance in the investigation of the circumstances, cause and manner of death.

**70.5(2) Approval by state medical examiner.** Appointment and authorization of medical examiner investigators are subject to the approval of the state medical examiner.

**70.5(3) Fees.** Fees for the services rendered by the investigators on behalf of the county to assist the medical examiner shall be paid by the county served.

**70.5(4) Authority to sign report of investigation.** A medical examiner investigator may sign the Report of Investigation by Medical Examiner (Form ME-1), but the completed form must be reviewed and also signed by the responsible physician medical examiner prior to submission to the state medical examiner division. Medical examiner investigators are not authorized to certify the death (i.e., sign the death certificate), nor are they authorized to sign permits for cremations, these being functions specifically assigned to physician medical examiners. Investigators may request X-rays or other tests be performed on decedents, but only with the specific authorization of the responsible physician medical examiner.

**70.5(5) Training and other requirements.**

a. A trained and certified nonphysician health care provider (e.g., paramedic, registered nurse), or other individual applying for this position, shall be required to receive training in death investigation prior to being allowed to conduct death investigations on behalf of a medical examiner.

b. Any applicant must provide written documentation that the applicant's request to serve is approved by the board of supervisors for that county and by the chief county medical examiner for that county. This authorization shall state that the individual will be financially supported by that county to conduct procedures pursuant to Iowa Code chapter 331, part 8, under the supervision of the county medical examiner. In the absence of a chief medical examiner for the county, the state medical examiner may authorize approval.

c. Training for medical examiner investigators shall be provided by the state medical examiner division.

d. Costs for training medical examiner investigators.

(1) The commissioner of public safety and the state medical examiner may charge an applicant a fee for this course to defray costs associated with the materials, facilities, guest speakers and educational equipment.

(2) These fees shall be collected at the state medical examiner division and shall be deposited with the treasurer of state into the state medical examiner's account. Any surplus funds remaining at the end of the fiscal year shall revert to the general fund.

(3) Any other costs (e.g., travel, meals, lodging) for the persons attending medical examiner investigators training course shall be the responsibility of the county served or that person, as arranged between those parties.

(4) The state medical examiner may accept alternative training provided through outside agencies if the subject material and contact hours are sufficient to meet the goals of these rules.

**661—70.6(331) Morgue, laboratory and equipment for medical examiners.** Requests for morgue facilities, laboratory facilities and equipment by a county medical examiner shall be made in writing to the state medical examiner, who shall then forward written recommendations to the county medical examiner and board of supervisors for their action. Requests for professional, technical and clerical assistance by a county medical examiner for the performance of official duties shall first be requested in writing to the state medical examiner, who shall then make written recommendation to the county board of supervisors for their action.

This rule is intended to implement Iowa Code section 331.801, subsection 3.

**661—70.7(331) Deaths of individuals brought into state for emergency treatment.** When an individual dies after being brought into the state for emergency medical treatment, and the death otherwise falls under medical examiner jurisdiction as specified in Iowa Code section 331.802, subsections 2 and 3, the medical examiner for the county in which death was pronounced shall conduct a full investigation into the death and file a completed Medical Examiner Report of Investigation (Form ME-1). The fees and expenses for this investigation shall be billed to and paid by the county served by that medical examiner. The county may file a claim for payment with the Iowa department of public health, which shall reimburse the county. When an autopsy is deemed necessary, the decision for that autopsy shall be made by the medical examiner, who shall notify the appropriate out-of-state law enforcement officer or county attorney. The cost of the autopsy shall be billed to the appropriate out-of-state jurisdiction.

**661—70.8(331,691) Body buried prior to proper medical examiner investigation.** The state medical examiner may act in conjunction with or in place of the county medical examiner when investigating any case of a sudden, violent or suspicious death after which the body is buried without an investigation or autopsy. If an autopsy is deemed necessary, the state medical examiner or county medical examiner shall notify the county attorney, who then shall apply for a court order requiring the body to be exhumed in accordance with Iowa Code chapter 144.

**661—70.9(331) Embalming permits.** Prior to embalming a body whose death falls under medical examiner jurisdiction, authorization by the medical examiner in written form must

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

be obtained by the appropriate funeral director on Form ME-2, "Medical Examiner Embalming Certificate," available from the state medical examiner division. Copies of completed embalming permits shall be maintained by the funeral home handling the remainder of the funeral arrangements for the decedent, and a copy shall be maintained by the crematory.

**661—70.10(331,691) Failure to comply with these rules.**

**70.10(1)** When a medical examiner, pathologist or other physician fails to comply with these rules, the state medical examiner shall provide written notice of the failure to comply to that individual, the appropriate county medical examiner and the appropriate county board of supervisors. Within 30 calendar days, the individual identified as not in compliance with these rules and the county medical examiner, if not the person so identified, shall provide a written response, outlining proposed corrective actions to the state medical examiner. If no response or resolution of the concerns has been received by the state medical examiner within 30 calendar days, the state medical examiner shall forward copies of all pertinent correspondence and information to the Iowa board of medical examiners or other appropriate professional licensing board and to the board of supervisors for the county in which the individual not complying with the rules is appointed, informing them of the individual's failure to comply with the rules. These correspondences are public documents. The individual identified as not complying with these rules and the county medical examiner shall cooperate fully with these boards in any action which they may pursue.

**70.10(2)** A deputy county medical examiner or medical examiner investigator may be removed from that position by the state medical examiner at any time for failure to comply with these rules and provisions of the Code of Iowa related to the duties of the position, when the following are satisfied:

a. The state medical examiner shall provide written notice of the failure to comply to that individual, the appropriate county medical examiner and the appropriate county board of supervisors.

b. The individual has 30 calendar days to respond to the written notice. The response must be in written form, addressed to the state medical examiner.

c. If the individual and the county medical examiner provided insufficient or no response or resolution of the concerns, then authorization for that individual to perform the duties of a deputy county medical examiner or medical examiner investigator shall immediately be revoked.

d. If the individual requests a hearing regarding the individual's authority to operate as a deputy county medical examiner or medical examiner investigator, the hearing shall be held within 30 calendar days of the request, and any decision by the state medical examiner shall be made and provided to the individual through written notice within 14 calendar days of the hearing. Authority for that individual to perform investigations shall be suspended during this period, pending the outcome of the hearing.

e. Deputy county medical examiners or medical examiner investigators whose authority to operate in these capacities has been revoked by the state medical examiner may appeal that action to the commissioner of public safety within 30 calendar days of receiving notification of the decision of the state medical examiner.

(1) The commissioner may appoint a presiding officer, pursuant to Iowa Code section 17A.11, to hear the appeal. Consideration of the appeal shall proceed under the provisions of rules 661—10.300(17A) through 661—10.318(17A).

(2) The commissioner or the presiding officer shall issue a written decision in response to the appeal. The commissioner may uphold or overturn a decision of a presiding officer. The decision of the commissioner is final agency action for the purposes of Iowa Code chapter 17A.

(3) The state medical examiner shall provide a copy of any final decision which removes a deputy medical examiner or a medical examiner investigator to the appropriate board of supervisors and to any professional licensing board having jurisdiction over the deputy medical examiner or medical examiner investigator.

These rules are intended to implement Iowa Code sections 331.801 to 331.805, 691.5, and 691.6.

**ARC 7395A****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)<sup>a,b</sup>.

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 99F.4, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 23, "Closed Circuit Videotape Surveillance Systems on Excursion Gambling Boats," Iowa Administrative Code.

These amendments update requirements for video surveillance systems and equipment on excursion gambling boats licensed pursuant to Iowa Code chapter 99F by the Iowa Racing and Gaming Commission.

A public hearing on these proposed amendments will be held on August 6, 1997, at 10:30 a.m. in the Third Floor Conference Room, 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](mailto: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, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the 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 section 99F.4.

The following amendments are proposed.

ITEM 1. Amend rule **661—23.1(99F)** by adding the following new definitions in alphabetical order:

"Casino surveillance" means the observation of gaming and gaming-related activities in a licensed gaming establishment. The purpose of a surveillance system is to safeguard the licensee's assets, protect both the public and licensee's employees, and to promote public confidence that licensed

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gaming is conducted honestly and free of criminal elements and activities. It is the responsibility of the licensee to ensure that the surveillance system is used to accomplish the stated purposes and is not used in an improper manner that would bring discredit to the industry.

"Dedicated coverage" means a video camera which is required by these standards to continuously record a specific activity. In lieu of continuous recording, time lapse recording is acceptable, if approved by the DCI or the administrator for a specific activity.

"Slot change booth" means a structure on the floor of a licensed gaming establishment which houses a coin counting device that is utilized to redeem coins from patrons. The term does not include slot machine carousels, floor banks or change banks.

ITEM 2. Amend rule 661—23.4(99F), numbered paragraphs "5" and "8," as follows:

5. Universal power supply—The system and its equipment must be directly and securely wired in a way to prevent tampering with the system. *In the event of a loss in power to the surveillance system, an auxiliary or backup power source must be available and capable of providing immediate restoration of power to the elements of the surveillance system that enable surveillance personnel to observe the gaming activity remaining open for play and all areas monitored by dedicated coverage.*

8. Videotape recorders—~~Capable of producing high quality, first generation pictures with a horizontal resolution of a minimum of 300 lines nonconsumer, professional grade, and recording standard 1/2 inch, VHS tape with high speed scanning and flickerless playback capability in real time. Also, time and date insertion capabilities for taping what is being viewed by any camera in the system. A minimum of one video recorder for every eight video cameras is required. Each video camera required by these standards must possess the capability of having its view displayed on a video monitor and recorded. The surveillance system must include enough monitors and recorders to simultaneously display and record multiple gaming, cage, countroom activities, and record the views of all dedicated coverage. The acceptable standard is eight cameras to one recorder unless the licensee satisfactorily demonstrates the ability to meet the intent of the rule by other means.~~

ITEM 3. Amend rule 661—23.5(99F) as follows:

**661—23.5(99F) Required surveillance.** Every licensee or operator shall conduct and record as required by either the commission or the DCI surveillance which allows clear, unobstructed views in the following areas of the excursion boats, and the land-based facilities, and racetrack enclosure:

1. Overall views of the casino pit areas.
2. All gaming or card table surfaces, including table bank trays, with sufficient clarity to permit identification of all chips, cash, and card values, and the outcome of the game. Each gaming table shall have the capability of being viewed by no less than two cameras.
3. Dice in craps games, with sufficient clarity to read the dice in their stopped position after each roll.
4. All roulette tables and wheels, capable of being recorded on a split screen to permit views of both the table and the wheel on one monitor screen.
5. All areas within cashier cages and booths, including, but not limited to, customer windows, employee windows, cash drawers, vaults, safes, counters, chip storage and fill windows. Every transaction occurring within or at the casino cashier cages must be recorded with sufficient clarity to

permit identification of currency, chips, tokens, fill slips, paperwork, employees, and patrons.

6. All entrance and exit doors to the casino area shall be monitored by the surveillance system if they are utilized for the movement of uncounted moneys, tokens, or chips. Also, elevators, stairs, gangplanks, and loading and unloading areas shall be monitored if they are utilized for the movement of uncounted moneys, chips, or tokens.

7. All areas within a hard count room and any area where uncounted coin is stored during the drop and count process, including walls, doors, scales, wrapping machines, coin sorters, vaults, safes, and general work surfaces.

8. All areas within a soft count room, including solid walls, doors, solid ceilings, stored drop boxes, vaults, safes, and counting surfaces which shall be transparent.

9. Overall views of patrons, dealers, spectators, and pit personnel, with sufficient clarity to permit identification thereof.

10. Overall views of the movement of cash, gaming chips and tokens, drop boxes and drop buckets.

11. All areas on the general casino floor with sufficient clarity to permit identification of all players, employees, patrons, and spectators.

12. Every licensee who exposes slot machines for play shall install, maintain, and operate at all times a casino surveillance system that possesses the capability to monitor and record clear, unobstructed views of the following:

- All slot change booths, including their cash drawers, countertops, counting machines, customer windows, and employee windows, recorded with sufficient clarity to permit identification of all transactions, cash, and paperwork therein.

- The slot machine number.

- All areas, recorded with sufficient clarity to permit identification of all players, employees, patrons, and spectators.

13. The DCI may require surveillance coverage of any other operation or game on either an excursion gambling boat or a land-based facility.

1. Slot machines. Every licensee who exposes slot machines for play shall install, maintain, and operate a casino surveillance system that possesses the capability to monitor and record the slot machine number.

2. Table games. The surveillance system must possess the capability to monitor and record all gaming or card table surfaces; table number, including table bank trays, with sufficient clarity to permit identification of all chips, cash, card values, and the outcome of the game; dice in craps games, with sufficient clarity to read the dice in their stopped position after each roll and all roulette tables and wheels must be capable of being monitored and recorded on a split screen to permit views of both the table and the wheel on one monitor screen. Each table or card game shall have the capability of being monitored and recorded by no less than two cameras.

3. Progressive table games. Each progressive table game must be monitored by dedicated coverage that provides views of the table surface so that the card values and card suits can be identified and a view of the progressive meter jackpot amount.

4. Casino cage and slot change booth. The surveillance system must possess the capability to monitor and record a general overview of activities occurring in each casino cage and slot change booth, with sufficient clarity to identify patrons and employees at the counter area, cash drawers, vaults, safes, countertops, coin and currency counting machines, chip and token storage, chip, token, and currency de-

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

*nomination. The casino cage and slot change booth area in which fills, credits, and jackpots are transacted must be monitored by dedicated coverage that provides views with sufficient clarity to identify the chip, token, and currency values and the amounts on the fill/credit slips.*

5. *Count rooms. The surveillance system must possess the capability to monitor and record all areas within the hard or soft count room, including walls, doors, scales, wrapping machines, coin sorters, currency counters, vaults, safes, and general work surfaces. The counting surface, in the soft count room, must be made of a transparent material. Any area where uncounted coin or currency is stored must be monitored by dedicated coverage. In addition, the hard count and soft count process must be monitored by dedicated coverage.*

6. *Movement of funds. The surveillance system must possess the capability to monitor and record the movement of cash, gaming chips, tokens, drop boxes and drop buckets. All casino entrance and exit doors, elevators, stairs, gangplanks, loading and unloading areas shall also possess the capability to be monitored and recorded if they are utilized for the movement of uncounted moneys, tokens, or chips.*

7. *Admissions entrance and exits. The admissions and exit area of the excursion gambling boat and racetrack enclosure must be monitored by dedicated coverage with sufficient clarity to identify patrons and employees at the admissions entrance and exit area.*

8. *Overall views. The surveillance system must possess the capability to monitor and record with sufficient clarity the casino pit area and general casino floor with sufficient clarity to permit identification of players, employees, patrons, and spectators.*

9. *The DCI may require surveillance coverage of any other operation or game on either an excursion gambling boat, land-based facility, or racetrack enclosure.*

ITEM 4. Amend rule 661—23.9(99F) as follows:

**661—23.9(99F) Surveillance room.** There shall be provided on each excursion gambling boat and racetrack enclosure a room or rooms specifically utilized to monitor and record activities on the casino floor, count room, cashier cages, gangplank area, and slot cages change booths. ~~These rooms~~ This room shall have a trained surveillance person person(s) present during casino operation hours. *In addition, an excursion gambling boat and racetrack enclosure may have satellite monitoring equipment.* The following are requirements for the operation of equipment in the surveillance room and of satellite monitoring equipment:

23.9(1) Surveillance equipment location. All equipment that may be utilized to monitor or record views obtained by a casino surveillance system must remain located in the room used exclusively for casino surveillance security purposes, ~~except for equipment which is being repaired or replaced~~ *The satellite monitoring equipment must be capable of being disabled by the casino surveillance room when not in use.* The entrance to the casino surveillance room must be locked or secured at all times.

23.9(2) Override capability. Casino surveillance equipment must have total override capability over any other satellite monitoring equipment in other casino offices, with the exception of the DCI rooms.

23.9(3) Access. DCI and commission employees shall at all times be provided immediate access to the casino surveillance room and other casino surveillance areas and satellite monitoring equipment. Also, all DCI and commission em-

ployees shall have access to all records and areas of such rooms.

23.9(4) Surveillance logs. Entry in the log shall be required when requested by the DCI or the commission, whenever surveillance is conducted on anyone, or whenever any activity that appears unusual, irregular, illegal or in violation of commission rules is observed. Also, all telephone calls shall be logged.

23.9(5) Blueprints. A copy of the configuration of the casino floor shall be posted and updated immediately upon any approved change. Also included shall be the location of any change, and the location of surveillance cameras, gaming tables and slot machines by assigned numbers. Copies shall also immediately be made available to the DCI room and commission.

23.9(6) Storage and retrieval. Surveillance personnel will be required to label and file all videotape recordings. The date, and time, and signature of the person making the recording is required. All videotape recordings shall be retained for at least seven days after recording unless a longer period is required by the DCI, the commission, or court order. Original audiotapes and original videotapes shall be released to a the DCI agent or commission upon demand.

23.9(7) Malfunctions. Each malfunction of surveillance equipment must be repaired within 24 hours of the malfunction. If, after 24 hours, activity in the affected area cannot be monitored, the game or machine shall be closed until such coverage can be provided. A record of all malfunctions shall be kept and reported to the DCI each day. *In the event of a dedicated coverage malfunction, the licensee must immediately provide alternative camera coverage or other security measures that will protect the subject activity. If other security measures are taken, the licensee must immediately notify the DCI. The DCI, in its discretion, will determine whether the other security measures are adequate.*

23.9(8) Security. Entry to the surveillance room and access to satellite monitoring equipment is limited to persons approved by the DCI or the administrator of commission. A log of personnel entering and exiting the surveillance room and accessing satellite monitoring equipment shall be maintained and submitted to the DCI every 30 days or commission upon request.

23.9(9) Playback station. An area is required to be provided within the DCI room that will include, but is not limited to, a video monitor and a video recorder with the capability of producing first generation videotape copies.

23.9(10) Additional requirements.

a. ~~Audio~~ Audiotape and videotape monitoring will be continuous in the DCI and security detention areas, when someone is being detained. These recordings must be retained for 30 days after the recorded event, unless directed otherwise by the administrator, DCI, or court order.

b. The commission, its employees, and DCI agents shall, at all times, be provided immediate access to the surveillance room and all areas of the casino.

23.9(11) Written plans and alterations.

a. Every operator or applicant for licensing shall submit to the commission for approval by the administrator, and to the DCI for approval by the director of the DCI, a written casino surveillance system plan no later than 60 days prior to the start of gaming operations.

b. A written casino surveillance system plan must include a casino floor plan that shows the placement of all casino surveillance equipment in relation to the locations required to be covered, and a detailed description of the casino surveillance system and its equipment. In addition, the plan

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may include other information that evidences compliance with these rules by the licensee, operator or applicant.

c. The operator may change the location of table games, slot machines, and other gaming devices. The surveillance system must also be adjusted, if necessary, to provide the coverage required by these rules. A DCI agent must approve the change in surveillance system before the relocated table games, slot machines, or other gaming devices may be placed into operation. ~~The operator must submit any change to the surveillance system showing the change in the location of the gaming devices and related security and surveillance equipment within seven days to the administrator and the director of the DCI.~~

## ARC 7353A

RACING AND GAMING  
COMMISSION[491]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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.9(c) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 1, "Organization and Operation," Chapter 2, "Rule Making and Declaratory Rulings," Chapter 3, "Public Records and Fair Information Practices," Chapter 5, "Application for Track Licenses and Racing Dates," Chapter 7, "Greyhound Racing," Chapter 10, "Thoroughbred Racing," Chapter 12, "Simulcasting," and Chapter 20, "Application Process for Excursion Boats and Racetrack Enclosure Gaming License," Iowa Administrative Code.

Items 1 and 2 change language to specify use of the 1990 edition of Robert's Rules of Order.

Items 4, 7, and 9 correct grammatical or punctuation errors.

Item 3 reflects how records for occupational licensing are being retained with the new licensing system.

Item 5 adds language to allow for computer technology to be used for photo finish equipment.

Item 6 adds rule 491—7.7(99D) governing race reckless/interfered/rule off procedures.

Item 8 allows for either a negative Coggins test or a current negative equine infectious anemia test.

Item 10 rescinds the December filing deadline for riverboat license applications.

Any person may make written suggestions or comments on the proposed amendments on or before August 5, 1997. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on August 5, 1997, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

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

The following amendments are proposed.

ITEM 1. Amend subrule 1.2(3), paragraph "f," as follows:

f. Cases not covered by these rules shall be governed by *the 1990 edition of Robert's Rules of Order Newly Revised (1981 edition)*.

ITEM 2. Amend subrule 2.2(2) as follows:

2.2(2) Conduct of meetings. The acting chairperson of the commission shall serve as the presiding officer at the meetings. At the commencement of the meeting, any person wishing to make an oral presentation shall advise the presiding officer of the person's name, address and affiliation. The meetings shall be conducted in the same manner as any commission meeting and be governed by *the 1990 edition of Robert's Rules of Order Newly Revised*.

ITEM 3. Amend subrule 3.14(2) as follows:

3.14(2) Occupational licensing. Records associated with occupational licensing conducted under Iowa Code chapters 99D and 99F are maintained by this commission. The licensing system of records includes numerous files and cross files which include but are not limited to: computer storage of licensing records *and photos*, fingerprint cards, *and license applications, photos of licensees and photo cards*. The records associated with occupational licenses, which contain personally identifiable information, are open for public inspection only upon the approval of the administrator or the administrator's designee. The information stored in a data processing system is not compared with information in any other data processing system.

ITEM 4. Amend subrule 3.14(3) as follows:

3.14(3) List of contested cases and stewards' hearings. The commission utilizes a listing of contested case and stewards' hearings furnished by the Association of Racing Commissioners International and provides individually identifiable information to that organization. The list is used for purposes delineated in Iowa Code chapter 99D.

ITEM 5. Amend subrule 5.16(16) as follows:

5.16(16) Photo finish camera. An association shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish devices must be approved by the commission before its first use in a race. The association shall promptly post a photograph, *on a monitor*, of each photo finish for win, place or show, or fourth place in superfecta races in an area accessible to the public. The association shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the association shall provide, without cost, a print ~~from a negative~~ of a photo finish to the commission. ~~Photo A photo finish negatives~~ of each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the administrator.

ITEM 6. Amend Chapter 7 by adding the following new rule and renumbering 491—7.7(99D) to 491—7.15(99D) as 491—7.8(99D) to 491—7.16(99D):

491—7.7(99D) Race reckless/interfered/rule off procedures.

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

**7.7(1) Race reckless.** It is the steward's discretion for the first offense on a maiden as to whether the maiden interfered or raced reckless. It will not be mandatory that a first offense on a maiden be raced reckless.

**7.7(2) Interfered.**

a. Maidens or graded greyhounds coming into Iowa with an interference line from another state will receive an interference ticket at the time of the first offense in Iowa and be ruled off all Iowa tracks.

b. Graded greyhounds will be given an interference ticket at the time of their first offense and will be required to school back to stewards' satisfaction. Second offense requires a second interference ticket, and the dog is ruled off all Iowa tracks.

c. First offense interference greyhounds will be deleted from the master interference list after one year has elapsed.

**7.7(3) Ruled off.** Once a greyhound has been ruled off in the state of Iowa, it cannot for any reason be entered to race in Iowa again.

ITEM 7. Amend subrule **7.8(9)** by making the word "photo-finish" two words wherever it appears in the subrule.

ITEM 8. Amend subrule **10.5(1)**, paragraph "j," as follows:

j. A horse has no current negative ~~coggins~~ *Coggins* test or current negative equine infectious anemia test certificate attached to the registration certificate, or

ITEM 9. Amend rule 491—12.8(99D) as follows:

**491—12.8(99) Transmitted.** All simulcasting must be transmitted live and all wagering on ~~simulcast~~ *simulcasting* shall be made in accordance with the Iowa racing and gaming commission rules on pari-mutuel wagering in 491—Chapter 8.

ITEM 10. Amend subrule 20.10(5), introductory paragraph, as follows:

**20.10(5) Application criteria.** An application for excursion boat gambling shall be filed using forms provided by the commission. ~~To facilitate an orderly review process by the commission and staff, the commission will accept applications only during the month of December to coincide with the submission of renewal applications. The commission will, however, receive the application of any applicant denied a license in 1996 after the one-year period has expired (see paragraph 20.14(1)"g").~~ The proposals of the applicant shall conform to Iowa Code chapter 99F and the following operational criteria:

**ARC 7365A****REVENUE AND FINANCE  
DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 421.14 and 421.17, the Iowa Department of Revenue and Finance

hereby gives Notice of Intended Action to amend Chapter 150, "Offset of Debts Owed State Agencies," Iowa Administrative Code.

The amendments implement 1997 Iowa Acts, House File 266, sections 5, 7, 8, and 9, which provide that the minimum for setoff under Iowa Code section 421.17 be set by rule to provide greater flexibility based on cost-effectiveness and change the definitions of "department" and "state agency" to expand the classification of who may participate in the setoff programs.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than August 5, 1997, to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 15, 1997. Such written comments should be directed to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 8, 1997.

These amendments are intended to implement Iowa Code sections 421.17(21)"b"(3), 421.17(23)"c," 421.17(23)"g," 421.17(25)"c," 421.17(29)"a"(1), 421.17(29)"a"(2) and 421.17(29)"e."

The following amendments are proposed.

ITEM 1. Amend rule 701—150.1(421) as follows:

**701—150.1(421) Definitions.** For purposes of this chapter, the following definitions shall govern:

"Debtor" means any person owing a debt to the state of Iowa or any state agency.

"Department" means the Iowa department of revenue and finance or the director of the Iowa department of revenue and finance and the director's representative. *The term "department" also includes any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for the collection of debts owed to the state or its agencies.*

"Director" is the director of revenue and finance or the director of a state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

"Liability" or "debt" means any liquidated sum due and owing to the state of Iowa or any state agency which has ac-

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

crued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person's *original* liability to a state agency shall *must* be at least \$50, *unless otherwise provided*.

"Offset" shall mean to set off or compensate a state agency which has a legal claim against a person or entity where there exists a person's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person's claim on a state agency shall *must* be at least \$50 *the minimum amount as indicated in the definition of "liability" or "debt" as set forth in this rule. If the source of a person's claim is a tax refund or tax rebate, the minimum will be \$25.*

"Person" or "entity" means individual, corporation, business trust, estate, trust, partnership or association, or any other legal entity, but does not include a state agency.

"State agency" or "agency" means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa Comprehensive Annual Financial Report. *Entities included in this definition of state agency may enter into an agreement with the director of revenue and finance to participate in the setoff program as provided in this chapter and Iowa Code section 421.17. "State agency" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.*

ITEM 2. Amend subrule 150.2(2) as follows:

**150.2(2)** Agencies may collect debts under the provisions of Iowa Code subsection 421.17(29) through the preaudit offset system. *Exercise of setoff under the provisions of Iowa Code section 421.17(29) is not limited to the income tax refund offset system. Exercise of the provisions under Iowa Code section 421.17(29) allows an agency to set off an amount owed to a state agency by a person or entity against any refund, credit, rebate, or other claim owed to the person or entity.* Departments utilizing the income tax refund offset system under the provisions of Iowa Code subsection 421.17(21) which allows for the recovery of child support, foster care, and public assistance payments; Iowa Code subsection 421.17(23) which allows for the recovery of guaranteed student or parental loans; and Iowa Code subsection 421.17(25) which allows for the recovery of criminal fines, civil penalties, surcharges, and court costs, may also utilize this offset system to collect debts due. Any state agency exempt from the provisions of Iowa Code section 421.39, and making payments, shall be subject to these rules.

ITEM 3. Amend rule 701—150.9(421), implementation clause, as follows:

These rules are intended to implement Iowa Code section 421.17 as amended by 1997 Iowa Acts, House File 266, and Iowa Code sections 421.17, 422.16, 422.20, and 422.72.

## ARC 7391A

## SECRETARY OF STATE[721]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 47.1, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 4, "Forms," Iowa Administrative Code.

These amendments update 23 existing forms, add two new ones, and rescind one obsolete form. Many of the changes add instructions to forms to help ensure that they are properly completed. Nomination petitions (Forms 2-E, 2-F, 2-G, 2-H, 2-J, 2-K, 2-O, and 2-S) have been changed only to add a note which reads, "An Affidavit of Candidacy must be filed with this petition." All affidavits of candidacy (Forms 2-A, 2-B, 2-C, 2-D, 2-M, and 2-N) now include a note which reminds the candidate to file the affidavit with the nomination petition. All affidavits also have an optional space for the candidate to include a telephone number. Affidavits for school and city elections (Forms 2-M and 2-N) have a box for the candidate to check if the office is on the ballot to fill a vacancy; an explanation of the term "vacancy" has been added to reduce confusion. Absentee ballot envelopes and affidavits (Forms 3-B, 3-D, 4-A, 4-B and 4-C) have been revised to help voters complete them correctly. Two forms (3-A and 3-H) have been amended to add necessary references to the Reform Party, which gained official status as a political party following the 1996 general election. Two forms (5-B and 5-C) have been amended to delete now unnecessary instructions to file them with the Secretary of State. The requirement that reports of public tests of electronic voting equipment be filed with the Secretary of State was rescinded by 1997 Iowa Acts, House File 636, section 63.

New Form 1-S provides a method for voters who do not have color photo identification cards to have another registered voter attest to their identity. The other new Form, 3-I, provides a format for county auditors to notify residents of nursing homes that their absentee ballot request listed a political party different from the one on the registration record. Form 5-E has been rescinded because it is no longer necessary for counties to compile voter registration source information; this is now automatically collected by the voter registration system.

Any interested person may make written suggestions or comments on the proposed amendments on or before Tuesday, August 5, 1997. Written comments should be sent to the Elections Division, Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319-0138, fax (515)242-3932. Anyone who wishes to comment orally may telephone the Elections Division at (515)281-5865 or visit the office on the second floor of the Hoover Building.

There will be a public hearing on Tuesday, August 5, 1997, at 1:30 p.m. at the office of the Secretary of State, Second Floor, Hoover State Office Building. People may comment orally or in writing. Persons who speak at the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

## SECRETARY OF STATE[721](cont'd)

This rule is intended to implement Iowa Code sections 43.13, 43.14, 43.18, 43.42, 43.43, 43.61, 43.67, 43.88, 44.3, 45.1, 45.3, 46.20, 48A.4, 48A.32, 49.65, 49.66, 49.77, 49.79, 49.80, 49.81, 49.90, 49.91, 49.104(2), 49.104(3), 49.104(5), 49.104(6), 50.3, 50.4, 50.5, 50.9, 50.10, 50.12, 50.19, 50.24, 50.26, 50.28, 51.11, 52.23, 52.35, 52.38, 53.2, 53.13, 53.19, 53.21, 53.22, 53.23(4), 53.25, 53.26, 53.30,

53.31, 53.40, 53.46(2), 54.5, 56.2(5), 260C.15(2), 277.4, 278.2, 331.306, 362.4, and 376.4 and 11 CFR, Subpart C, Section 8.7 (1995).

The following amendments are proposed.

ITEM 1. Amend rule 721—4.3(17A) as follows:

**721—4.3(17A) Election forms.**

Section 1.	Election Day and Canvass Forms
Form Number	Description
1-A (Rev.-95)	Voter's Declaration of Eligibility
1-B	<del>Repealed (combined with 1-A)</del> (Reserved)
1-C	<del>Repealed (see Form 3-H)</del> (Reserved)
1-D (Rev.-90)	Notice to Voter of Rejection of Absentee or Special Ballot
1-E	(Reserved)
1-F (Rev.-90)	Oath for Officer or Clerk of Election
1-G (Rev.-95)	Statement to Person Casting a Special Ballot
1-H (Rev.-95)	Envelope for Special Ballot
1-I (Rev.-95)	Affidavit of Voter Requesting Assistance
1-J (Rev.-95)	Declaration of Intent to Serve as Election Observer (Public Measure Elections)
1-K (Rev.-90)	Ballot Record and Receipt
1-L (Rev.-95)	County Abstract of Votes
1-M (93)	Accreditation Form—Pollwatchers for Political Parties (Challenging Committees)
1-N (93)	Accreditation Form—Observers for Political Parties (To Witness the Counting of Ballots)
1-O (95)	Letter of Appointment—Pollwatchers for Nonpartisan and Nonparty Candidates
1-P (95)	Application for Additional Ballots
1-Q (95)	Application for Additional Ballots—Auditor's Record of Telephone Request
1-R (95)	Ballot Photocopy Record
1-S (97)	<i>Identification Statement</i>
Section 2.	Nomination Documents and Forms
Form Number	Description
2-A (Rev.-94 97)	Affidavit by Candidate—Primary Election
2-B (Rev.-94 97)	Affidavit by Candidate—Nominations by Political Parties
2-C (Rev.-94 97)	Affidavit by Candidate—Nominations by Nonparty Political Organizations
2-D (Rev.-94 97)	Affidavit by Candidate—Nonpartisan Nominations
2-E (Rev.-93 97)	Nomination Paper—For U.S. Senator, U.S. Representative & Statewide Offices
2-F (Rev.-93 97)	Nomination Paper—For State Senator
2-G (Rev.-93 97)	Nomination Paper—For State Representative
2-H (Rev.-93 97)	Nomination Paper—For Nonpartisan Nominations and Nonparty Political Organizations
2-I (Rev.-93)	Certificate of Nomination by Nonparty Political Organization—Chapter 44
2-J (Rev.-93 97)	Nomination Petition for the Office of Electors for President and Vice President of the United States
2-K (Rev.-93 97)	Nomination Paper for County Office
2-L (Rev.-95)	Nomination by Convention—Certificate of Nomination by Political Party—Chapter 43
2-M (Rev.-94 97)	Affidavit by Candidate—School and City Elections
2-N (Rev.-94 97)	Affidavit by Candidate—City Elections—Chapter 44
2-O (93 Rev.-97)	Nomination Petition—Merged Area Schools
2-P (Rev.-95)	Petition Requesting Election
2-Q (93)	Judicial Declaration of Candidacy
2-R (93)	Certificate of Candidates for Presidential Electors
2-S (93 Rev.-97)	Nomination Petition—Governor and Lieutenant Governor—Chapter 45
Section 3.	Absentee Voting Forms
Form Number	Description
3-A (Rev.-95 97)	Application for Absentee Ballot
3-B (Rev.-95 97)	Absent Voter's Affidavit <i>and Envelope</i>
3-C (Rev.-90)	Affidavit for Voter Who Did Not Receive Absent Voter's Ballot
3-D (Rev.-90 97)	Absentee Ballot Carrier Envelope
3-E (93)	Statement of Voter—Lost Absentee Ballot
3-F (93)	Log for Absentee Ballot Delivery Team
3-G (Rev.-95)	Challenge of Absentee Voter
3-H (95 Rev.-97)	Statement to Voter of Change or Declaration of Party Affiliation
3-I (97)	<i>Statement to Voter of Change or Declaration of Party Affiliation for Voter in Nursing Home or Hospital</i>

## SECRETARY OF STATE[721](cont'd)

Section 4.	Armed Forces and Overseas Absentee Voting
Form Number	Description
4-A (Rev.-91 97)	Armed Forces or Overseas Ballot—Delivery Envelope
4-B (Rev.-91 97)	Armed Forces or Overseas Ballot—Return Carrier Envelope
4-C (Rev.-91 97)	Armed Forces or Overseas Ballot—Affidavit Envelope
4-D (93)	Proxy Absentee Ballot Request
Section 5.	Administrative Forms
Form Number	Description
5-A	<del>Repealed (Reserved)</del>
5-B (93 Rev.-97)	Certificate of Test—Central Count Tabulating Equipment
5-C (93 Rev.-97)	Certificate of Test—Precinct Count Tabulating Equipment
5-D (Rev.-95)	Election Document Retention Record
5-E (95)	<del>Voter Registration Transaction Source Record Repealed</del>

ITEM 2. Rescind the implementation clause following **721—4.3(17A)** and insert in lieu thereof the following new paragraph:

This rule is intended to implement Iowa Code sections 43.13, 43.14, 43.18, 43.42, 43.43, 43.61, 43.67, 43.88, 44.3, 45.1, 45.3, 46.20, 48A.4, 48A.32, 49.65, 49.66, 49.77, 49.79, 49.80, 49.81, 49.90, 49.91, 49.104(2), 49.104(3), 49.104(5), 49.104(6), 50.3, 50.4, 50.5, 50.9, 50.10, 50.12, 50.19, 50.24, 50.26, 50.28, 51.11, 52.23, 52.35, 52.38, 53.2, 53.13, 53.19, 53.21, 53.22, 53.23(4), 53.25, 53.26, 53.30, 53.31, 53.40, 53.46(2), 54.5, 56.2(5), 260C.15(2), 277.4, 278.2, 331.306, 362.4, and 376.4 and 11 CFR, Subpart C, Section 8.7 (1995).

## ARC 7390A

### SECRETARY OF STATE[721]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 47.1, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

These amendments provide a deadline for the receipt of the original copy of a document filed by facsimile machine. Voters who lack required identification documents may have another registered voter attest to the voter’s identity. Instructions are provided for administrative recounts and for rejecting petitions for satellite absentee voting stations which name unusable locations. The amendments reflect changes to the petition filing deadlines and required hours for satellite absentee voting stations in Iowa Code section 53.11. The rule requiring all satellite absentee voting station workers to transport ballots is amended to require two workers who are members of different political parties to participate. Procedures are provided for opening absentee affidavit envelopes before election day. The amendment also makes technical and editorial corrections in the rules.

Any interested person may make written suggestions or comments on the proposed amendments on or before Tuesday, August 5, 1997. Written comments should be sent to the Elections Division, Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319-0138, fax (515)242-5953. Anyone who wishes to

comment orally may telephone the Elections Division at (515)281-5865 or visit the office on the second floor of the Hoover Building.

There will be a public hearing on Tuesday, August 5, 1997, at 2 p.m. at the office of the Secretary of State, Second Floor, Hoover State Office Building. People may comment orally or in writing. Persons who speak at the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These amendments are intended to implement 1997 Iowa Acts, House File 636.

The following amendments are proposed.

ITEM 1. Amend subrule **21.2(2)** by adding the following new paragraphs:

a. The filing shall be void if the original of a document filed by facsimile machine is not received within seven days after the filing deadline for the original document.

b. The filing shall be void if the postmark on the envelope containing the original document is later than the filing deadline date.

c. If a filing is voided because the original of a document submitted by facsimile machine was postmarked too late or arrives too late, the person who filed the document shall be notified immediately in writing.

ITEM 2. Amend subrule **21.3(3)** by adding the following new paragraph:

d. A person who does not possess any of the identification documents required by this subrule may fulfill the requirement by having another registered voter of the county who possesses the required identification documents attest to the person’s identity. Form 1-S shall be used. The form shall be filed in person by both parties. It may be filed at the polls on election day or at the office of the commissioner at any time before the special precinct board convenes to examine the qualifications of voters who cast special ballots. If the form is filed at the polls on election day, the precinct election officials may permit the voter without identification to vote without casting a special ballot.

ITEM 3. Amend 721—Chapter 21 by rescinding and reserving rules **721—21.5(47)** to **721—21.7(49)** and **721—21.11(44)**.

ITEM 4. Amend 721—Chapter 21 by adding the following new rule:

**721—21.25(50) Administrative recounts.** When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall

SECRETARY OF STATE[721](cont'd)

be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount.

The recount shall be conducted by members of the special precinct board following the provisions of Iowa Code sections 50.48 and 50.49. The recount board may use a computer program board which was not used in the election to compare with the suspected defective one.

This rule is intended to implement 1997 Iowa Acts, House File 636, section 59.

ITEM 5. Amend rule 721—21.300(53), introductory paragraph, as follows:

**721—21.300(53) Satellite absentee voting stations.** The county commissioner of elections may designate locations in the county for absentee voting stations. If the commissioner receives a petition requesting that a satellite absentee voting station be established at a location described on the petition, the commissioner shall provide the requested station if the petition was properly signed and filed. *The petition shall be rejected if the site chosen is not accessible to elderly and disabled voters or has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, if the owner of the site refuses permission to locate the satellite absentee voting station at the site named on the petition, or if the owner of the site demands payment for its use.*

The petition ~~must~~ shall be signed by not less than 100 eligible electors of the county. The petition ~~must~~ shall be filed with the commissioner no later than ~~5 p.m. on the eleventh day before the election~~ the deadline specified in Iowa Code section 53.11 for the election.

Satellite absentee voting stations established by petition shall be open for at least one day ~~from 8 a.m. until 5 p.m. for a minimum of six hours.~~ ~~These satellite~~ Satellite absentee voting stations shall be accessible to elderly and disabled voters.

ITEM 6. Amend subrule 21.300(1) as follows:

**21.300(1) Form of petition.** The petition requesting that a satellite absentee voting station be established at a specific location shall be in substantially the following form:

STATE OF IOWA

PETITION FOR ABSENTEE VOTING STATION

Instructions: This petition may be signed by people who

- are U.S. citizens.
- are at least 18 years old,
- have not been convicted of a felony,
- have not been declared mentally incompetent by a court,
- and who live in this county.

They do not need to be registered voters.

The petition must be taken to the county auditor's office before 5 p.m. on \_\_\_\_\_ (date = ~~11 days before the election for which the satellite absentee voting station is requested~~).

Date of election: \_\_\_\_\_

We, the people of \_\_\_\_\_ County, request that there be an absentee voting station at the place described below:

[Instructions: Give the address of the building, and the name of the building, if it has a name. Elderly and disabled voters must be able to get into the building to vote.]

Signature	Address, including street and number, if any	Date signed
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		

SECRETARY OF STATE[721](cont'd)

17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		

page \_\_\_ of \_\_\_

ITEM 7. Amend subrule **21.300(2)**, first and second unnumbered paragraphs, as follows:

~~If a satellite absentee voting station was established because the auditor received a petition, and it is not possible to provide at least seven days' notice, the notice shall be published as soon as possible after the receipt of the petition. If no newspaper will be published before the satellite absentee voting station opens, no published notice is required.~~

A notice shall also be posted at each satellite absentee voting station at least seven days *before* the opening of the satellite absentee voting station. The notice shall remain posted as long as the satellite absentee voting station is scheduled for service. If it is not possible to post the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be posted as soon as possible.

ITEM 8. Amend subrule **21.300(3)**, first unnumbered paragraph, as follows:

At least three people shall be assigned to work at each satellite absentee voting station; more workers may be added at the commissioner's discretion. All workers must be qualified electors of the county, and for primary and general elections the workers must be registered with a political party. No more than a simple majority of the workers shall be ~~members~~ *members* of the same political party.

ITEM 9. Amend paragraph **21.300(5)"c"** as follows:

c. An absentee voter's log in which to record the names of electors casting absentee ballots, the serial numbers on their applications and affidavit envelopes, and the date and time the ballots are returned. The log may also be used to record the return of absentee ballots which were mailed.

ITEM 10. Amend subrule **21.300(6)**, first unnumbered paragraph, as follows:

If the ballots are transported by the satellite absentee voting station workers, ~~all of the two workers who are members of different political parties~~ and the ballots must travel together in the same vehicle.

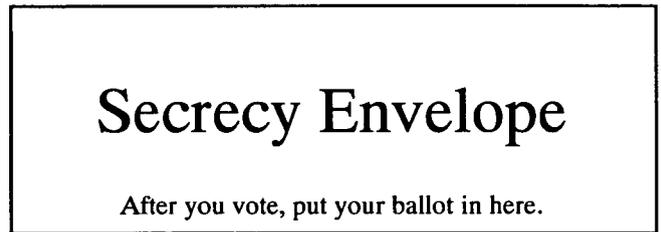
ITEM 11. Amend subrule **21.300(12)**, numbered paragraph "8" of the instructions, as follows:

8. If couriers will be picking up the ballots, all workers must wait until both couriers arrive. Ask the couriers for identification before surrendering the ballots. If the workers are to return the ballots to the commissioner's office, ~~all two workers who are members of different political parties~~ and the ballots must travel together in the same vehicle to return the ballots.

ITEM 12. Amend 721—Chapter 21 by adding the following **new** rule:

**721—21.359(53) Processing absentee ballots before election day.** Only when the voters have been provided with secrecy envelopes may the commissioner direct the special precinct board to open affidavit envelopes on the day before election day.

**21.359(1)** The secrecy envelope shall be closed on at least two sides and shall completely cover the ballot. The envelope shall have the following message printed on it using at least 24-point type:



**21.359(2)** The special precinct board shall review voters' affidavits and applications to determine which ballots will be accepted for counting and prepare the notices to those voters whose ballots have been rejected. The affidavit envelopes containing ballots that will not be counted and the applications submitted for those ballots shall be stored in a secure location.

**21.359(3)** The affidavit envelopes containing the ballots that will be counted shall be stacked with the affidavits facing down. The envelopes shall be opened and the secrecy envelope containing the ballot shall be removed. The affidavit envelope and application shall be stored together.

**21.359(4)** If a voter has not enclosed the ballot in a secrecy envelope, the officials shall put the ballot in a secrecy envelope without examining the ballot. Two of the special precinct election officials, one from each of the political parties referred to in Iowa Code section 49.13(2), shall sign the secrecy envelope.

**21.359(5)** The following security procedures shall be followed:

a. The process shall be witnessed by observers appointed by the county chairperson of each of the political parties referred to in Iowa Code section 49.13, subsection 2.

b. No ballots shall be counted or examined before election day.

c. The number of secrecy envelopes shall be recorded before the ballots are stored and the number shall be verified before any ballots are removed from the envelopes on elec-

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tion day. The ballots may be bundled and sealed in groups of a specified number to make counting easier.

This rule is intended to implement 1997 Iowa Acts, House File 636, section 73.

ITEM 13. Amend subrule 21.361(5) as follows:

**21.361(5)** An absentee ballot shall be rejected if the *affidavit* envelope contains more than one ballot of any kind. *This includes all ballots contained in the affidavit envelope, whether or not they are enclosed in secrecy envelopes.*

## ARC 7392A

## SECRETARY OF STATE[721]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 52.5, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

These amendments make several important changes in Chapter 22. Specific performance standards for newly approved voting systems are adopted. Changes are made in the requirements for voting system testing and examination. The chapter is reorganized and divided into four sections to gather together all rules about each specific type of voting equipment. Ballot printing instructions for special paper ballots are revised to reflect changes in Iowa Code chapter 49. Rules are provided for the programming of precinct count systems. Specific instructions are provided for precinct workers using the AIS 100, a recently approved voting system. A new tally list form is prescribed for central count systems.

With these rules the Secretary of State adopts voting systems standards promulgated by the Federal Election Commission as the minimum requirement for all new voting systems approved in Iowa after this year. The rules require the report of an independent test authority to certify compliance with those standards. The FEC standards are widely relied upon in the voting system industry; these standards will help protect Iowa voters by requiring that voting equipment be reliable. See Items 1, 2, and 5.

Changes are made in the requirements for voting system testing and examination. More specific information about the version of the system to be examined will be required on the application for examination and test. See Item 6. Following the 1996 general election, a third political party qualified in Iowa. New voting systems will be required to demonstrate the ability to accommodate three political parties. See Items 7 and 13. A method is provided for the Board of Examiners to rescind certification of voting systems and voting booths which are no longer used in Iowa and are no longer available for purchase from the manufacturer. See Items 16 and 18. The changes in equipment that vendors are required to submit for reexamination are more specifically described. See Item 15. Clearer instructions about ballot rotation and write-in spaces for printing test ballots are provided in Items 8, 9, 10, 11, 12, and 14.

Editorial and organizational changes have been made to divide the chapter into sections based upon the type of voting equipment being discussed. See Items 4, 20, 21, 25, 32 and 34.

Ballot printing instructions for special paper ballot systems have been revised in response to substantial changes made to Iowa Code chapter 49 by 1997 Iowa Acts, House File 636 which changes the basic ballot format in the Iowa Code from the party column paper ballot to the office block style used for special paper ballots. This change has made several provisions of Chapter 22 redundant; those provisions have been rescinded. See Item 24.

Devices which are used to count special paper ballots at the precinct polling place can be programmed to detect ballots that appear to be blank or for which the voter has "over-voted," or marked the names of more candidates than are allowed for one or more offices. These rules require that capability and provide instructions to the precinct official. See Item 26. Specific instructions are provided for precinct election officials using the AIS 100, a recently approved precinct count system. See Items 30 and 31. A new tally list form is prescribed for central count systems. There are also a number of technical and editorial changes made to the chapter.

Any interested person may make written suggestions or comments on the proposed amendments on or before Tuesday, August 5, 1997. Written comments should be sent to the Elections Division, Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319-0138, fax (515)242-5953. Anyone who wishes to comment orally may telephone the Elections Division at (515)281-5865 or visit the office on the second floor of the Hoover Building.

There will be a public hearing on Tuesday, August 5, 1997, at 1:30 p.m. at the office of the Secretary of State, Second Floor, Hoover State Office Building. People may comment orally or in writing. Persons who speak at the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code chapter 52.

The following amendments are proposed.

ITEM 1. Amend rule 721—22.1(52) by adding the following new definitions in alphabetical order:

"Accredited independent test authority" means a person or agency that is formally recognized by the National Association of State Election Directors as competent to design and perform qualification tests for voting system hardware and software.

"Qualification test" means the examination and testing of an electronic voting system by an independent test authority using Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Systems, as adopted by the Federal Election Commission January 25, 1990, and as amended April 1990, to determine if the system complies with those standards.

ITEM 2. Amend 721—Chapter 22 by adding the following new rule 22.2(52):

**721—22.2(52) Voting system standards.** All electronic voting systems and machines approved for use by the Board of Examiners after December 31, 1997, shall meet Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Systems, as adopted by the Federal Election Commission January 25, 1990, and as amended April 1990. The report of an accredited independent test au-

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thority certifying that the system is in compliance with these standards shall be submitted with the application for examination.

This rule is intended to implement Iowa Code section 52.5.

ITEM 3. Amend subrule 22.3(3) as follows:

22.3(3) Correspondence and materials required to be filed with the Board of Examiners may shall be addressed to the examiners in care of the Elections Division, Office of the Secretary of State, Statehouse Second Floor, Hoover Building, Des Moines, Iowa 50319, or to the chairperson of the board of examiners.

ITEM 4. Amend rule 22.5(52), introductory paragraph, as follows:

721—22.5(52) Examination of voting equipment—Application application. Any vendor who wishes to apply for certification of voting equipment for use in the state of Iowa shall apply to the secretary of state for an appointment with the examiners. The application shall include five copies of each of the following:

ITEM 5. Adopt new subrule 22.5(3) as follows:

22.5(3) Report of an accredited independent test authority certifying that the system is in compliance with Federal Election Commission's Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Systems.

ITEM 6. Amend subrule 22.5(10) as follows:

22.5(10) Request for examination and test. The following form shall be filed with the materials required above:

STATE OF IOWA

REQUEST FOR EXAMINATION AND TEST BY THE BOARD OF EXAMINERS FOR VOTING MACHINES AND ELECTRONIC VOTING SYSTEMS

Equipment to be examined, including name, model number, and version numbers for hardware and software: \_\_\_\_\_

Date this version became available for purchase: \_\_\_\_\_

Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Person to contact: \_\_\_\_\_ Title: \_\_\_\_\_

Type of equipment (check one):

\_\_\_ Voting machine (mechanical)

\_\_\_ Voting machine (direct recording electronic)

\_\_\_ Electronic voting system (precinct count)

\_\_\_ Electronic voting system (central count)

I request that the Iowa Board of Examiners for Voting Machines and Electronic Voting Systems examine and test the equipment described above and in the attached documents for the purpose of determining whether this equipment will be certified for use in the State of Iowa. I will pay the costs of this examination, including the examiners' fees and expenses. I understand that the examiners' fee of one hundred fifty dollars (\$150) each is to be paid before the examination begins.

I will also pay the fees of any consultants employed by the examiners to assist in the evaluation of the equipment and to advise the examiners as to the sufficiency of the equipment. I understand that I have the right to suggest the names of reliable independent test authorities to the examiners and may decline to submit the equipment to the examination of an individual for good reason.

I understand that a production model of the equipment submitted for certification shall be made available to the examiners and their consultant, if any.

I agree to submit this equipment for further examination if any changes are made following its approval for use. I understand that certification will be denied or rescinded if the examiners determine that this voting system does not meet the requirements of the Code of Iowa and Iowa Administrative Code.

I understand that voting machines or voting systems that have not been approved by the examiners cannot be used at any election in the State of Iowa.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_ (Date)

by \_\_\_\_\_ NOTARY PUBLIC (or title of other officer authorized to perform notarial acts)

ITEM 7. Amend rule 22.10(52), catchwords, as follows:

721—22.10(52) Test primary election for two three political parties.

ITEM 8. Amend subrule 22.10(2) as follows:

22.10(2) Offices. The following offices shall each have two candidates for each party. Candidate names shall be rotated as required by Iowa Code section 43.28.

ITEM 9. Amend paragraph 22.10(2) "k" as follows:

k. County Supervisor (vote for no more than three of six candidates)

ITEM 10. Amend subrule 22.10(3) as follows:

22.10(3) Write-in votes. A space Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be elected to the office.

ITEM 11. Amend subrule 22.11(1), introductory paragraph, as follows:

22.11(1) Offices. In the test general election all of the above offices shall be included with the addition of candidates for lieutenant governor to be voted for jointly with each candidate for governor. Each political party and nonparty political organization shall have one candidate for each office that appeared on the primary ballot, except county supervisor, which shall have three candidates for each party and nonparty political organization. Names of candidates for county supervisor shall be rotated as required by Iowa Code section 49.31, subsection 2.

The following nonpartisan offices shall also be included on the ballot with the heading "Nominated by Petition":

ITEM 12. Amend subrule 22.11(1) by adding the following new paragraph "d":

d. Agriculture Extension Council

ITEM 13. Amend subrule 22.11(4) as follows:

22.11(4) Straight party voting for two three political parties and five nonparty political organizations.

ITEM 14. Amend subrule 22.11(5) as follows:

22.11(5) Write-in votes. A space Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be

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*elected to the office.* This does not include judges standing for retention.

ITEM 15. Amend rule 721—22.17(52), introductory paragraph, as follows:

**721—22.17(52) Reexamination following changes in equipment.** The vendor shall notify the examiners of any changes in the equipment ~~and including changes in tabulation software, firmware, and hardware.~~ *The vendor shall provide to the examiners the following information when requesting recertification:*

ITEM 16. Amend paragraph 22.18(1)“c” as follows:

c. Equipment which has been certified for use but has not been adopted by any county in Iowa, or is no longer used by any county in Iowa, and does not meet the current standards established by these rules or is no longer available for purchase from the manufacturer. *The examiners may rescind certification of such voting equipment without a complaint or contested case proceedings.*

ITEM 17. Amend subrule 22.18(2) as follows:

**22.18(2) Procedure for rescinding certification.** Complaints regarding voting equipment certified for use in Iowa should shall be filed with the examiners secretary of state. The examiners shall review all complaints and may initiate a contested case to rescind certification on any ground listed above. The contested case may be conducted before the examiners or before an administrative law judge. A contested case for rescinding certification shall be conducted, to the extent applicable, in accordance with the procedural rules specified in 481—Chapter 10, Iowa Administrative Code.

ITEM 18. Amend rule 721—22.19(52), introductory paragraph, as follows:

**721—22.19(52) Examination of voting booths—Application application.** Any vendor who wishes to apply for approval of a voting booth for use in the state of Iowa shall apply to the secretary of state for an appointment with the examiners. ~~An application may also be made by the county commissioner of elections for examination of voting booths already in use before May 3, 1990. The commissioner shall file as complete an application as possible, but the examiners shall not refuse to examine a voting booth if the commissioner cannot provide all materials required to be submitted by a vendor.~~ The application shall include five copies of each of the following:

ITEM 19. Amend subrule 22.29(1) by adding the following new paragraph “c”:

c. A voting booth which has been certified for use has not been purchased by any county in Iowa, or is no longer used by any county in Iowa, is no longer available for purchase from the manufacturer. The examiners may rescind certification of such voting booths without a complaint or contested case proceedings.

ITEM 20. Amend 721—Chapter 22 by renumbering as indicated in the chart that follows:

Current number	New number
22.53(52)	22.100(52)
22.53(1)	22.101(52)
22.53(2)	22.102(52)
22.53(3)	22.201(52)
22.53(3)“a”	22.201(1)

22.53(3)“b”	22.201(2)
22.53(3)“c”	22.200(2)
22.53(3)“d”	22.200(1)
22.53(3)“e”	22.231(52)
22.53(4)	22.221(52)
22.53(5)	22.232(52)
22.53(6)	22.240(52)
22.53(7)	22.250(52)
22.53(8)	22.251(52)
22.54(47)	22.431(52)
22.55(52)	22.342(52)
22.56 to 22.59	Reserved.
22.60(52)	22.461(52)

New number	Current number
Reserved.	22.56 to 22.59
22.100(52)	22.53(52)
22.101(52)	22.53(1)
22.102(52)	22.53(2)
22.200(1)	22.53(3)“d”
22.200(2)	22.53(3)“c”
22.201(52)	22.53(3)
22.201(1)	22.53(3)“a”
22.201(2)	22.53(3)“b”
22.221(52)	22.53(4)
22.231(52)	22.53(3)“e”
22.232(52)	22.53(5)
22.240(52)	22.53(6)
22.250(52)	22.53(7)
22.251(52)	22.53(8)
22.342(52)	22.55(52)
22.431(52)	22.54(47)
22.461(52)	22.60(52)

ITEM 21. Amend 721—Chapter 22 by adding the following new division title before renumbered rule 721—22.100(52):

SPECIAL PAPER BALLOT SYSTEMS

ITEM 22. Amend renumbered rule 721—22.100(52) as follows:

**721—22.100(52) Special paper ballots, portable vote tallying systems, and central count systems.** ~~As an alternative to mechanical voting machines and paper ballots, the~~ *The board of supervisors of any county may authorize, purchase and order the use of special paper ballots and a portable vote tallying system for voting at any or all of the regular polling places or for absentee voting within a county at any election. The supervisors may also authorize the use of special paper ballots in conjunction with a central count system.*

ITEM 23. Amend renumbered rule 721—22.101(52) by deleting paragraph letters a to h, by arranging the defini-

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tions in alphabetical order, and by adding the following new definitions in alphabetical order:

“Overvote” means to vote for more than the permitted number of choices for any office or question on a ballot.

“Undervote” means to vote for fewer than the permitted number of choices for any office or question on a ballot.

ITEM 24. Rescind renumbered rule 721—22.102(52) and insert in lieu thereof the following new rule:

**721—22.102(52) Special paper ballots.** The special paper ballots shall be printed pursuant to Iowa Code chapters 43 and 49 and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the system.

**22.102(1)** The special paper ballots may be printed on both sides of a sheet of paper. If both sides are used, the words “TURN THE BALLOT OVER” shall be clearly printed in at least 24-point type (1/4" high) on the front and the back of the special paper ballot, at the bottom.

**22.102(2)** Printed at the top of the front side of the special paper ballot shall be the name and date of the election; the words, “Official Ballot”; a designation of the ballot rotation, if any; and a facsimile of the commissioner’s signature.

**22.102(3)** The voting target shall be printed opposite each candidate’s name and write-in line on the special paper ballot, and opposite the “yes” and “no” for each public measure and judge. Wherever possible, the voting target shall be on the left side of the name or “yes” and “no”.

**22.102(4)** For partisan primary elections, the names of candidates representing each political party shall be printed on separate special paper ballots. The ballots shall be uniform in quality, texture and size. The name of the political party shall be printed in at least 24-point type (1/4" high) at the top of the ballot.

**22.102(5)** There shall be printed on the ballot a line to accommodate the initials of the precinct election official who endorses the ballot as provided in Iowa Code sections 43.36 and 49.82.

**22.102(6)** It is not necessary for public measures to be printed on colored paper.

**22.102(7)** Ballots shall be coded as necessary to allow the tabulation program to identify the appropriate ballots for the precinct. Ballots shall be coded so the tabulating device can identify the votes cast for each office and question on the ballot by precinct. The votes from the absentee and special voters precinct shall be reported as a single precinct. Identical ballots shall not be coded to identify groups of voters within a precinct.

ITEM 25. Amend 721—Chapter 22 by adding the following new division title before renumbered rule 721—22.200(52):

## PRECINCT COUNT SYSTEMS

ITEM 26. Amend renumbered rule 721—22.201(52) as follows:

**721—22.201(52) Programming the tabulating devices for precinct count systems.**

**22.201(1)** All programming of tabulating devices shall be performed under the supervision of the commissioner. The devices shall be programmed so as to ensure that all votes will be counted in accordance with Iowa law. *Tabulating devices shall be programmed to reject ballots:*

a. *Not coded to be used in the precinct.*

b. *That are read as blank.*

c. *That have one or more overvoted offices or public measures.*

*If a ballot is rejected for any of the reasons above, the voter shall be offered the opportunity to correct the ballot. The defective ballot shall be kept with other spoiled ballots. If the voter is not available, the ballot shall be placed in the ballot box without further examination.*

**22.201(2)** All tabulating devices shall be tested before each election in accordance with Iowa Code section 52.38. The paper printout produced in testing the tabulating device shall ~~not be signed by the person conducting the test and the tape shall be torn or cut across the signature. detached from the device and shall remain in evidence~~ *The tape shall be delivered to the precinct election officials to display with the report showing all counters have been reset to zero in the precinct throughout election day. The tabulating device, including the ballot box, and the door to any compartment containing the programming for the election shall be sealed or locked immediately upon completion of the test by the person performing the test.*

ITEM 27. Amend renumbered rule 721—22.232(52), introductory paragraph, and subrule 22.232(4) as follows:

**721—22.232(52) Manner of voting.** After the precinct election official has endorsed a special paper ballot, the *official shall instruct the voter to use only the marker provided. The special paper ballot shall be inserted in a secrecy envelope and given to the person who is entitled to receive the ballot in accordance with the provisions of Iowa Code section 49.77.*

**22.232(4)** The voter shall at once deposit the ballot, still enclosed in the secrecy envelope, in the tabulating device so that the special paper ballot is automatically removed from the secrecy envelope, the votes tabulated, and the special paper ballot is deposited in the ballot box. ~~Where a central count system is used, the voter shall give the ballot, enclosed in a secrecy envelope, to a precinct election official. The precinct election official shall at once, in the presence of the voter, deposit the ballot into the ballot box without revealing any of the marks on the ballot.~~

ITEM 28. Amend renumbered subrule 22.240(3) as follows:

**22.240(3)** Unlock or remove the seals on the ballot box and manually count the valid votes on any special paper ballots found in the portion(s) of the ballot box designated for unread ballots and ballots with write-in votes, and enter the votes so counted on the official tally sheet in the proper place. *The officials shall follow the procedures in Iowa Code section 53.37(2) for counting damaged, defective or unread ballots.*

ITEM 29. Rescind renumbered rule 721—22.251(52) and insert in lieu thereof the following new rule:

**721—22.251(52) Absentee voting instructions.** Written instructions to the voter shall be sent with every absentee ballot.

**22.251(1)** The instructions to the voter shall be in substantially the following form:

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STATE OF IOWA  
ABSENTEE VOTING INSTRUCTIONS

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**READ ALL INSTRUCTIONS CAREFULLY BEFORE VOTING!**  
**WARNING:** Do not mark or fold your ballot except as outlined in these instructions. If your ballot is not properly marked, your vote cannot be counted.

**The main points:**

- Vote in secrecy; use a # 2 pencil.
- Complete, sign and date the affidavit.
- Seal the ballot inside the affidavit envelope.
- Return the ballot on time:  
 By mail before election day, or  
 Deliver to Auditor by x p.m.   /  /  .

**YOUR BALLOT PACKET CONTAINS**

- "Official Ballot".
- Secrecy envelope to enclose "Official Ballot".
- Affidavit envelope.
- Return envelope.

**IF YOU SPOIL YOUR BALLOT**

- Put the ballot and other materials in return envelope.
- Write "SPOILED BALLOT" on the return envelope.
- Mail or take the entire packet to the auditor. A new packet will be sent to you.

**IF YOU NEED HELP TO VOTE**

If you are blind, cannot read, or cannot mark your own ballot because you are disabled, you may choose someone to help you vote. However, these people cannot help you vote:

- your employer.
- an agent of your employer.
- an officer or agent of your union.

**MARKING YOUR BALLOT**

1. **Vote in secrecy.** Mark your ballot so that no one else will know how you voted, unless you need help to vote.
2. **Study the ballot carefully before voting.** Marks cannot be erased without spoiling the ballot.
3. **Use a #2 pencil** [or describe other appropriate marker].
4. **Voting for candidates.** Mark the [describe voting target] next to the names of the candidates you want to vote for. [Show sample voting mark.]  
 [ ] CANDIDATE NAME

For some offices you may vote for more than one person. Watch for instructions under each office title that say, "Vote for no more than \_\_\_\_."

5. **Write in votes.** If you want to vote for a person whose name is not on the ballot:
  - a. Write the name of the person on the line after the names of the other candidates, AND

- b. Mark the [describe voting target] next to the name you have written.
6. **Overvoting.** If you mark more [describe voting target] for an office than the number of people that can be elected, your vote for that office will not be counted.
7. **No extra marks.** Make no marks on the ballot except the marks you make to vote.

**RETURNING YOUR BALLOT**

*This ballot must be returned to the county auditor even if you don't vote.* Follow instructions on the Affidavit Envelope for returning your ballot.

**IF YOUR BALLOT IS REJECTED BEFORE THE BALLOT ENVELOPE IS OPENED, YOU WILL BE NOTIFIED OF THE REASON.**

**22.251(2)** In addition to the instructions provided above, the following information shall be inserted in the instructions provided to voters at the general election:

- a. **Voting on questions.** To vote for a question, mark the [describe voting target] next to the word "YES." To vote against a question, mark the [describe voting target] next to the word "NO."
- b. **Voting on judges.** To vote to keep a judge in office, mark the [describe voting target] next to the word "YES" opposite the judge's name. To vote to remove a judge from office, mark the [describe voting target] next to the word "NO."
- c. **Straight party voting.** To vote for all of the candidates of a political party, mark the [describe voting target] next to the name of that party. If you mark a straight party vote you may change your straight party vote for any office by marking the [describe voting target] for a candidate of another party. If you can vote for more than one person for an office, you must mark all of your candidate choices if you are splitting your vote between candidates of two or more parties.

**ITEM 30.** Amend 721—Chapter 22 by adding the following **new** rule:

**721—22.260(52) Specific precinct count systems.** Additional rules are provided for the following systems approved for use in Iowa.

**ITEM 31.** Amend 721—Chapter 22 by adding the following **new** rule:

**721—22.261(52) AIS 100—system messages and solution codes.** The numbers in the right-hand column of this chart correspond to solution codes printed after the chart. Precinct election officials and others working with this system shall be provided with the appropriate information from the chart.

System Message	When to expect this message	What to do
Accept blank ballot	Polls open: reading ballots	1
Audit log full	Polls open: reading ballots	4
Counter block failed CRC	Preelection testing & setup	6
Counters are full	Polls open: reading ballots	4
Counters are in overflow	Polls open: reading ballots	4
Counters cannot hold next count	Polls open: reading ballots	4
Counters cleared	Election day start-up	0
DRAM counter space bad	Polls open: reading ballots	4

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System Message	When to expect this message	What to do
Election definition failed CRC	Preelection testing & setup	4
Erroneous arithmetic operation	Anytime	4
Error accessing NVRAM	Polls open: reading ballots	4
Error getting machine ID	Election day start-up	4
Error in initializing modem	Modem transmission of results	5
Error in opening modem	Modem transmission of results	5
Error in receiving command request	Modem transmission of results	5
Error in receiving login request	Modem transmission of results	5
Error in receiving password request	Modem transmission of results	5
Error reading PCMCIA card	Polls open: reading ballots	4
Error reading system audit log	Polls open: reading ballots	4
Error seeking on PCMCIA card	Preelection testing & setup	6
Error setting line parameters	Preelection testing & setup	6
Error setting real time clock	Preelection testing & setup	6
Error writing PCMCIA card	Polls open: reading ballots	4
Error writing system audit log	Polls open: reading ballots	4
Event log failed CRC	Preelection testing & setup	6
Host rejects password	Modem transmission of results	5
Incompatible PCMCIA card format	Preelection testing & setup	6
Incompatible system log format	Preelection testing & setup	6
Invalid instruction	Polls open: reading ballots	4
Invalid memory reference	Polls open: reading ballots	4
Invalid Seq-Type-Split	Polls open: reading ballots	3
Memory parity error	Polls open: reading ballots	4
Missing precinct counter block	Polls open: reading ballots	4
No ballots scanned	Preelection testing & setup	6
Overvote on race XXXXX	Polls open: reading ballots	2
Party preference race missing	Preelection testing & setup	6
PCMCIA card not inserted	Polls open: reading ballots	4
PCMCIA driver missing	Polls open: reading ballots	4
PCMCIA header section failed CRC	Polls open: reading ballots	6
Printer time-out	Polls open: reading ballots	4
Race results cross-check fail	Polls open: reading ballots	4
Reset to factory settings	Preelection testing & set-up	0
Results sent successfully	Modem transmission of results	0
Status results cross-check fail	Polls open: reading ballots	4
Successfully scanned ballot	Polls open: reading ballots	0
System audit log failed CRC	Polls open: reading ballots	4
Test deck has not been processed	Election day start-up	run test
Unable to initialize diverter	Election day start-up	4
Unable to initialize scanning system	Election day start-up	4
Unable to load signal handlers	Election day start-up	4
Unable to update counters	Polls open: reading ballots	4
Unload election definition		4
UNKNOWN ERROR, CODE: XXX	Polls open: reading ballots	4

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System Message	When to expect this message	What to do
Voltage too low	Anytime	check plug, then 4
100-Could not detect orientation	Polls open: reading ballots	3
101-Paper jam	Polls open: reading ballots	7
103-Paper not detected under sensor	Polls open: reading ballots	3 or 4
104-No data on bottom sensor	Polls open: reading ballots	4
105-Time out error on data interrupt	Polls open: reading ballots	3
106-Error skipping black checks on start	Polls open: reading ballots	4
107-Did not detect enough timing marks	Polls open: reading ballots	3
109-Unable to set priority	Election day start up	4
111-Unable to find leading timing bands	Polls open: reading ballots	3
112-Did not find the minimum number of rows	Polls open: reading ballots	3
116-Unable to attach to data interrupt proxy	Preelection testing & setup	6
117-Unable to attach to hardware interrupt	Preelection testing & setup	6
118-Unable to attach to set clock resolution	Preelection testing & setup	6
119-Unable to create watchdog timer	Preelection testing & setup	6
120-Unable to set signal handler	Preelection testing & setup	6
121-Bottom side not found	Polls open: reading ballots	3
123-Cache buffer overflow	Polls open: reading ballots	3 then 4
124-Scanner board failure	Polls open: reading ballots	4
125-Checksum failure reading CMOS memory	Preelection testing & setup	0
127-Double paper detected	Polls open: reading ballots	3
128-Diverter not initialized	Polls open: reading ballots	4
129-Diverter run on	Polls open: reading ballots	4
130-Diverter not detected	Polls open: reading ballots	4
131-Ballot skewed	Polls open: reading ballots	3
Unknown error code: XXX	Polls open: reading ballots	3 then 4
???-Unknown error on decode	Polls open: reading ballots	3 & 4

Solution Codes

0. This is okay—you don't need to do anything.

1. Ballot decision—BLANK BALLOT: See Solution Code 2.

2. Ballot decision—OVERVOTED BALLOT.

If the voter is still there, offer the voter the opportunity to mark the ballot using the proper pen or pencil. If the voter declines the offer, press "yes" and reinsert the ballot. If the voter wants to correct the ballot press "no." Mark the unreadable ballot or overvoted ballot "SPOILED" and keep it with other spoiled ballots. If the voter asks to use the original ballot as a guide to marking the new ballot, be sure the voter returns the unreadable ballot to you before placing the new ballot in the counter.

3. Ballot decision—Ballot not read by counter.

First ask the voter to reinsert the ballot. If the message repeats, take the voter aside to allow other voters to insert their ballots into the counter. With the permission of the voter, a precinct official shall inspect the ballot by comparing it with another of the same ballot type. Assure the voter that you will not reveal to anyone how the ballot was marked. There are several possible reasons for this message to appear.

- The ballot is flawed or misprinted. Solution: Replace ballot. Mark the unreadable ballot "SPOILED." Keep it

with other spoiled ballots. If the voter asks to use the original ballot as a guide to marking the new ballot, be sure the voter returns the unreadable ballot to you before placing the new ballot in the counter.

- The wrong ballots were provided to the precinct officials. Check other ballot packages to see if all ballots are wrong. If all of the offices and candidates are the same and only coding or rotation is different, allow voters to use the ballots on hand. Notify the auditor's office for replacement ballots. Follow the procedures for Solution Code 4 until the correct ballots are delivered.

- The voter has attempted to use a ballot other than the one provided by the precinct officials. This voter shall be challenged for using an illegal ballot. Place the ballot in the special ballot envelope.

- The wrong memory card is loaded in the machine. See Solution Code 4.

4. Equipment problem.

Call the auditor's office, report the message and ask for a new memory card or counter. Until a replacement arrives, place all ballots in a sealed ballot box. When the new memory card or counter has been installed, two precinct officials of different parties shall feed all ballots into the counter,

SECRETARY OF STATE[721](cont'd)

including all previously counted ballots and ballots received while the counter was not working.

5. Modem transmission problem.

Try again to send election results. If the error message repeats, be prepared to read the election results over the telephone. Call the auditor's office to report the problem.

6. Precinct election officials do not need instructions for this message.

7. Paper jam problem.

Ask voter to try ballot again. If the error message repeats, follow the instructions in Solution Code 4.

ITEM 32. Amend 721—Chapter 22 by adding the following new rule:

721—22.241(52) Electronic transmission of election results. If the equipment includes a modem for the electronic transmission of election results, the precinct officials may transmit the results after a printed copy has been made.

ITEM 33. Amend 721—Chapter 22 by adding the following new division title before renumbered rule 721—22.342(52):

CENTRAL COUNT SYSTEMS

ITEM 34. Rescind renumbered rule 721—22.342(52) and insert in lieu thereof the following new rule:

721—22.342(52) Tally list for central count precincts. An abbreviated tally list shall be provided for each precinct.

22.342(1) The tally list shall include a precinct officials' certificate in substantially the following form:

Precinct Tally List—Precinct Officials' Certificate
Precinct Name: \_\_\_\_\_ County, Iowa

Number of "Voter's Declarations of Eligibility" slips signed: \_\_\_\_\_

Ballot Box seal number: \_\_\_\_\_

We, the undersigned, Precinct Election Officials of this precinct do hereby certify that the number of "Voter's Declarations of Eligibility" slips listed above represents the total number of persons who cast ballots in this precinct.

After all persons entitled to do so had cast their votes, the ballot box was sealed with the seal number listed above in the presence of all of the precinct election officials.

The sealed ballot container will be delivered to the counting center by:

\_\_\_\_\_, a member of the \_\_\_ political party, and \_\_\_\_\_, a member of the \_\_\_ political party, both of whom are officials of this precinct.

Signed by all precinct election officials of this precinct:
Date: \_\_\_/\_\_\_/\_\_\_ (1) \_\_\_\_\_ (etc.)

22.342(2) At the counting center, the number of ballots in the ballot box shall be compared to the number of signed declarations of eligibility reported on the precinct officials' certificate. If the number of votes from any precinct differs from the number of signed declarations of eligibility, the reason for the difference shall be determined and reported in the tally list for the election.

22.342(3) Write-in votes from each precinct shall be reported on a separate tally sheet which provides columns for the names of offices, the names of persons receiving votes, space to tally the votes received, and a column in which to report the total number of votes cast for each person. In tally lists provided for primary elections, separate pages shall be provided to tally the write-in votes for each political party.

Tally sheets for write-in votes shall be attested to by each member of the resolution board who participated in the count.

22.342(4) The officials at the counting center shall certify the procedures followed at the counting center in substantially the following form:

Counting Center Tally Certificate

County

We, the undersigned officials of the Counting Center for this county, do hereby certify that all ballots delivered from the precincts for this election were tabulated as shown in the attached report. A separate record of the votes cast in each precinct is included.

We further certify that a record of any write-in votes or other votes manually counted pursuant to Iowa Code chapter 52 is included in this Tally List, and that the numbers entered in the column headed "Total Votes" are the correct totals of all votes manually counted by us.

Signed at the Counting Center located at \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_, \_\_\_:\_\_\_ am/pm.

[signatures of counting center officials]

1. \_\_\_\_\_

(etc.)

22.342(5) The record generated by the tabulating equipment for each precinct shall be attached to or enclosed with the tally list and shall constitute the official return of the precinct.

ITEM 35. Amend 721—Chapter 22 by adding the following new division title before renumbered rule 721—22.431(52):

VOTING MACHINES

ARC 7352A

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 111, "Real Property Acquisition and Relocation Assistance," Iowa Administrative Code.

This chapter is being amended to adopt by reference a new edition of Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance." Subparagraph 111.1(2)"b"(4) is also being amended to reference two Iowa Code chapters. This subparagraph paraphrases a portion of Iowa Code section 6B.42, which was amended by 1995 Iowa Acts, chapter 192, section 1, to add these two Iowa Code chapters.

Following are the major changes being made in Section II of the Uniform Manual:

1. Section 111.1(11) is being amended to clarify that the acquisition and relocation rules shall be complied with on local highway projects if the local jurisdiction wants federal fi-

## TRANSPORTATION DEPARTMENT[761](cont'd)

nancial assistance in the program or project for which the acquisition or displacement is occurring.

2. In section 111.2(19), the definition of "program or project" is being amended to mirror the federal definition in 49 CFR Part 24.

3. In section 111.2(23), the definition of "small business" is being amended to mirror the federal definition in 49 CFR Part 24. The change states that sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for reimbursement of reestablishment expenses.

4. Section 111.7(3) is being amended to remove the requirement that a city or county submit a right-of-way certificate on a project that has no federal financial assistance.

5. Sections 111.102 to 111.104 are being amended to give the acquiring agency the authority to determine that an appraisal is not necessary and to use a compensation estimate if the valuation problem is uncomplicated and the acquisition payment is \$10,000 or less. The compensation estimate must be approved by an agency representative prior to acceptance of any agreement based on it. Prior language required a compensation estimate if the valuation problem was uncomplicated and the acquisition payment was \$2,500 or less. Prior language also required a review appraiser to sign the compensation estimate.

6. Sections 111.103 and 111.104 are being amended to give the acquiring agency the authority to use a value-finding appraisal report to value noncomplex total or partial acquisitions when damages to the remaining property are nonexistent or are relatively minor, are easily measured or explained, or are measurable by a cost to cure. The use of this report is limited only by the complexity of the acquisition or of the property being appraised. Prior language required a value-finding appraisal report when the compensation was estimated to be more than \$2,500 but less than \$15,000. A detailed appraisal was required for acquisitions estimated to equal or exceed \$15,000.

7. Section 111.103(2) is being amended to state that detailed appraisals shall reflect nationally recognized appraisal standards including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice.

8. Section 111.103(3) is being amended to delete reference to a dollar amount when deciding to obtain more than one appraisal or a detailed appraisal. Instead, the decision is to be based on the complexity of the appraisal problem.

9. Section 111.103(7) is being amended to state that all appraisal forms and formats developed by the Department shall ensure that appraisals are performed in conformance with the federal Uniform Relocation Act and the Uniform Standards of Professional Appraisal Practice, including the Jurisdictional Exception thereto.

10. Section 111.103(10) is being amended to require that contract (fee) appraisers hired to perform detailed appraisals must be Iowa-certified in accordance with Iowa Code chapter 543D. Also, if the contract appraiser who prepared the detailed appraisal was Iowa-certified, any contract review appraiser hired to review this appraisal must also be Iowa-certified.

11. Section 111.304 regarding reestablishment expenses for nonresidential moves is being amended to conform to the federal regulations in 49 CFR Part 24. This section provides for reimbursement of expenses incurred in relocating and reestablishing a small business, farm or nonprofit organization at a replacement site. Prior language limited certain expenses to specific dollar amounts, with the overall payment limited to \$10,000. For example, advertising the replace-

ment location was limited to \$1,500 of the \$10,000 total. The revised language retains the \$10,000 cap but does not set dollar limits for individual expenses. Also, refurbishments at the replacement site are no longer ineligible per se.

A copy of Section II of the revised Uniform Manual is available from the Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1401.

These amendments are intended to implement Iowa Code chapters 6B and 316.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: rules@iadot.e-mail.com.

5. Be received by the Director's Staff Division no later than August 5, 1997.

A meeting to hear requested oral presentations is scheduled for Thursday, August 7, 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 Division at the address listed in this Notice.

3. Be delivered to the Director's Staff Division or post-marked no later than 20 days after publication of this Notice in the Iowa Administrative Bulletin.

Proposed rule-making actions:

ITEM 1. Amend rule 761—111.1(316), introductory paragraph, as follows:

**761—111.1(316) Acquisition and relocation assistance manual.** The ~~May 1990~~ *October 1997* edition of Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance" is adopted by reference.

ITEM 2. Amend subrule 111.1(2), paragraphs "a" and "b," as follows:

a. In general, Section II applies to any program or project that involves the acquisition of real property or that causes a person to be a displaced person if the program or project:

(1) Is undertaken with federal financial assistance, or

(2) Is a road or street program or project undertaken with state financial assistance from the primary road fund, includ-

## TRANSPORTATION DEPARTMENT[761](cont'd)

ing primary road funds allocated for state park and institutional roads, or

(3) ~~Is on a federal aid system~~ a public road or highway eligible for federal aid.

b. In general, Section II applies to any of the following entities that acquire real property or displace a person for a program or project described in paragraph "a":

- (1) The state of Iowa.
- (2) A political subdivision of the state.
- (3) A department, agency or instrumentality of one or more states or political subdivisions.
- (4) A utility or railroad subject to Iowa Code section 327C.2, ~~chapter 479 or chapter 476 or chapter 476, 478, 479, or 479B~~ authorized by law to acquire property by eminent domain.
- (5) Any other person who has the authority to acquire property by eminent domain under state law.
- (6) Any other person who acquires real property or displaces a person for a program or project described in paragraph "a."

**ARC 7372A****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 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

1997 Iowa Acts, House File 416, section 10, increases the allowable dimensions for multitrip permits: width has increased from 11 to 16 feet; length has increased from 100 to 120 feet; the 14-foot, 4-inch height limit has been eliminated. Also, total gross weight cannot exceed 156,000 pounds. Section 11 of this Act increases the fee for a multitrip permit from \$100 to \$200. These changes became effective July 1, 1997, and are reflected in Items 4 and 5.

By rule, the Department previously limited the validity of a multitrip permit to 30 days. Item 3 increases this validity to 60 days.

1997 Iowa Acts, House File 704, sections 25, 26 and 27, strike existing escort requirements. Section 29 of this Act requires the Department to adopt rules for all escort requirements other than those movements exempted in section 29. This legislation became effective July 1, 1997. Items 6 and 8 rescind existing rules on warning devices and required es-

corts or lights and adopt new language addressing these topics. They are all safety issues and are closely related. The term "sufficient shoulder width" is being defined in Item 1 because the new escort legislation uses this term but does not define it. The new escort requirements are less restrictive than the current ones.

These amendments are intended to implement Iowa Code chapter 321E, 1997 Iowa Acts, House File 416, sections 10 and 11, and 1997 Iowa Acts, House File 704, sections 25, 26, 27 and 29.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 7373A**. The purpose of this Notice is to solicit public comment on that submission which is incorporated by reference.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: rules@iadot.e-mail.com.
5. Be received by the Director's Staff Division no later than August 5, 1997.

A meeting to hear requested oral presentations is scheduled for Thursday, August 7, 1997, at 10 a.m. in the conference room of the Motor Vehicle Division, which is located on the upper level of Park Fair Mall, 100 Euclid Avenue, Des Moines.

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 Division at the address listed in this Notice.
3. Be delivered to the Director's Staff Division or post-marked no later than 20 days after publication of this Notice in the Iowa Administrative Bulletin.

## ARC 7357A

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF [261]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts Chapter 59, "Enterprise Zones," Iowa Administrative Code.

These rules are intended to implement new legislation, 1997 Iowa Acts, House File 724, which became effective on July 1, 1997. Rules governing enterprise zone designation and certification were adopted on an emergency basis so that these procedures would be available on the same date. The emergency filing permits counties and cities to begin to identify enterprise zone areas and initiate the certification process.

More detailed proposed rules are published herein under Notice of Intended Action as ARC 7356A to provide for a comment period before adopting final rules. The proposed new rules describe how a city or county may request enterprise zone certification by the Department, establish eligibility requirements for businesses seeking to participate in the enterprise zone, describe application and evaluation procedures, and outline the requirements for the creation of an Enterprise Zone Commission.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are impracticable and contrary to the public interest because 1997 Iowa Acts, House File 724, became effective on July 1, 1997, and authorizes a city or county to request the Department to certify an area(s) as an enterprise zone. An emergency adoption of these rules governing the enterprise zone designation and certification process permits cities and counties to avoid unnecessary administrative delays and allows them to begin to attract eligible businesses into certified enterprise zones.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on July 1, 1997. These rules confer a benefit on the public by creating enterprise zones which are intended to bring economic relief to distressed areas by attracting businesses that will provide quality jobs to Iowa.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rule: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These rules are intended to implement 1997 Iowa Acts, House File 724.

These rules were adopted by the IDED Board on June 19, 1997.

These rules became effective on July 1, 1997.

The following new chapter is adopted.

CHAPTER 59  
ENTERPRISE ZONES

**261—59.1(15E) Purpose.** The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Eligible businesses locating or located in an enterprise zone are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encour-

age communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city.

**261—59.2(15E) Definitions.**

"Act" means 1997 Iowa Acts, House File 724.

"Board" means the Iowa department of economic development board.

"Commission" or "Enterprise zone commission" means the enterprise zone commission established by a city or county within a designated enterprise zone.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"DRF" means the Iowa department of revenue and finance.

"Enterprise zone" means a site or sites certified by the department of economic development board for the purpose of attracting private investment within economically distressed counties or areas of cities within the state.

**261—59.3(15E) Enterprise zone certification.** An eligible county or a city may request the board to certify an area meeting the requirements of the Act and these rules as an enterprise zone. Zone designations will remain in effect for a period of ten years from the date of the board's certification as a zone. A county or city may request zone designation at any time prior to July 1, 2000.

**59.3(1) County—eligibility.**

a. Requirements. To be eligible for enterprise zone designation, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 1995 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 1990 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1990 and 1995.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 1990 census.

b. Zone parameters. Up to 1 percent of a county area may be designated as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land designated as enterprise zones under subrules 59.3(1) and 59.3(2) shall not exceed in the aggregate 1 percent of the total county area (excluding any area which qualifies as an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993).

**59.3(2) City—eligibility.**

a. Requirements. To be eligible for enterprise zone designation, a city (population of 24,000 or more as shown by the 1990 certified federal census) must meet at least two of the following criteria:

(1) The area has a per capita income of \$9,600 or less based on the 1990 census.

(2) The area has a family poverty rate of 12 percent or higher based on the 1990 census.

(3) Ten percent or more of the housing units are vacant in the area.

(4) The valuations of each class of property in the designated area is 75 percent or less of the citywide average for

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

that classification based upon the most recent valuations for property tax purposes.

(5) The area is a blighted area, as defined in Iowa Code section 403.17.

b. Population limits. A city with a population of 24,000 or more, as shown by the 1990 certified federal census, may request enterprise zone certification by the department. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose.

c. Urban or rural enterprise community. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an enterprise zone. (The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones.)

**59.3(3) Designation procedures.**

a. Request with supporting documentation. All requests for certification shall include the following:

(1) Documentation that meets the distress criteria of Iowa Code section 15E.184.

(2) A legal description of the proposed enterprise zone area.

(3) Certification that the enterprise zone to be designated is within the overall limitation that may not exceed in the aggregate 1 percent of the county area and that the boundaries of the area to be designated are under the jurisdiction of the city or county requesting the designation.

(4) Resolution of the city council or board of supervisors, as appropriate, requesting designation of the enterprise zone(s).

b. Board review. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

c. Notice of board action. The department will provide notice to a city or county of the board's certification, denial, or deferral of their request for designation of an area as an enterprise zone. If an area is certified by the board as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

**261—59.4(15E) Enterprise zone commission.** Upon notice of enterprise zone certification by the board, the applicant city or county may begin to identify commission members who meet the requirements of Iowa Code section 15E.185. Final approval of the commission's composition is subject to department review and compliance with department rules.

[Filed Emergency 6/20/97, effective 7/1/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

## ARC 7351A

INDUSTRIAL SERVICES  
DIVISION[873]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Industrial Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment provides reference to current tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(2), the Industrial Commissioner finds that notice and public participation are unnecessary. Rule 8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and Iowa Department of Revenue and Finance determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 1997, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment became effective on July 1, 1997.

The following amendment is adopted.

Amend 343—8.8(85,17A) to read as follows:

**873—8.8(85,17A) Payroll tax tables.** Tables for determining payroll taxes to be used for the period July 1, ~~1996~~ 1997, through June 30, ~~1997~~ 1998, are the tables in effect on July 1, ~~1996~~ 1997, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E Publication 15 [Rev. January ~~1996~~ 1997].)

2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Publication 44-002 [Rev. May 1995] for all wages paid on or after July 1, 1995.)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent (Internal Revenue Service, Circular E Publication 15 (Rev. January ~~1996~~ 1997].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/17/97, effective 7/1/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

## ARC 7371A

## INSURANCE DIVISION[191]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 505.8 and 1997 Iowa Acts, House File 701, sections 1, 34, and 41, the Insurance Division adopts amendments to Chapter 35, "Accident and Health Insurance," Chapter 36, "Individual Accident and Health—Minimum Standards," Chapter 71, "Small Group Health Benefit Plans," and Chapter 75, "Iowa Individual Health Benefit Plans," Iowa Administrative Code.

The amendments relate to state conformance with federal legislation, "The Health Insurance Portability and Availability Act of 1996" along with two studies conducted by the Division pursuant to 1995 Iowa Acts, chapter 204, section 14, and 1996 Iowa Acts, chapter 1219, section 52, which address certain coverages in the basic and standard health care plans.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable because of the immediate need for rule change to implement new provisions of this law.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective on July 1, 1997, as they confer a benefit upon the citizens of Iowa.

The Insurance Division adopted these amendments on July 1, 1997.

These amendments are also published herein under Notice of Intended Action as **ARC 7370A** to allow public comment. This emergency filing permits the Division to implement the new provisions of the law.

These amendments are intended to implement 1997 Iowa Acts, House File 701, 1995 Iowa Acts, chapter 204, section 14, and 1996 Iowa Acts, chapter 1219, section 52.

These amendments became effective July 1, 1997.

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

**191—35.22(509) Group health insurance coverage policy requirements.**

**35.22(1)** A group health insurance coverage shall be renewable except for the following reasons:

- a. Nonpayment of premiums.
- b. Fraud.
- c. Violation of participation or contribution rules.
- d. Termination of coverage in the market in accordance with division requirements.
- e. For a network plan, no enrollees connected to the plan live, reside, or work in the service area of the issuer.
- f. For coverage through bona fide associations, if the employer's membership in the association ceases, but only if coverage is terminated uniformly without regard to health-related factors regarding any individual.

g. A carrier may choose to discontinue offering a particular type of health insurance coverage in the market if the carrier does all the following:

(1) Provides advance notice of its decision to discontinue the plan to the commissioner a minimum of three days prior to the notice for affected employers, participants, and beneficiaries.

(2) Provides notice of its decision not to renew a plan to all affected employers, participants, and beneficiaries no less than 90 days prior to nonrenewal of a plan.

(3) Offers to each plan sponsor of the discontinued coverage the option to purchase any other coverage currently offered by the carrier to other employees in this state.

(4) Acts uniformly, in opting to discontinue the coverage and in offering the option under subparagraph 35.22(1)"g"(3), without regard to the claims experience of the sponsors under the discontinued coverage or to a health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for the coverage.

h. A decision by the carrier to discontinue offering and to cease to renew all of its health insurance delivered or issued for delivery to employers in this state shall do all of the following:

(1) Provide advance notice of its decision to discontinue such coverage to the commissioner. Notice to the commissioner, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph 35.22(1)"h"(2) to affected employers, participants, and beneficiaries.

(2) Provide notice of its decision not to renew such coverage to all affected employers, participants, and beneficiaries no less than 180 days prior to the nonrenewal of the coverage.

(3) Discontinue all health insurance coverage issued or delivered for issuance to employers in this state and cease renewal of such coverage.

i. The membership of an employer in an association, which is the basis for the coverage which is provided through such association, ceases, but only if the termination of coverage under this subrule occurs uniformly without regard to any health status-related factor relating to any covered individual.

j. The commissioner finds that the continuation of the coverage is not in the best interests of the policyholders or certificate holders, or would impair the carrier's ability to meet its contractual obligations.

k. At the time of coverage renewal, a carrier may modify the health insurance coverage for a product offered under group health insurance coverage in the group market, for coverage that is available in such market other than only through one or more bona fide associations, if such modification is consistent with the laws of this state, and is effective on a uniform basis among group health insurance coverage with that product.

**35.22(2)** A carrier that elects not to renew health insurance coverage under 35.22(1)"h," shall not write any new business in the group market in this state for a period of five years after the date of notice to the commissioner.

**35.22(3)** Preexisting condition exclusions.

a. A health insurance issuer shall impose a preexisting condition exclusion only if it relates to a condition for which medical advice, diagnosis, care or treatment was recommended or received within the 6-month period ending on the enrollment date.

b. When a preexisting condition exclusion is imposed, the exclusion period is limited to 12 months or 18 months for late enrollees and shall be reduced by periods of creditable coverage. A health maintenance organization may use affiliation periods of 2 months or 3 months for late enrollees in lieu of a preexisting condition exclusion. Waiting or affiliation periods shall run concurrently with any applicable preexisting condition exclusion period.

c. For purposes of this subrule, "creditable coverage" means health benefits or coverage provided to an individual under any of the following:

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(1) A group health plan as defined in 1997 Iowa Acts, House File 701, section 5.

(2) Health insurance coverage.

(3) Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.

(4) Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under Section 1928 of that Act.

(5) 10 U.S.C. ch. 55.

(6) A health or medical care program provided through the Indian health service or a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. ch. 89.

(9) A public health plan as defined under federal regulations.

(10) A health benefit plan under Section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).

(11) An organized delivery system licensed by the director of public health.

d. A carrier, with respect to a participant or beneficiary, may impose a preexisting condition exclusion only as follows:

(1) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date. However, genetic information shall not be treated as a condition under this subparagraph in the absence of a diagnosis of the condition related to such information.

(2) The exclusion extends for a period of not more than 12 months, or 18 months in the case of a late enrollee, after the enrollment date.

(3) The period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

e. A carrier offering group health insurance coverage shall not impose any preexisting condition as follows:

(1) In the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.

(2) In the case of an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

(3) Relating to pregnancy as preexisting condition.

f. A carrier shall waive any waiting period applicable to a preexisting condition exclusion or limitation period with respect to particular services under health insurance coverage for the period of time an individual was covered by creditable coverage, provided that the creditable coverage was continuous to a date not more than 63 days prior to the effective date of the new coverage. Any period that an individual is in a waiting period for any coverage under group health insurance coverage, or is in an affiliation period, shall not be taken into account in determining the period of continuous coverage. A health maintenance organization that does not use preexisting condition limitations in any of its health insurance coverage may impose an affiliation period. For purposes of this paragraph "affiliation period" means a period of time not to exceed 60 days for new entrants and not to exceed 90 days for late enrollees during which no premium shall be

collected and coverage issued is not effective, so long as the affiliation period is applied uniformly, without regard to any health status-related factors. This paragraph does not preclude application of a waiting period applicable to all new enrollees under the health insurance coverage, provided that any carrier imposed waiting period is no longer than 60 days and is used in lieu of a preexisting condition exclusion.

g. Health insurance coverage may exclude coverage for late enrollees for preexisting conditions for a period not to exceed 18 months.

ITEM 2. Rescind and reserve subrule 36.4(8).

ITEM 3. Amend rule 191—71.1(513B) to read as follows:

**191—71.1(513B) Purpose.** This chapter is intended to implement the provisions of Iowa Code chapter 513B to provide for the availability of health insurance coverage to small employers, regardless of their health status or claims experience; to regulate insurance rating practices and establish limits on differences in rates between health benefit plans health insurance coverages, to ensure renewability of coverage; to establish limitations on underwriting practices, eligibility requirements and the use of preexisting condition exclusions; to provide for development of "basic" and "standard" health insurance plans to be offered to all small employers; to provide for establishment of a reinsurance program; to direct the basis of market competition away from risk selection and toward the efficient management of health care; to improve the overall fairness and efficiency of the small group health insurance market and to promote broader spreading of risk in the small employer marketplace. Carriers that provide basic and standard health benefit plans, as herein set forth, to small employers are intended to be subject to all provisions of Iowa Code chapter 513B and this chapter of rules.

ITEM 4. Amend 191—71.2(513B), definition of "New entrant," as follows:

"New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan insurance coverage.

ITEM 5. Amend rule 191—71.3(513B) to read as follows:

**191—71.3(513B) Applicability and scope.**

71.3(1)a. Except as provided herein, this chapter shall apply to any health benefit plan insurance coverage, whether provided on a group or individual basis, which:

(1) Meets one or more of the conditions set forth in 513B.3(1) to 513B.3(3).

(2) Provides coverage to one or more employees of a small employer located in this state without regard to whether the policy or certificate was issued in this state; and

(3) Is in effect on or after July 1, 1991.

b. Except as specifically provided, the provisions of 513B and this chapter shall not apply to health insurance policies delivered or issued for delivery prior to the effective date of the Act.

71.3(2)a. A carrier that provides individual health insurance policies to one or more of the employees of a small employer shall be considered a small employer carrier and subject to the provisions of 513B and this chapter with respect to such policies if the small employer contributes, directly or indirectly, to the premiums for the policies and the carrier is aware, or should have been aware, of such contribution.

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b. In the case of a carrier that provides individual health insurance policies to one or more employees of a small employer, the small employer shall be considered an eligible small employer as defined in 513B.10(1)~~“b”(3)~~ ~~as amended by 1993 Iowa Acts, Senate File 362~~ and the small employer carrier subject to 513B.10(1)~~“b”(2)~~ if:

- (1) The small employer has at least two employees;
- (2) The small employer contributes, directly or indirectly, to the premiums charged by the carrier; and
- (3) The carrier is aware, or should have been aware, of the contribution by the employer.

**71.3(3)** Iowa Code chapter 513B and this chapter shall apply to a health ~~benefit plan~~ *insurance coverage* provided to a small employer or to the employees of a small employer without regard to whether the health ~~benefit plan~~ *insurance coverage* is offered under or provided through a group policy or trust arrangement of any size sponsored by an association or discretionary group.

**71.3(4)** An individual health insurance policy shall not be subject to 513B and this chapter solely because the policyholder elects a business expense deduction under Section 162(1) of the Internal Revenue Code, the health ~~benefit plan~~ *insurance coverage* is treated as part of a plan or program for purposes of Section 125 of the Internal Revenue Code for which the employee makes all the contributions, the employer provides payroll deduction of health insurance premiums on behalf of an employee if the health ~~benefit plan~~ *insurance coverage* covers employees where the employer has applied for group health benefits and has received written notification that the group did not meet the small group carrier's minimum participation or contribution standards. The individual health insurance carrier shall maintain a copy of the employer's notification from the small group carrier for insurance division audit purposes.

**71.3(5)a.** If a small employer is issued a health ~~benefit plan~~ *insurance coverage* under the terms of 513B, the provisions of 513B and this chapter shall continue to apply to the health ~~benefit plan~~ *insurance coverage* in the case that the small employer subsequently employs more than 50 eligible employees. A carrier providing coverage to such an employer shall, within 60 days of becoming aware that the employer has more than 50 eligible employees but no later than the anniversary date of the employer's health ~~benefit plan~~ *insurance coverage*, notify the employer that the protections provided under 513B and this chapter shall cease to apply to the employer if such employer fails to renew its current health ~~benefit plan~~ *insurance coverage* or elects to enroll in a different health ~~benefit plan~~ *insurance coverage*. It is the responsibility of the employer to notify the carrier of changes in employment levels which could change the employer's status as a small employer for the purposes of this chapter.

b.(1) If a health ~~benefit plan~~ *insurance coverage* is issued to an employer that is not a small employer as defined, but subsequently the employer becomes a small employer (due to the loss or change of work status of one or more employees), the terms of 513B shall not apply to the health ~~benefit plan~~ *insurance coverage*. The carrier providing health ~~benefit plan~~ *insurance coverage* to such an employer shall not become a small employer carrier under the terms of 513B solely because the carrier continues to provide coverage under the health ~~benefit plan~~ *insurance coverage* to the employer.

(2) A carrier providing coverage to an employer described in subparagraph “b”(1) shall, within 60 days of becoming aware that the employer has 50 or fewer eligible employees, notify the employer of the options and protections

available to the employer under 513B, including the employer's option to purchase a small employer health ~~benefit plan~~ *insurance coverage* from any small employer carrier. It is the responsibility of the employer to notify the carrier of changes in employment levels which could change the employer's status as a small employer for the purposes of this chapter.

**71.3(6)a(1)** If a small employer has employees in more than one state, 513B and this chapter shall apply to a health ~~benefit plan~~ *insurance coverage* issued to the small employer if:

1. The majority of eligible employees of such small employer are employed in this state; or
2. The primary business location of the small employer is in this state.

(2) In determining whether the laws of this state or another state apply to health ~~benefit plan~~ *insurance coverage* issued to a small employer described in subparagraph (1), the provisions of the paragraph shall be applied as of the date the health ~~benefit plan~~ *insurance coverage* was issued to the small employer for the period that the health ~~benefit plan~~ *insurance coverage* remains in effect.

b. If a health ~~benefit plan~~ *insurance coverage* is subject to 513B and this chapter, the provisions of 513B and those set forth herein shall apply to all individuals covered under the health ~~benefit plan~~ *insurance coverage* whether they reside in this state or in another state.

**71.3(7)** A carrier that is not operating as a small employer carrier in this state shall not become subject to the provisions of the Act and this regulation solely because a small employer that was issued a health ~~benefit plan~~ *insurance coverage* in another state by that carrier moves to this state.

ITEM 6. Amend rule 191—71.4(513B) as follows:

**191—71.4(513B) Establishment of classes of business.**

**71.4(1)** A small employer carrier that establishes more than one class of business as defined in 513B.2 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

a. A description of each criterion employed by the carrier (or any of its agents) for determining membership in the class of business;

b. A statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons as set forth in the definition of “class of business” in 513B.2;

c. A statement disclosing which, if any, health ~~benefit plans~~ *insurance coverages* are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

**71.4(2)** A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a health ~~benefit plan~~ *insurance coverage* or for a class of business.

ITEM 7. Amend rule 191—71.5(513B) to read as follows:

**191—71.5(513B) Transition for assumptions of business from another carrier.**

**71.5(1)a.** A small employer carrier shall not transfer or assume the entire insurance obligation or risk of a health ~~benefit plan~~ *insurance coverage* covering a small employer in this state unless:

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(1) The transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(2) The transaction has been approved by the commissioner of the state of domicile of the ceding carrier; and

(3) The transaction otherwise meets the requirements of this rule and 513B.3(4)"c."

b. A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation or risk of one or more small employer health benefit plans from another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction upon a finding that the transaction is in the best interests of the individuals insured under the health benefit plans insurance coverages to be transferred and is consistent with the purposes of Iowa Code chapter 513B and this chapter. The commissioner shall not approve the transaction until at least 30 days after the date of the filing except that, if the ceding carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

c.(1) The filing required under paragraph 71.5(1)"b" shall:

1. Describe the class of business (including any eligibility requirements) of the ceding carrier from which the health benefit plan insurance coverage will be ceded;

2. Describe whether the assuming carrier will maintain the assumed health benefit plans insurance coverage as a separate class of business (pursuant to 71.5(3)) or will incorporate them into an existing class of business (pursuant to 71.5(4)). If the assumed health benefit plans insurance coverage will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans insurance coverages will be incorporated;

3. Describe whether the health benefit plans insurance coverages being assumed are currently available for purchase by small employers;

4. Describe the potential effect of the assumption (if any) on the benefits provided by the health benefit plans insurance coverages to be assumed;

5. Describe the potential effect of the assumption (if any) on the premiums for the health benefit plans insurance coverages to be assumed;

6. Describe any other potential material effects of the assumption on the coverage provided to the small employers covered by the health benefit plans insurance coverages to be assumed; and

7. Include any other information required by the commissioner.

(2) A small employer carrier required to make a filing under 71.5(1)"b" shall also make an informational filing with the commissioner of each state in which there are small employer health benefit plans insurance coverages that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under 71.5(1)"b" and shall include at least the information specified in 71.5(1)"c"(1) for the small employer health benefit plans insurance coverages in that state.

d. A small employer carrier shall not transfer or assume the entire insurance obligation or risk of a health benefit plan insurance coverage covering a small employer in this state unless it complies with the following provisions:

(1) The carrier has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in

71.5(1)"c" for the health benefit plans insurance coverages covering small employers in this state.

(2) If the assumption of a class of business would result in the assuming small employer carrier being out of compliance with the limitations related to premium rates contained in Iowa Code section 513B.4(1)"a," the assuming carrier shall make a filing with the commissioner pursuant to 513B.17 seeking suspension of the application of 513B.4(1)"a."

(3) An assuming carrier seeking suspension of the application of 513B.4(1)"a" shall not complete the assumption of health benefit plans insurance coverages covering small employers in this state unless the commissioner grants the suspension requested pursuant to 71.5(1)"d"(2).

(4) Unless a different period is approved by the commissioner, a suspension of the application of 513B.4(1)"a" shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, last only until the anniversary date of such employer's coverage (except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within 3 months of the date of assumption of the class of business).

71.5(2)a. Except as provided in paragraph 71.5(1)"b," a small employer carrier shall not cede or assume the entire insurance obligation or risk for a small employer health benefit plan insurance coverage unless the transaction includes ceding to the assuming carrier the entire class of business that includes such health benefit plan insurance coverage.

b. A small employer carrier may cede less than an entire class of business to an assuming carrier if:

(1) One or more small employers in the class have exercised their right under contract or state law to reject (either directly or by implication) the ceding of their health benefit plans insurance coverage to another carrier. In that instance, the transaction shall include each health benefit plan insurance coverage in the class of business except those health benefit plans insurance coverages for which a small employer has rejected the proposed cession; or

(2) After a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the small employers insured in that class of business.

71.5(3) Except as provided in 71.5(4), a small employer carrier that assumes one or more health benefit plans insurance coverages from another carrier shall maintain such health benefit plans insurance coverages as a separate class of business.

71.5(4) A small employer carrier that assumes one or more health benefit plans insurance coverages from another carrier may exceed the limitation contained in 513B.2 (relating to the maximum number of classes of business a carrier may establish) due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier complies with the following provisions:

a. Upon assumption of the health benefit plans insurance coverages, such health benefit plans insurance coverages shall be maintained as a separate class of business. During the 15-month period following the assumption, each of the assumed small employer health benefit plans insurance coverages shall be transferred by the assuming small employer carrier into a single class of business operated by the assuming small employer carrier. The assuming small employer carrier shall select the class of business into which the assumed health benefit plans insurance coverages will be

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transferred in a manner that results in the least possible change to the ~~benefits coverages~~ and rating method of the assumed health ~~benefit plans insurance coverages~~.

b. The transfers authorized in paragraph "a" shall occur, with respect to each small employer, on the anniversary date of the small employer's coverage, except that an individual small employer period may be extended beyond the first anniversary date up to 12 months if the anniversary date occurs within 3 months of the date of assumption of the class of business.

c. A small employer carrier making a transfer pursuant to paragraph "a" may alter the benefits of the assumed health ~~benefit plans insurance coverages~~ to conform to the benefits currently offered by the carrier in the class of business into which the health ~~benefit plans insurance coverages~~ have been transferred.

d. The premium rate for an assumed small employer health ~~benefit plan insurance coverage~~ shall not be modified by the assuming small employer carrier until the health ~~benefit plan insurance coverage~~ is transferred pursuant to paragraph "a." Upon transfer, the assuming small employer carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health ~~benefit plan insurance coverage~~ is transferred. In making such calculation, the risk load applied to the health ~~benefit plan insurance coverage~~ shall be no higher than the risk load applicable to such health ~~benefit plan insurance coverage~~ prior to the assumption.

e. During the 15-month period provided in this subrule, the transfer of small employer health ~~benefit plans insurance coverages~~ from the assumed class of business in accordance with this subrule shall not be considered a violation of the first sentence of 513B.4(4).

**71.5(5)** An assuming carrier may not apply eligibility requirements (including minimum participation and contribution requirements) with respect to an assumed health ~~benefit plan insurance coverage~~ (or with respect to any health ~~benefit plan insurance coverage~~ subsequently offered to a small employer covered by such an assumed health ~~benefit plan insurance coverage~~) that are more stringent than the requirements applicable to such health ~~benefit plan insurance coverage~~ prior to the assumption.

**71.5(6)** The commissioner may approve a longer period of transition upon application of a small employer carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

**71.5(7)** Nothing in this rule or in 513B is intended to:

a. Reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Iowa Code chapters 521 and 521B, of the ceding or assuming carrier related to the transaction;

b. Authorize a carrier that is not admitted to transact the business of insurance in this state to offer health ~~benefit plans insurance coverages~~ in this state; or

c. Reduce or diminish the protections related to an assumption reinsurance transaction provided in Iowa Code chapters 521 and 521B or otherwise provided by law.

ITEM 8. Amend 71.6(1)"b"(2)"3" to read as follows:

3. A description of how the change in rating method would affect the premium rates currently charged to small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals (and a description of the types of groups or individuals) whose premium rates may change by more than 10 percent due to the proposed change in rating method (not generally

including increases in premium rates applicable to all small employers in a health ~~benefit plan insurance coverage~~;

ITEM 9. Amend 71.6(1)"b"(3) "1," "2" and "3" to read as follows:

1. A change in the number of case characteristics used by a small employer carrier to determine premium rates for health ~~benefit plans insurance coverages~~ in a class of business;

2. A change in the manner of procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health ~~benefit plans insurance coverages~~ in a class of business;

3. A change in the method of allocating expenses among health ~~benefit plans insurance coverages~~ in a class of business; or

ITEM 10. Amend subrule 71.6(2), paragraphs "c," "d," "e," "g" and "h," to read as follows:

c. A small employer carrier shall use the same case characteristics in establishing premium rates for each health ~~benefit plan in a insurance coverage~~ class of business and shall apply them in the same manner in establishing premium rates for each health ~~benefit plan insurance coverage~~. Case characteristics shall be applied without regard to the risk characteristics of a small employer.

d. The rate manual developed pursuant to 71.6(1) shall clearly illustrate the relationship among the base premium rates charged for each health ~~benefit plan insurance coverage~~ in the class of business. If the new business premium rate is different than the base premium rate for a health ~~benefit plan insurance coverage~~ the rate manual shall illustrate the difference.

e. Differences among base premium rates for health ~~benefit plans insurance coverages~~ shall be based solely on the reasonable and objective differences in the design and benefits of the health ~~benefit plan insurance coverages~~ and shall not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose, or are expected to choose, a particular health ~~benefit plan insurance coverage~~. A small employer carrier shall apply case characteristics and rate factors within a class of business in a manner that ensures that premium differences among health ~~benefit plans insurance coverages~~ for identical small employer groups vary only due to reasonable and objective differences in the design and benefits of the health ~~benefit plans insurance coverages~~ and are not due to the actual or expected health status or claims experience of the small employer groups that choose, or are expected to choose, a particular health ~~benefit plan insurance coverage~~.

g.(1) Except as provided in subparagraph (2), a premium charged to a small employer for a health ~~benefit plan insurance coverage~~ shall not include a separate application fee, underwriting fee or any other separate fee or charge.

(2) A carrier may charge a separate fee with respect to a health ~~benefit plan insurance coverage~~ (but only one fee with respect to such plan) provided the fee is no more than \$5 per month per employee and is applied in a uniform manner to each health ~~benefit plan insurance coverage~~ in a class of business.

h. A small employer carrier shall allocate administrative expenses to the basic and standard health benefit plans on no less favorable a basis than expenses are allocated to other health ~~benefit plans insurance coverages~~ in the class of business. The rate manual developed pursuant to 71.6(1) shall describe the method of allocating administrative expenses to

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the health ~~benefit plans insurance coverages~~ in the class of business for which the manual was developed.

ITEM 11. Amend subrule 71.6(4), paragraphs "b," "c" and "d," to read as follows:

b.(1) If, for any health ~~benefit plan insurance coverage~~ with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed the change in the base premium rate for the purposes of 513B.4(1)"c" and 513B.4(1)"d."

(2) If, for any health ~~benefit plans insurance coverages~~ with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health ~~benefit plan insurance coverage~~ shall be considered a health ~~benefit plan insurance coverage~~ into which the small employer carrier is no longer enrolling new small employers for the purposes of 513B.4(1)"c" and 513B.4(1)"d."

c. If, for any rating period, the change in the new business premium rate for health ~~benefit plan insurance coverage~~ differs from the change in the new business premium rate for any other health ~~benefit plan insurance coverage~~ in the same class of business by more than 20 percent, the carrier shall make a filing with the commissioner containing a complete explanation how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made within 30 days of the beginning of the rating period.

d. A small employer carrier shall keep on file, for a period of at least six years, the calculations used to determine the change in base premium rates and new business premium rates for each health ~~benefit plan insurance coverage~~ for each rating period.

ITEM 12. Amend subrule 71.6(5), paragraphs "b" and "c," to read as follows:

b. In the case of a health ~~benefit plan insurance coverage~~ into which a small employer carrier is no longer enrolling new small employers, a change in a premium rate for a small employer shall produce a revised premium rate that is no more than the following:

(1) The base premium rate for the small employer (given its present composition and as shown in the rate manual in effect for the small employer at the beginning of the previous rating period), multiplied by

(2) One plus the lesser of:

1. The change in the base rate or

2. The percentage change in the new business premium for the most similar health ~~benefit plan insurance coverage~~ into which the small employer carrier is enrolling new small employers, multiplied by

(3) One plus the sum of:

1. The risk load applicable to the small employer during the previous rating period and

2. 15 percent (prorated for periods of less than one year).

c. In the case of a health ~~benefit plan insurance coverage~~ described in 513B.4(2), if the current premium rate for the health ~~benefit plan insurance coverage~~ exceeds the ranges set forth in 513B.4(1), the formulae set forth in paragraphs "a" and "b" will be applied as if the 15 percent adjustment provided in paragraphs "a"(2)"2" and "b"(3)"2" were a zero percent adjustment.

ITEM 13. Amend subrule 71.6(6), paragraph "c," to read as follows:

c. A waiver granted under ~~1993 Iowa Acts, chapter 80, section 5, 513B.4A~~ shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

ITEM 14. Amend 191—71.7(513B) as follows:

**191—71.7(513B) Requirement to insure entire groups.**

71.7(1)a. A small employer carrier that offers coverage to a small employer shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. The small employer carrier shall provide the same health ~~benefit plan insurance coverage~~ to each employee and dependent.

b. Except as provided in 513B.10(3)(4) (with respect to exclusions for preexisting conditions), the choice among ~~benefit plans insurance coverages~~ may not be limited, restricted or conditioned upon the risk characteristics of the employees or their dependents.

71.7(2)a. Except as provided in this subrule, a small employer carrier may not issue a health ~~benefit plan insurance coverage~~ to a small employer unless the health ~~benefit plan insurance coverage~~ covers all eligible employees and all dependents of eligible employees.

b. A small employer carrier may issue a health ~~benefit plan insurance coverage~~ to a small employer that excludes an eligible employee or the dependent of an eligible employee only if:

(1) The excluded individual has coverage under a health ~~benefit plan insurance coverage~~ or other health ~~benefit coverage~~ arrangement, including that set forth in Iowa Code chapter 514E, that provides ~~benefits coverage~~ similar to or exceeding benefits provided under the basic health ~~benefit plan insurance coverage~~;

(2) The excluded individual does not have a risk characteristic or other attribute that would cause the carrier to make a decision with respect to premiums or eligibility for a health ~~benefit plan insurance coverage~~ that is adverse to the small employer;

(3) The excluded individual states in a signed waiver that the individual has had coverage under a health ~~benefit plan insurance coverage~~ or other health ~~benefit arrangement~~, including that set forth in Iowa Code chapter 514E, within the previous six months and reasonably expects to have coverage within the succeeding six months under a health ~~benefit plan insurance coverage~~ or other health ~~benefit arrangement~~ that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

c. A small employer carrier shall require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and dependents of eligible employees. The small employer carrier shall require the small employer to provide appropriate supporting documentation in the form of a W-2 Summary Wage and Tax Form and federal or state quarterly withholding statements for the current year and the year immediately preceding the year of application for coverage.

(1) A small employer carrier shall secure a waiver, with respect to each eligible employee and each dependent of an eligible employee, declining an offer of coverage under a health ~~benefit plan insurance coverage~~ provided to a small employer. The waiver shall be signed by the eligible employee (on behalf of such employee or the dependent of such employee) and shall certify that the individual who declined coverage was informed of the availability of coverage under the health ~~benefit plan insurance coverage~~. The waiver form

## INSURANCE DIVISION[191](cont'd)

shall require that the reason for declining coverage is stated on the form and shall include a written warning of the penalties imposed on late enrollees. Waivers shall be maintained by the small employer carrier for a period of six years.

(2) A small employer carrier shall obtain, with respect to each individual who submits a waiver under 71.7(2)"c"(1), information sufficient to establish that the waiver is permitted under 71.7(2)"b."

d.(1) A small employer carrier shall not issue coverage to a small employer if the carrier is unable to obtain the list required under 71.7(2)"c," a waiver required under 71.7(2)"c"(1) or the information required under 71.7(2)"c"(2) in circumstances set forth in this subrule.

(2)1. A small employer carrier shall not offer coverage to a small employer if the carrier, or a producer for such carrier, has reason to believe that the small employer has induced or pressured an eligible employee (or dependent of an eligible employee) to decline coverage due the individual's risk characteristics.

2. A producer shall notify a small employer carrier, prior to submitting an application for coverage with the carrier on behalf of a small employer, of any circumstances that would indicate that the small employer has induced or pressured an eligible employee (or dependent of an eligible employee) to decline coverage due the individual's risk characteristics.

71.7(3)a. New entrants to a small employer group shall be offered an opportunity to enroll in the health benefit plan insurance coverage currently held by such group. A new entrant that does not exercise the opportunity to enroll in the health benefit plan insurance coverage within the period provided by the small employer carrier may be treated as a late enrollee by the carrier, provided that the period provided to enroll in the health benefit plan insurance coverage extends at least 30 days after the date the new entrant is notified of his or her opportunity to enroll. If a small employer carrier has offered more than one health benefit plan insurance coverage to a small employer group pursuant to subrule 71.7(1)"b," the new entrant shall be offered the same choice of health benefit plans insurance coverages as the other members of the group.

b. A small employer carrier shall not apply a waiting period, elimination period or other similar limitation of coverage (other than an exclusion for preexisting medical conditions consistent with 513B.10(3)(4)), with respect to a new entrant that is longer than 60 days. This subrule does not affect an employer's ability to determine an employee's probationary period of work prior to the commencement of benefits.

c. New entrants to a group shall be accepted for coverage by the small employer carrier without any restrictions or limitations on coverage related to the risk characteristics of the employees or their dependents except that a carrier may exclude coverage for preexisting medical conditions consistent with the provisions provided in 513B.10.

d. A small employer carrier may assess a risk load to the premium rate associated with a new entrant consistent with the requirements of 513B.4. The risk load shall be the same risk load charged to the small employer group immediately prior to acceptance of the new entrant into the group.

71.7(4)a.(1) In the case of an eligible employee (or dependent of an eligible employee) who, prior to July 1, 1993, was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan insurance coverage to an eligible small employer (as defined in Iowa Code section 513B.2(16) as amended by

1993 Iowa Acts, chapter 80), the small employer carrier shall provide an opportunity for the eligible employee (or dependent of such eligible employee) to enroll in the health benefit plan insurance coverage currently held by the small employer.

(2) A small employer carrier may require an individual who requests enrollment under this subrule to sign a statement indicating that such individual sought coverage under the group contract (other than as a late enrollee) and that the coverage was not offered to the individual.

The opportunity to enroll shall meet the following requirements:

b.(1) The opportunity to enroll shall begin October 1, 1993, and extend for a period of at least three months.

(2) Eligible employees and dependents of eligible employees who are provided an opportunity to enroll pursuant to this subrule shall be treated as new entrants. Premium rates related to such individuals shall be set in accordance with 71.7(3).

(3) The terms of coverage offered to an individual described in subparagraph "a"(1) may exclude coverage for preexisting medical conditions if the health benefit plan insurance coverage currently held by the small employer contains such an exclusion, provided that the exclusion period shall be reduced by the number of days between the date the individual was excluded or denied coverage and the date coverage is provided to the individual pursuant to this subrule.

(4) A small employer carrier shall provide written notice at least 45 days prior to the opportunity to enroll provided in 71.7(4)"a"(1) to each small employer insured under a health benefit plan insurance coverage offered by such carrier. The notice shall clearly describe the rights granted under this subrule to employees and dependents previously excluded or denied coverage and the process for enrollment of such individuals in the employer's health benefit plan insurance coverage.

ITEM 15. Amend rule 191—71.9(513B) to read as follows:

**191—71.9(513B) Application to reenter state.**

71.9(1) A carrier prohibited from writing coverage for small employers in this state pursuant to Iowa Code section 513B.5(2) may not resume offering health benefit plan insurance coverage to small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a small employer carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

71.9(2) In the case of a small employer carrier doing business in only one established geographic service area of the state, if the small employer carrier elects to nonrenew a health benefit plan insurance coverage under 513B.5, the small employer carrier shall be prohibited from offering health benefit plans insurance coverages to small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

ITEM 16. Rescind rule 191—71.10(513B) and insert the following new rule:

## INSURANCE DIVISION[191](cont'd)

**191—71.10(513B) Creditable coverage.** For purposes of this chapter, creditable coverage shall have the same definition as in 1997 Iowa Acts, House File 701, section 10.

ITEM 17. Amend rule 191—71.11(513B) to read as follows:

**191—71.11(513B) Rules related to fair marketing.**

**71.11(1)a.** A small employer carrier shall actively market ~~at least health insurance coverages including~~ one basic and one standard health benefit plan to small employers in this state. A small employer carrier may not suspend the marketing or issuance of the basic and standard health benefit plans unless the carrier has good cause and has received the prior approval of the commissioner.

b. In marketing the basic and standard health benefit plan to small employers, a small employer carrier shall use at least the same sources and methods of distribution that it uses to market other health ~~benefit plans insurance coverages~~ to small employers.

**71.11(2)a.** A small employer carrier, in accordance with the provisions of Iowa Code section 513B.10, ~~shall actively offer at least one basic and one standard health benefit plan to any small employer shall accept every small employer that applies for or makes an inquiry regarding~~ health insurance coverage from the small employer carrier ~~and shall accept every eligible individual who applies for enrollment.~~ The offer shall be in writing and shall include at least the following information:

(1) A general description of the benefits contained in the basic and standard health benefit plan and any other health ~~benefit plan insurance coverage~~ being offered to the small employer, and

(2) Information describing how the small employer may enroll in the plans.

The offer may be provided directly to the small employer or delivered through a producer.

b.(1) A small employer carrier shall provide a price quote to a small employer (directly or through an authorized producer) within ten working days of receiving a request for a quote and other information as necessary to provide the quote. A small employer carrier shall notify a small employer (directly or through an authorized producer) of any additional information needed by the small employer carrier to provide the quote within five working days of receiving a request for a price quote.

(2) A small employer carrier shall not apply more stringent or detailed requirements related to the application process for the basic and standard health benefit plans than applied for other health ~~benefit plans insurance coverage~~ offered by the carrier.

~~c.(1) If a small employer carrier denies coverage under a health benefit plan to a small employer on the basis of a risk characteristic, the denial shall be in writing and state with specificity the reasons for the denial (subject to any restrictions related to confidentiality of medical information). The written denial shall be accompanied by a written explanation of the availability of the basic and standard health benefit plans from the small employer carrier. The explanation shall include at least the following:~~

~~1. A general description of the benefits contained in each plan;~~

~~2. A price quote for each plan; and~~

~~3. Information describing how the small employer may enroll in such plans.~~

~~The written information described in this subparagraph may be provided directly to the small employer or delivered through an authorized producer.~~

~~(2) The price quote shall be for the lowest priced basic and standard health benefit plan for which the small employer is eligible.~~

**71.11(3)** A small employer carrier shall establish and maintain a toll-free telephone service to provide information to small employers regarding the availability of ~~small employer health benefit plans insurance coverages~~ in this state. The service shall provide information to callers regarding application for coverage from the carrier. The information may include the names and telephone numbers of producers located in geographic proximity to the caller or such other information reasonably designed to assist the caller to locate an authorized producer or to otherwise apply for coverage.

**71.11(4)** The small group carrier shall not require a small employer to join or contribute to any association or group as a condition of being accepted for coverage by the small employer carrier except, if membership in an association or other group is a requirement for accepting a small employer into a particular health ~~benefit plan insurance coverage~~, a small employer carrier may apply such requirement, ~~subject to the requirements of Iowa Code section 513B.10(1)“b” as amended by 1993 Iowa Acts, chapter 80.~~

**71.11(5)** A small employer carrier may not require, as a condition to the offer or sale of a health ~~benefit plan insurance coverage~~ to a small employer, that the small employer purchase or qualify for any other insurance product or service.

**71.11(6)a.** Carriers offering individual and group health ~~benefit plans insurance coverages~~ in this state shall be responsible for determining whether the plans are subject to the requirements of Iowa Code 513B and this chapter. Carriers shall elicit the following information from applicants for such plans at the time of application:

(1) Whether or not any portion of the premium will be paid by or on behalf of a small employer, either directly or through wage adjustments or other means of reimbursement; and

(2) Whether or not the prospective policyholder, certificate holder or any prospective insured individual intends to treat the health ~~benefit plan insurance coverage~~ as part of a plan or program under Section 162 (other than Section 162(1)), Section 125 or Section 106 of the United States Internal Revenue Code.

b. If a small employer carrier fails to comply with paragraph “a,” the small employer carrier shall be deemed on notice regarding any information that could reasonably have been attained if the small employer carrier had complied with paragraph “a.”

**71.11(7)a.** A small employer carrier shall annually file the following information with the commissioner related to health ~~benefit plans insurance coverages~~ issued by the small employer carrier to small employers in this state:

(1) The number of small employers that were issued health benefit plans in the previous calendar year (separated as to newly issued plans and renewals);

(2) The number of small employers that were issued the basic health benefit plan and the standard health benefit plan in the previous calendar year (separated as to newly issued plans and renewals and as to class of business);

(3) The number of small employer health ~~benefit plans insurance coverages~~ in force in each county (or by ZIP code) of the state as of December 31 of the previous calendar year;

## INSURANCE DIVISION[191](cont'd)

(4) The number of small employer health ~~benefit plans~~ *insurance coverages* that were voluntarily not renewed by small employers in the previous calendar year;

(5) The number of small employer health ~~benefit plans~~ *insurance coverages* that were terminated or nonrenewed (for reasons other than nonpayment of premium) by the carrier in the previous calendar year; and

(6) The number of small employer health ~~benefit plans~~ *insurance coverages* that were issued to small employers that were uninsured for at least the three months prior to issue.

b. The information described in paragraph "a" shall be filed no later than March 15 of each year.

**71.11(8) and 71.11(9)** No change.

ITEM 18. Amend subrules 71.12(1) and 71.12(2) to read as follows:

**71.12(1)** Subject to 71.12(2), a carrier shall not offer health ~~benefit plans~~ *insurance coverages* to small employers or continue to provide coverage under health ~~benefit plans~~ *insurance coverages* previously issued to small employers in this state unless the carrier has made a filing with the commissioner that the carrier intends to operate as a small employer carrier in this state under the terms of this chapter.

**71.12(2)a.** If a carrier does not intend to operate as a small employer carrier in this state, the carrier may continue to provide coverage under health ~~benefit plans~~ *insurance coverages* previously issued to small employers in this state only if the carrier complies with the following provisions:

(1) The carrier complies with the requirements of the 513B (other than 513B.11 to 513B.13 ~~as amended by 1993 Iowa Acts, Senate File 362~~) with respect to each of the health ~~benefit plans~~ *insurance coverages* previously issued to small employers by the carrier.

(2) The carrier provides coverage to each new entrant to a health ~~benefit plans~~ *insurance coverages* previously issued to a small employer by the carrier. The provisions of 513B (other than 513B.11 to 513B.13 ~~as amended by 1993 Iowa Acts, Senate File 362~~) and this chapter shall apply to the coverage issued new entrants.

(3) The carrier complies with the requirements of ~~1993 Iowa Acts, Senate File 362, section 15 513B.17A,~~ and rule 71.13(513B), as they apply to small employers whose coverage has been terminated by the carrier, and to individuals and small employers whose coverage has been limited or restricted by the carrier.

b. A carrier that continues to provide coverage pursuant to this subsection shall not be eligible to participate in the reinsurance program established under 513B.11 ~~as amended by 1993 Iowa Acts, Senate File 362.~~

ITEM 19. Amend rule 191—71.13(513B) to read as follows:

**191—71.13(513B) Restoration of coverage.**

**71.13(1)a.** Except as provided in 71.13(1)"b," a small employer carrier shall, as a condition of continuing to transact business in this state with small employers, offer to provide a health ~~benefit plan~~ *insurance coverage* as described in 71.13(3) to any small employer carrier after January 1, 1993, unless the carrier's termination is pursuant to Iowa Code section 513B.5.

b. The offer required under 71.13(1)"a" shall not be required with respect to a health ~~benefit plan~~ *insurance coverage* that was not renewed if:

(1) The health ~~benefit plan~~ *insurance coverage* was not renewed for reasons permitted in 513B.5(1), or

(2) The nonrenewal was a result of the small employer voluntarily electing coverage under a different health ~~benefit plan~~ *insurance coverage*.

**71.13(2)** The offer made under 71.13(1) shall occur not later than 60 days after July 2, 1993. A small employer shall be given at least 60 days to accept an offer made pursuant to 71.13(1).

**71.13(3)** A health ~~benefit plan~~ *insurance coverage* provided to a terminated small employer pursuant to 71.13(1) shall meet the following conditions:

a. The health ~~benefit plan~~ *insurance coverage* shall contain benefits that are identical to the benefits in the health ~~benefit plan~~ *insurance coverage* that was terminated or nonrenewed.

b. The health ~~benefit plan~~ *insurance coverage* shall not be subject to any waiting periods (including exclusion periods for preexisting conditions) or other limitations on coverage that exceed those contained in the health ~~benefit plan~~ *insurance coverage* that was terminated or nonrenewed. In applying such exclusions or limitations, the health ~~benefit plan~~ *insurance coverage* shall be treated as if it were continuously in force from the date it was originally issued to the date that it is restored pursuant to 71.13(513B) ~~and 1993 Iowa Acts, Senate File 362, section 15.~~

c. The health ~~benefit plan~~ *insurance coverage* shall not be subject to any provisions that restrict or exclude coverage or benefits for specific diseases, medical conditions or services otherwise covered by the plan.

d. The health ~~benefit plan~~ *insurance coverage* shall provide coverage to all employees who are eligible employees as of the date the plan is restored. The carrier shall offer coverage to each dependent of such eligible employees.

e. The premium rate for the health ~~benefit plan~~ *insurance coverage* shall be no more than the premium rate charged to the small employer on the date the health ~~benefit plan~~ *insurance coverage* was terminated or nonrenewed provided that, if the number or case characteristics of the eligible employees (or their dependents) of the small employer has changed between the date the health ~~benefit plan~~ *insurance coverage* was terminated or nonrenewed and the date that it is restored, the carrier may adjust the premium rates to reflect any changes in case characteristics of the small employer. If the carrier has increased premium rates for other similar groups with similar coverage to reflect general increases in health care costs and utilization, the premium rate may be further adjusted to reflect the lowest such increase given to a similar group. The premium rate for the health ~~benefit plan~~ *insurance coverage* may not be increased to reflect any changes in risk characteristics of the small employer group until one year after the date the health ~~benefit plan~~ *insurance coverage* is restored. Any such increase shall be subject to the provisions of 513B.4 ~~as amended by 1993 Iowa Acts, Senate File 362.~~

f. The health ~~benefit plan~~ *insurance coverage* shall not be eligible to be reinsured under the provisions of 513B.12, except that the carrier may reinsure new entrants to the health ~~benefit plan~~ *insurance coverage* who enroll after the restoration of coverage.

ITEM 20. Rescind and reserve subrule **71.14(4)**.

ITEM 21. Rescind and reserve subrule **75.10(3)**.

ITEM 22. Amend **191—Chapter 75**, matrix footnote 1, to read as follows:

(1) ~~\$10,000~~ **\$50,000** Lifetime Max.

## INSURANCE DIVISION[191](cont'd)

ITEM 23. Amend 191—Chapter 75 by adding the following **new** rule:

**191—75.11(513C) Maternity benefit rider.** Every individual insurance carrier shall offer an optional maternity benefit rider for the basic and standard health benefit plans providing full benefits for a pregnancy and delivery without complications with a 12-month waiting period. Credit toward meeting the waiting period shall be given for prior coverage of a pregnancy without complications provided there was no more than a 63-day break in coverage.

These rules are intended to implement 1997 Iowa Acts, House File 701, and 1995 Iowa Acts, chapter 204, section 14, and 1996 Iowa Acts, chapter 1219, section 52.

[Filed Emergency 6/26/97, effective 7/1/97]  
[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

## ARC 7394A

PUBLIC SAFETY  
DEPARTMENT[661]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 692.10, the Department of Public Safety hereby amends 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 adopted 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 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.

These amendments were proposed under Notice of Intended Action as **ARC 7253A** published in the Iowa Administrative Bulletin on May 21, 1997. A public hearing on the amendments was held on June 16, 1997. No comments on the proposed amendments were received, either at the hearing or otherwise. The adopted amendments are identical to those published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that these amendments confer a benefit on the public by allowing additional means of access to criminal

history records, and that the normal waiting period before the amendments become effective should be waived.

These amendments became effective July 1, 1997.

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 adopted.

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 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](mailto:echinfo@safe-ia.gov) or [cchinfo@dps.state.ia.us](mailto: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.

[Filed Emergency After Notice 6/27/97, effective 7/1/97]  
[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7361A****TELECOMMUNICATIONS AND  
TECHNOLOGY COMMISSION,  
IOWA[751]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission hereby rescinds Chapter 7, "Authorized Use and Users," Iowa Administrative Code.

Chapter 7 describes authorized facilities and authorized users for the fiber-optic network.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impractical and contrary to the public interest in that these rules allow the Commission to regulate authorized uses and users of the fiber-optic network immediately.

In accordance with Iowa Code section 17A.5(2)"b"(2), the Commission also finds that the usual effective date of this rescission, 35 days after publication, should be waived and the rescission be made effective on July 9, 1997. This effective date confers a benefit on the public because the delay imposed by the Administrative Rules Review Committee will soon expire. Additionally, the Commission will propose a new Chapter 7 which includes the changes discussed during the meeting before the Administrative Rules Review Committee on May 13, 1997.

This rescission was approved by the Commission on June 10, 1997.

This rescission became effective on July 9, 1997.

The following amendment is adopted.

**Rescind 751—Chapter 7.**

[Filed Emergency 6/24/97, effective 7/9/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7373A****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 24, 1997, adopted amendments to Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

1997 Iowa Acts, House File 416, section 10, increases the allowable dimensions for multitrip permits: width has increased from 11 to 16 feet; length has increased from 100 to 120 feet; the 14-foot, 4-inch height limit has been eliminated. Also, total gross weight cannot exceed 156,000 pounds. Section 11 of this Act increases the fee for a multitrip permit from \$100 to \$200. These changes became effective July 1, 1997, and are reflected in Items 4 and 5.

By rule, the Department previously limited the validity of a multitrip permit to 30 days. Item 3 increases this validity to 60 days.

1997 Iowa Acts, House File 704, sections 25, 26 and 27, strike existing escort requirements. Section 29 of this Act requires the Department to adopt rules for all escort requirements other than those movements exempted in section 29. This legislation became effective July 1, 1997. Items 6 and 8 rescind existing rules on warning devices and required escorts or lights and adopt new language addressing these topics. They are all safety issues and are closely related. The term "sufficient shoulder width" is being defined in Item 1 because the new escort legislation uses this term but does not define it. The new escort requirements are less restrictive than the current ones.

In accordance with Iowa Code subsection 17A.4(2), the Department finds that notice and public participation to amend the rules to conform to the statutory requirements for multitrip permits are unnecessary.

In accordance with Iowa Code subsection 17A.4(2), the Department finds that it is contrary to the public interest to delay implementation of the 30-day increase in the validity of the multitrip permit by going through "normal" notice and public participation procedures because the delay will increase the Department's (and thus the taxpaying public's) administrative costs and cost carriers time and money.

The Department anticipates this summer will be one of Iowa's busiest construction seasons ever, which means an increase in the number of overdimensional and overweight trips. Without a change in the validity of the multitrip permit from 30 to 60 days, the Department anticipates increased demand for single-trip permits. With single-trip permits, carriers must call or fax the Department for each trip; wait times for approval and issuance range from eight minutes to three hours, based on demand. Because of the anticipated increased demand, wait times for carriers and Departmental administrative costs in issuing the permits will increase.

Because of the legislative changes in the allowable dimensions and weight for multitrip permits, more movements that would otherwise require a single-trip permit are eligible for a multitrip permit. However, the Department believes that the doubling of the multitrip permit fee will discourage carriers from purchasing multitrip permits. The Department also believes that doubling the validity from 30 to 60 days will counteract this fee increase and encourage carriers to purchase multitrip permits, thus decreasing the demand for single-trip permits. The Department believes that there is no detriment to the public in issuing multitrip permits, since carriers also have the option of purchasing multiple single-trip permits for the same movements.

In accordance with Iowa Code subsection 17A.4(2), the Department finds that it is contrary to the public interest to delay implementation of the new escort requirements. The current escort rules implement prior legislation, which has been repealed. Therefore, the current rules would quite possibly not be valid after July 1, 1997. Without implementation of new rules, there would either be no rules in effect, or outdated rules in effect, both of which are contrary to the intent of the new legislation.

Under Iowa Code subparagraph 17A.5(2)"b"(2), the Department finds that increasing the validity of the multitrip permit will confer a benefit on carriers who make overdimensional and overweight trips by saving them time and money. It will also confer a benefit on the taxpaying public by decreasing the Department's administrative costs.

The Department also finds that the escort changes will confer a benefit on both the public and carriers. The public benefits by having escort rules implementing the new legislation, and the new escort rules will save carriers time and money because they are less restrictive.

## TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments are also published herein under Notice of Intended Action as **ARC 7372A** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 321E, 1997 Iowa Acts, House File 416, sections 10 and 11, and 1997 Iowa Acts, House File 704, sections 25, 26, 27 and 29.

These amendments became effective July 1, 1997.

Rule-making actions:

ITEM 1. Amend rule **761—511.1(321E)** by adding the following definition in alphabetical order:

“Sufficient shoulder width” means a gravel or paved surface extending a minimum of six feet beyond the edge of the roadway.

ITEM 2. Amend subrule 511.2(1) as follows:

**511.2(1)** Applications, forms, and instructions *and restrictions* are available by mail from the Office of Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; or in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa; telephone (515)237-3264.

ITEM 3. Amend paragraph **511.4(3)“c”** as follows:

c. The validity of a multitrip permit shall not exceed ~~30~~ **60** calendar days.

ITEM 4. Amend subrule 511.5(2) as follows:

**511.5(2)** Multitrip permit. A fee of ~~\$100~~ **\$200** shall be charged for each multitrip permit, payable prior to the issuance of the permit. Additional routes will require a new permit.

ITEM 5. Amend subrule 511.9(1) as follows:

**511.9(1)** Multitrip permits may be issued for vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:

a. Width. ~~11 feet.~~ **16 feet.**

b. Length. ~~100 feet.~~ **120 feet.**

c. Height. ~~14 feet 4 inches.~~ **Limited only to the height of underpasses, bridges, power lines, and other established height restrictions. The carrier shall be required to contact affected public utilities when the height of the vehicle with load exceeds 16 feet 0 inches. At the discretion of the permit-issuing authority, a written verification may be required from the affected utility.**

d. Weight. ~~See rule 511.11(321, 321E).~~ **156,000 pounds total gross weight.**

e. Distance. On routes specified by the permit-issuing authority.

ITEM 6. Rescind and reserve rule **761—511.14(321E)**.

ITEM 7. Amend paragraph **511.15(2)“c”** as follows:

c. An 18-inch by 18-inch red *or orange fluorescent* flag shall be mounted on each corner of the front bumper of the escort vehicle.

ITEM 8. Rescind subrule 511.15(3) and insert in lieu thereof the following **new** subrule:

**511.15(3)** Requirements for escorts, flags, signs and lights. The following chart explains the minimum escort and warning devices required for vehicles operating under permit.

TRANSPORTATION DEPARTMENT[761](cont'd)

Minimum Warning Devices and Escort Requirements  
For Vehicles Operating Under Permit

	Flags/Signs	Lights	Escorts		
			4-Lane	2-Lane	
<b>Length</b>					
75'1" up to and including 85'	✓	not required	not required	not required	
Over 85' up to and including 120'	✓	✓	not required	not required	
Over 120'	✓	not required	rear	rear	
<b>Projections</b>					
Front: over 25'	not required	✓	not required	not required	
Rear: over 4' up to and including 10'	flags only	not required	not required	not required	
Rear: over 10'	flags only	✓	not required	not required	
<b>Height</b>					
Over 14'4" up to and including 20'	✓	not required	front with a height pole	front with a height pole	
<b>Weight</b>					
Over 80,000 lbs.	not required	✓	not required	not required	
<b>Width</b>					
Over 8'6" up to half the roadway	✓	not required	not required	Lane Width Less than 12'	Lane Width 12' and more
				not required	not required
Over half the roadway, up to and including 14'6" with sufficient shoulders	✓	not required	rear *	front	front *
	✓	not required	rear *	front	front
Over 14'6" up to and including 16'6"	✓	not required	rear *	front	front
Over 16'6" up to and including 18'	✓	not required	rear	front	front

\* In lieu of an escort, a carrier can display an amber light or strobe light on the power unit and on the rear extremity of the vehicle or load.

✓ Required

Definitions:

Flags – Red or orange fluorescent flags at least 18" square must be mounted as follows: one flag at each front corner of the towing unit and one flag at each rear corner of the load. In addition, there must be a flag at any additional protrusion in the width of the load.

Signs – A sign reading "Oversize Load" must be used. The sign must be at least 18" high by 7' long with a minimum of 12" black letters, with a 1 1/2" stroke, on a yellow background, and mounted on the front bumper and on the rear of the load. The rear sign for mobile homes and factory-built structures must be mounted at least 7' above the highway surface, measuring from the bottom of the sign.

Lights – An amber revolving light must be at least 7" high and 7" in diameter with at least a 100-candlepower lamp providing 360° warning (or strobe light) mounted on the towing unit, visible from front and rear. More than one light may be necessary.

Sufficient Shoulder – A gravel or paved surface extending a minimum of 6' beyond the edge of the roadway. (Roadways with sufficient shoulders will be identified by the department.)

The permit-issuing authority may require additional escorts when deemed necessary. The signs or warning devices must be removed or covered when the vehicle is within legal dimensions.

ITEM 9. Amend rule 761—511.15(321E), implementation clause, as follows:

This rule is intended to implement Iowa Code sections ~~section 321E.8, 321E.9 and 321E.14~~ and 1997 Iowa Acts, House File 704, section 29.

[Filed Emergency 6/26/97, effective 7/1/97]  
[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

## ARC 7374A

BLIND, DEPARTMENT  
FOR THE[111]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 216B.6, the Commission for the Blind hereby amends Chapter 1, "Administrative Organization and Procedures," and makes nonsubstantive amendments to Chapters 6 to 11, Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 1997, as ARC 7221A. No public comments were received on these amendments. The adopted amendments are identical to those published under Notice.

Chapter 1 describes the history, function, organization, and other administrative procedures of the department. The amendments to this chapter correct location information, a definition and a nonsubstantive text change.

These amendments were approved during the June 26, 1997, meeting of the Commission for the Blind.

These amendments will become effective on August 20, 1997.

These amendments are intended to implement Iowa Code chapters ~~216B~~ and 216D.

The following amendments are adopted.

ITEM 1. Amend **111—Chapters 1, 6, 9, 10 and 11** by striking "601L" and inserting in lieu thereof "216B".

ITEM 2. Amend **111—Chapters 7 and 8** by striking "601C" and inserting in lieu thereof "216D".

ITEM 3. Amend rule 111—1.3(216B) as follows:

**111—1.3(216B) Location and information.** The central office of the department is located at 524 Fourth Street, Des Moines, Iowa 50309-2364, telephone (515)281-1333 (incoming WATS number (800)362-2587). District offices are located at ~~332 Higley Building, 118 3rd Ave. SE, Suite 407, Cedar Rapids, Iowa 52401-1408 1438, telephone (319) 365-9111; First National Building, 607 Sycamore St., Suite 400, Waterloo, Iowa 50703-4725, telephone (319) 235-1403; and 427 Frances Building, Sioux City, Iowa 51101-1203, telephone 712-258-0293.~~ Information concerning department services may be obtained by contacting any of these offices.

ITEM 4. Amend rule **111—1.4(216B)**, definitions of "Blind" or "Blindness" and "Division administrator," as follows:

"Blind" or "Blindness," except as applicable to the business enterprises program, refers to the condition of an individual who meets one or more of the following criteria: (1) vision not more than 20/200 central visual acuity in the better eye, with ordinary corrective lenses, or a field defect in which the peripheral field has contracted to an extent that the widest diameter of visual field subtends to an angular distance of not greater than 20 degrees; (2) a combination of loss of visual acuity and loss of visual field which imposes an employment handicap which is substantially that of a blind person; (3) medical prognosis indicating a progressive loss of sight which will terminate in the condition described in ~~condition~~ *criterion* one; (4) a visual impairment sufficient to warrant attendance at the Iowa Braille and Sight-Saving

School or programs for the severely visually impaired in the public schools; or (5) a visual impairment which by agreement of the division of vocational rehabilitation services of the Iowa department of education and the department is such that the individual can be best served by the department.

"Division Program administrator" means the chief of each of the four divisions of the department for the blind.

[Filed 6/27/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

## ARC 7375A

BLIND, DEPARTMENT  
FOR THE[111]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 216B.6, the Commission for the Blind hereby rescinds Chapter 10, "Vocational Rehabilitation Services," Iowa Administrative Code, and adopts a new Chapter 10 with the same title.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 1997, as ARC 7222A. No public comments were received on this new chapter. The adopted chapter is identical to the one published under Notice.

This chapter enables the Department to carry out its responsibilities under the Vocational Rehabilitation Act of 1973 as amended in 1992 and under Iowa Code chapter 216B. The new chapter contains a number of changes which will bring the rules into conformity with revised federal regulations and clarify the vocational rehabilitation services program for department consumers.

This chapter was approved during the June 26, 1997, meeting of the Commission for the Blind.

These rules will become effective on August 20, 1997.

These rules are intended to implement Iowa Code chapter 216B.

The following chapter is adopted.

Rescind 111—Chapter 10 and insert in lieu thereof the following new chapter:

## CHAPTER 10

## VOCATIONAL REHABILITATION SERVICES

**111—10.1(216B) Function.** Vocational rehabilitation services assist consumers to achieve an employment outcome consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**111—10.2(216B) State plan.** The state plan for vocational rehabilitation of the blind of Iowa is developed by the department pursuant to federal regulations and submitted to the United States Department of Education, rehabilitation services administration. The state plan delineates the scope of vocational rehabilitation services to individuals and to groups, ensures that written policies are maintained, and provides guidelines for expenditure of funds.

## BLIND, DEPARTMENT FOR THE[111](cont'd)

In accordance with Section 361.29 of the federal regulations, reports of statewide studies and evaluations are available to the public for review.

**111—10.3(216B) Application procedures.** An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, (1) has completed and signed an agency application form; (2) has provided information necessary to initiate an assessment to determine eligibility and priority of services; and (3) is available to complete the assessment process. Persons desiring vocational rehabilitation services should contact the department office and must complete the application process.

**111—10.4(216B) Eligibility.**

**10.4(1)** Eligibility for vocational rehabilitation shall be determined upon the presence of four basic conditions: (1) the existence of blindness as defined in rule 111—1.4(216B); (2) the existence of blindness results in a substantial impediment to employment; (3) the ability to benefit in terms of employment outcomes from the provision of vocational rehabilitation services; and (4) the applicant requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

No duration of residence requirement is imposed that excludes from services any applicant who is present in the state. No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability. The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant. The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

**10.4(2)** Whenever changed circumstances, such as a decrease in fiscal or personnel resources or an increase in its program costs, indicate that the department may no longer be able to provide a full range of services, as appropriate, to all eligible applicants, the department will invoke an order of selection policy based upon Section 361.36 of the federal regulations.

**111—10.5(216B) Services.**

**10.5(1)** Services may include the following: assessment for determining eligibility and priority for services; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling and guidance; referral and other services necessary to secure needed services from other agencies and to advise individuals about the client assistance program; physical and mental restoration; vocational and other training services, including personal and vocational adjustment training; maintenance; transportation; services to family members; interpreter services for individuals who are deaf-blind, reader services, rehabilitation teaching services, orientation and mobility services, recruitment and training services to provide new employment opportunities in fields of appropriate public service; job search, placement assistance, and job retention services; supported employment services; personal assistance services; postemployment services; occupational licenses, tools, equipment, initial stocks and supplies; rehabilitation technology; transition services; acquisition of equipment; purchase and distribution of educational, professional, and other materials to be used by groups of individuals with disabilities; purchase and maintenance of equipment in connection with these materials; special tools, aids and devices to assist consumers in

achieving self-sufficiency; and provision of other goods and services considered beneficial to vocational rehabilitation.

**10.5(2)** Joint planning between an eligible individual and staff will be employed in the development of the individual written rehabilitation plan in order to determine which specific services may be needed and to ensure that the individual has the opportunity to make an informed choice regarding vocational rehabilitation goals and objectives. The following factors may be taken into account in arriving at a decision as to what services will be provided: the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**111—10.6(216B) Consideration of comparable services and benefits.**

**10.6(1)** Full consideration is given to any comparable service or benefit available to an eligible blind person under any program, except for grants or awards from organizations of the blind, prior to the provision of services to the individual or members of the individual's family, except for those services listed in subrule 10.6(3).

**10.6(2)** To the extent that an individual is eligible for comparable services or benefits, they are utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

**10.6(3)** The following services are exempt from a consideration of comparable services and benefits under subrule 10.6(1) above: assessment for determining eligibility; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling, guidance, and referral services; vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid with vocational rehabilitation funds unless maximum efforts have been made to secure grant assistance in whole or in part from other sources to pay for the training or training services.

**10.6(4)** The consideration of comparable services and benefits under any program does not apply if such a consideration would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk as defined by rule 111—1.4(216B), based on medical evidence provided by an appropriate qualified medical professional; or an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

**10.6(5)** In the event that severe revenue shortages make budget reductions necessary, the department may invoke a limitation on payment of tuition each semester to a rate no greater than the maximum tuition rate effective at institutions operated by the Iowa board of regents for each semester of the consumer's enrollment. When it is necessary to invoke this limitation with general notice to the public and to consumers potentially affected, exceptions may be made in cases in which a reasonable necessity for a waiver can be demonstrated, the consumer's counselor recommends a waiver, and the program administrator approves the waiver before the consumer's enrollment. In no case, however, shall this rule be construed as discouragement of a consumer's attending private or out-of-state institutions when utilization of other available funds makes it possible to do so.

**111—10.7(216B) Termination of services.**

## BLIND, DEPARTMENT FOR THE[111](cont'd)

**10.7(1)** A decision to terminate vocational rehabilitation services shall be made only after providing an opportunity for full consultation with the individual or, if appropriate, with the individual's representative.

**10.7(2)** The individual will be informed in writing of the reasons for the termination of services; furnished information on how the individual may appeal the decision as provided in rule 10.8(216B); and provided with a description of the services of the Iowa client assistance program and how to contact that program.

**10.7(3)** For those individuals who have been determined incapable of achieving an employment outcome, their circumstances will be reviewed annually unless they have refused services, are no longer in the state, their whereabouts are unknown, or they have a medical condition which is rapidly progressive or terminal.

**111—10.8(216B) Administrative review and formal hearing.** Administrative review is a procedure by which the agency may provide an opportunity for an applicant or consumer to express and seek remedy for dissatisfaction with a decision regarding the provision or denial of services. Formal hearing is a procedure whereby an applicant or consumer who is dissatisfied with the findings of an administrative review or any determinations made concerning the furnishing or denial of services may seek redetermination of the action or request a timely review of those determinations before an impartial hearing officer.

While the department encourages the use of the administrative review process to resolve grievances, the administrative review process is not to be used as a means to delay a formal hearing before an impartial hearing officer unless the parties jointly agree to a delay. An applicant or consumer may elect to proceed directly to the formal hearing process.

**10.8(1) Administrative review.** An applicant for, or consumer of, vocational rehabilitation services may request review of a decision regarding provision or denial of services with which the applicant or consumer is dissatisfied by submitting a letter to the program administrator for vocational rehabilitation services.

a. The program administrator shall acknowledge receipt of the letter and arrangements shall be made for the administrative review to be held at a mutually convenient date, time, and place which shall be within 15 days after receipt of the request for review.

b. The administrative review shall consist of review of the case file and any other documentation involved in the subject matter of the review; interviews with the counselor/teacher and any others directly involved with the subject matter of the review; and an interview with the applicant or consumer or, if appropriate, a representative of the applicant or consumer.

c. The program administrator shall issue a written decision within seven days of the review. The decision shall set forth the issue, principle, and relevant facts established during the review; pertinent provision of law, administrative rule or agency policy; and the reasoning upon which the decision is based. The letter transmitting the decision shall advise the applicant or consumer that the applicant or consumer shall inform the program administrator within seven days that either: (1) the applicant or consumer accepts the decision; or (2) the applicant or consumer does not accept the decision and wishes to proceed to a formal hearing.

d. A record of the decision and any action resulting from the decision shall be sent to the applicant or consumer by certified mail. The decision and a record of any action resulting from the decision shall be entered into the case file.

**10.8(2) Formal hearing.** An applicant for, or consumer of, vocational rehabilitation services, who is dissatisfied with the findings of an administrative review or who is dissatisfied with any determinations made concerning the furnishing or denial of services or has elected to bypass the administrative review process, may request a formal hearing by submitting a letter to the program administrator.

a. The director shall acknowledge receipt of the request and make arrangements for a formal hearing to be held within 45 days of the request of the applicant or consumer to initiate the administrative review and formal hearing process at a date, time and place mutually agreeable to both parties. The applicant or consumer shall also be notified of the right to have a representative present at the formal hearing.

b. The agency may not institute a suspension, reduction, or termination of services being provided under an individual written rehabilitation plan pending a final determination of the formal hearing or administrative review, unless the individual or, as appropriate, the individual's representative so requests, or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

c. An impartial hearing officer must be selected on a random basis or by agreement between the director of the agency and the individual or, as appropriate, the individual's representative from a pool of persons qualified to be an impartial hearing officer.

d. As specified in Section 361.5(b)(22) of the federal regulations, the impartial hearing officer shall be an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education). An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer; (1) is not a member of the commission for the blind; (2) has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; (3) has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state regulations governing the provision of services; (4) has received training with respect to the performance of official duties; and (5) has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual. The director may also request that the counselor/teacher or the program administrator be present at the formal hearing. At the request of the applicant or consumer, a representative of the applicant or consumer and a representative of the Iowa client assistance program may also be present. Any of these persons shall have the opportunity to present relevant evidence.

e. The impartial hearing officer shall inform those present of the confidentiality of matters discussed. The proceedings shall be recorded and transcribed.

f. Within 30 days of the completion of the formal hearing, the decision of the impartial hearing officer shall be mailed to the applicant or consumer or, if appropriate, the individual's representative, the director, program administrator and counselor/teacher. A representative of the Iowa client assistance program who has attended a formal hearing shall also receive a copy of the decision. The decision shall be sent to the applicant or consumer or, if appropriate, the individual's representative by certified mail. The applicant or consumer may receive a copy of the transcript of the hearing upon written request to the director.

The decision of the impartial hearing officer shall be based upon the provisions of the approved state plan, the federal Vocational Rehabilitation Act of 1973 as amended in

## BLIND, DEPARTMENT FOR THE[111](cont'd)

1992, federal vocational rehabilitation regulations, and state regulations and policies.

g. The director may concur with the decision of the impartial hearing officer or may decide to further review the decision. If the director concurs with the decision of the impartial hearing officer, the director shall issue a written statement concurring with the decision of the impartial hearing officer within 20 days of the certified mailing date of the impartial hearing officer's decision. The statement shall include the date of issuance; the name of the applicant or consumer; reference to relevant statutes, rules, policies or previous decisions; the particular facts upon which the decision of the hearing officer was based; and the reasons for the decision. A copy of the statement of concurrence shall be sent by certified mail to the applicant or consumer. The decision of the impartial hearing officer shall be effective on the date of issuance of the statement of concurrence by the director.

h. If the director decides to review the impartial hearing officer's decision, the director shall notify the applicant or consumer or, if appropriate, the individual's representative by certified mail, within 20 days of the certified mailing date of the impartial hearing officer's decision, of intent to review the decision in whole or in part. The applicant or consumer or, if appropriate, the individual's representative shall have an opportunity to submit additional evidence or information relevant to a final decision.

If the director fails to provide notice of intent to review the impartial hearing officer's decision as required in these rules, the impartial hearing officer's decision becomes a final decision.

i. The director may not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the applicant or consumer unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved state plan, the Vocational Rehabilitation Act of 1973 as amended in 1992, federal vocational rehabilitation regulations, or state regulations or policies that are consistent with federal requirements.

j. Within 30 days of the date of notice of intent to review the impartial hearing officer's decision mailed to the applicant or consumer, the director shall issue a written decision which shall include the date of issuance; the name of the applicant or consumer; reference to relevant statutes, rules, policies, or previous decisions; the particular facts upon which the decision is based; and the reasons for the decision. A copy of the decision shall be sent by certified mail to the applicant or consumer or, if appropriate, the individual's representative. The decision shall be effective on the date of issuance.

k. The director may not delegate the responsibility for decision making in the formal hearing process to any other officer or employee of the department.

**10.8(3)** Transcripts, notices, responses and other documents which are an integral part of the administrative review and formal hearing process shall be provided to involved parties in standard print format. An applicant or consumer, or representative of an applicant or consumer, or other involved party may request provision of documents in the alternative medium of braille, cassette tape or large-type format. Documents in the alternative medium shall be provided in a timely manner.

**111—10.9(216B) Applicant and consumer rights.** The counselor/teacher must inform the applicant or consumer of the applicant's or consumer's rights as follows:

**10.9(1)** A written statement of rights, which sets forth the department's policies and practices with regard to administrative review, fair hearing, confidentiality of records and nondiscrimination, shall be provided to the applicant as a part of the application process.

**10.9(2)** When an applicant is determined ineligible to receive vocational rehabilitation services, the applicant shall receive written notification of the right to appeal and information concerning services available through the Iowa client assistance program.

**10.9(3)** The individual written rehabilitation plan will include a statement that the consumer has been informed of the department's policies regarding administrative review, fair hearing, confidentiality of records and nondiscrimination.

**10.9(4)** Upon termination of services through the standard case closure procedure, the consumer shall be given a written statement of the right to appeal the termination, including information about services available through the Iowa client assistance program.

**10.9(5)** When disagreement occurs, staff shall verbally inform the applicant or consumer of the right to appeal and provide information about services available through the Iowa client assistance program.

**111—10.10(17A) Forms.** The following forms are used by the vocational rehabilitation services program:

1. Application for rehabilitation services—used for application for vocational rehabilitation services from the department. Also contains statement of compliance with the Civil Rights Act of 1964 and release of information form.

2. Individual written rehabilitation plan (IWRP)—used by the counselor/teacher and consumer to develop a blind person's program for rehabilitation. Printed on the form are the following statements: mutual agreement and understanding between consumer and counselor; department's program responsibilities; consumer responsibilities; review and evaluation of progress toward objectives and goal; and consumer rights and remedies. In addition, the IWRP provides for mutual development of a vocational goal, intermediate objectives, summary of planned services, accepted criteria for review and evaluation purposes and consumer acceptance and response.

These rules are intended to implement Iowa Code section 17A.3 and chapter 216B.

[Filed 6/27/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7354A**

## COLLEGE STUDENT AID COMMISSION[283]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 261.1(5) and 261.3, the College Student Aid Commission adopts Chapter 20, "Iowa National Guard Tuition Aid Program," Iowa Administrative Code.

This new chapter establishes rules for administering the National Guard Tuition Aid Program, which was established by the 1996 Iowa Legislature.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 9, 1997, as **ARC 7183A**. This rule has been amended from that published under Notice to include changes adopted by the 1997 Iowa Legislature concerning the prioritization of awards to freshmen and sophomores.

This chapter was adopted in final form on May 20, 1997.

This chapter will become effective on August 20, 1997.

This chapter is intended to implement Iowa Code section 261.21.

The following new chapter is adopted.

## CHAPTER 20

## IOWA NATIONAL GUARD TUITION AID PROGRAM

**283—20.1(261) Tuition aid to Iowa national guard members for undergraduate studies at eligible Iowa institutions.** The adjutant general shall determine eligibility requirements and select program recipients, and the decision of the adjutant general is final.

**20.1(1) Guard member eligibility.** A recipient must:

a. Be a resident of Iowa, as defined by the adjutant general of Iowa, and a member of an Iowa army or air national guard unit throughout each term for which the member has applied for benefits.

b. Have satisfactorily completed required guard training.

c. Have maintained satisfactory performance of guard duty.

d. Have applied to the adjutant general of Iowa for program eligibility.

e. Be pursuing a certificate or undergraduate degree program at an eligible Iowa college or university and maintain satisfactory academic progress.

**20.1(2) Institutional eligibility.** Guard members attending the following categories of Iowa colleges and universities are eligible to receive moneys from this program:

a. Institutions accredited by the North Central Association of Colleges and Secondary Schools.

b. State-supported area community colleges accredited by the state department of education.

**20.1(3) Award notification.** A guard member is notified of eligibility by the adjutant general of Iowa. The adjutant general will notify the Iowa college student aid commission (commission) of all eligible members. The commission will notify the Iowa colleges and universities of guard members' eligibility.

**20.1(4) Award limitations.** Awards may be used for tuition costs. Individual award amounts are limited to:

a. Fifty percent of the in-state tuition rate at an Iowa regents university;

b. Fifty percent of the in-state tuition rate at an Iowa community college; and

c. An amount equal to 50 percent of the average resident tuition rate at the regents universities for enrollment at an Iowa independent institution.

**20.1(5) Restrictions.**

a. A guard member may use benefits only for undergraduate tuition costs.

b. A guard member who has met the educational requirements for a baccalaureate degree is not eligible for benefits; students enrolled as freshmen and sophomores will be given preference for benefits.

c. A qualified full-time student may receive tuition aid benefits for no more than eight semesters of undergraduate study or the quarter or trimester equivalent. A qualified part-

time student may receive tuition aid benefits for no more than 16 semesters of undergraduate study or the quarter or trimester equivalent.

**20.1(6) Verification and compliance.**

a. The adjutant general will notify the commission of all eligible guard members. Changes in member eligibility will be sent to the commission within 30 days of the change.

b. The commission will notify eligible Iowa colleges and universities of guard members' eligibility.

c. The commission will coordinate the collection and dissemination of eligibility and enrollment information received from the adjutant general and the colleges and universities.

d. The institution's financial aid administrator will be responsible for completing necessary academic progress and enrollment verifications and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The colleges and universities will report changes of students' enrollment to the commission within 30 days after the last day of the enrollment period.

This rule is intended to implement Iowa Code section 261.21.

[Filed 6/20/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7376A****EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 272.2(13), 272.2(14), and 272.2(33), the Board of Educational Examiners hereby adopts amendments to Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Chapter 15, "Requirements for Special Education Endorsements," Chapter 16, "Occupational and Postsecondary Endorsements and Licenses," and Chapter 20, "Evaluator License," Iowa Administrative Code.

The amendments provide for a new unified endorsement for early childhood and special education, the elimination of three related endorsements to be effective in 2000, modifications in the framework for occupational and technical endorsements and licenses, renewal requirements of occupational and postsecondary licenses, and another option for the issuance of the postsecondary administrative endorsement. Finally, the proposed amendments provide for the issuance of an evaluator approval endorsement based on legislation enacted in 1996.

Notice of Intended Action was published in the April 23, 1997, Iowa Administrative Bulletin as **ARC 7197A**.

A public hearing on the proposed amendments was held on May 27, 1997. The Board received three written comments on the proposed amendments and two individuals appeared at the public hearing. The comments supported the amendments with one question on the capacity of a college to offer the program.

The Board corrected the requirements for the student teaching component of the unified endorsement by including the word "primary"; the staff inadvertently failed to include

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the third option in the amendments. Those who commented on the proposed amendments also noted the need to correct the option.

The proposed amendments to Chapter 12 were not adopted.

These amendments will become effective on August 31, 1997.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are adopted.

ITEM 1. Amend subrules 14.20(3) and 14.20(12) by adding the following new unnumbered paragraph at the end of each subrule:

NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inherent in the endorsement, and they will retain the endorsement on their licenses.

ITEM 2. Amend 282—14.20(272) by adding the following new subrule:

**14.20(16)** Teacher—prekindergarten through grade three, including special education.

a. Authorization. The holder of this endorsement is authorized to teach children from birth through grade three.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 14.19(3).

c. Content.

(1) Child growth and development.

1. Understand the nature of child growth and development for infants and toddlers (birth through age 2), preprimary (age 3 through age 5) and primary school children (age 6 through age 8), both typical and atypical, in areas of cognition, language development, physical motor, social-emotional, aesthetics, and adaptive behavior.

2. Understand individual differences in development and learning including risk factors, developmental variations and developmental patterns of specific disabilities and special abilities.

3. Recognize that children are best understood in the contexts of family, culture and society and that cultural and linguistic diversity influences development and learning.

(2) Developmentally appropriate learning environment and curriculum implementation.

1. Establish learning environments with social support, from the teacher and from other students, for all children to meet their optimal potential, with a climate characterized by mutual respect, encouraging and valuing the efforts of all regardless of proficiency.

2. Appropriately use informal and formal assessment to monitor development of children and to plan and evaluate curriculum and teaching practices to meet individual needs of children and families.

3. Plan, implement, and continuously evaluate developmentally and individually appropriate curriculum goals, content, and teaching practices for infants, toddlers, preprimary and primary children based on the needs and interests of individual children, their families and community.

4. Use both child-initiated and teacher-directed instructional methods, including strategies such as small and large group projects, unstructured and structured play, systematic instruction, group discussion and cooperative decision making.

5. Develop and implement integrated learning experiences for home-, center- and school-based environments for infants, toddlers, preprimary and primary children:

- Develop and implement integrated learning experiences that facilitate cognition, communication, social and physical development of infants and toddlers within the context of parent-child and caregiver-child relationships.

- Develop and implement learning experiences for preprimary and primary children with focus on multicultural and nonsexist content that includes development of responsibility, aesthetic and artistic development, physical development and well-being, cognitive development, and emotional and social development.

- Develop and implement learning experiences for infants, toddlers, preprimary, and primary children with a focus on language, mathematics, science, social studies, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology.

- Develop adaptations and accommodations for infants, toddlers, preprimary, and primary-aged children to meet their individual needs.

6. Adapt materials, equipment, the environment, programs and use of human resources to meet social, cognitive, physical motor, communication, and medical needs of children and diverse learning needs.

(3) Health, safety and nutrition.

1. Design and implement physically and psychologically safe and healthy indoor and outdoor environments to promote development and learning.

2. Promote nutritional practices that support cognitive, social, cultural and physical development of young children.

3. Implement appropriate appraisal and management of health concerns of young children including procedures for children with special health care needs.

4. Recognize signs of emotional distress, physical and mental abuse and neglect in young children and understand mandatory reporting procedures.

5. Demonstrate proficiency in infant-child cardiopulmonary resuscitation, emergency procedures and first aid.

(4) Family and community collaboration.

1. Apply theories and knowledge of dynamic roles and relationships within and between families, schools, and communities.

2. Assist families in identifying resources, priorities, and concerns in relation to the child's development.

3. Link families, based on identified needs, priorities and concerns, with a variety of resources.

4. Use communication, problem-solving and helping skills in collaboration with families and other professionals to support the development, learning and well-being of young children.

5. Participate as an effective member of a team with other professionals and families to develop and implement learning plans and environments for young children.

(5) Professionalism.

1. Understand legislation and public policy that affect all young children, with and without disabilities, and their families.

2. Understand legal aspects, historical, philosophical, and social foundations of early childhood education and special education.

3. Understand principles of administration, organization and operation of programs for children aged birth to 8 and their families, including staff and program development, supervision and evaluation of staff, and continuing improvement of programs and services.

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4. Identify current trends and issues of the profession to inform and improve practices and advocate for quality programs for young children and their families.

5. Adhere to professional and ethical codes.

6. Engage in reflective inquiry and demonstration of professional self-knowledge.

(6) Prestudent teaching field experiences. Complete 100 clock hours of prestudent teaching field experience with three age levels in infant and toddler, preprimary and primary programs and in different settings, such as rural and urban, encompassing differing socioeconomic status, ability levels, cultural and linguistic diversity and program types and sponsorship.

(7) Student teaching. Complete a supervised student teaching experience of at least 12 weeks' total in at least two different settings in two of three age levels: infant and toddler, preprimary, primary and with children with and without disabilities.

ITEM 3. Amend subrule 15.2(9) by adding the following **new** unnumbered paragraph at the end of the subrule:

NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inherent in the endorsement, and they will retain the endorsement on their licenses.

ITEM 4. Amend rule 282—16.1(272) to read as follows:

**282—16.1(272) Requirements for secondary level (grades 7-12). Provisional licenses** *The provisional license with the appropriate endorsement will be issued if the requirements of rule rules 282—14.11(272) and 282—14.19(272) for initial licensing have been met.*

**16.1(1)** Requirements for adding the following secondary level occupational endorsements.

**16.1(1) a.** Agricultural sciences and agribusiness. Completion of 24 semester hours in agricultural business management or economics, agricultural mechanics, agronomy, animal science, and horticulture. One thousand hours of work experience in one or more agriculture-related occupations. Coursework in agriculture education to include foundations of vocational and career education, planning and implementing courses and curriculum, methods and techniques of instruction, evaluation of programs and students, and in the coordination of cooperative experience education programs.

**16.1(2) b.** Marketing/distributive education. Completion of 24 semester hours in business to include a minimum of 6 semester hours each in marketing, management, and economics. Three thousand hours of recent, relevant work experience in occupations where the distribution of goods and services was the prime function. Coursework in foundations of vocational and career education, in curriculum design oriented to marketing, and in the coordination of cooperative education programs.

**16.1(3) c.** Office education. Completion of 24 semester hours in business to include coursework in office management, business communications, word and data processing and computer applications in business. Three thousand hours of recent, relevant work experience in an office-related occupation. Coursework in foundations of vocational and career education, in curriculum design oriented to office education, and in the coordination of cooperative education programs.

**16.1(4) d.** Consumer and homemaking education. Completion of 24 semester hours in food and nutrition, consumer education, family living and parenthood education,

child development, housing, home and resource management, and clothing and textiles. Four hundred hours of work experience in one or more homemaking or consumer-related occupations. Coursework in consumer and homemaking education to include methods and techniques of instruction, foundations of vocational and career education, course and curriculum development, and evaluation of programs and students.

**16.1(5) e.** Occupational home economics.

a 1. Option 1. Completion of the requirements for consumer and homemaking education (see 16.1(4)) and special preparation in the occupational area or 400 hours of employment related specifically to the occupational area.

b 2. Option 2. Completion of a baccalaureate degree with a major in the occupational area, coursework in methods and techniques of teaching, course and curriculum development, evaluation of programs and students, foundations of vocational and career education, coordination of cooperative programs and a teaching practicum (supervised or assessment of other teaching experience), 400 hours of employment related specifically to the occupational area.

**16.1(6) 16.1(2)** Multioccupations. Completion of any 7-12 endorsement and, in addition thereto, coursework in foundations of vocational and career education, coordination of cooperative programs and competency-based curriculum development. Four thousand hours of occupational experience in two or more occupations. *The multioccupations endorsement also authorizes the holder to supervise students in cooperative programs, school-to-work programs, and similar programs in which the student is placed in school-sponsored, on-the-job situations.*

**16.1(3)** Specialized secondary occupational endorsement programs. *These are bachelor's degree programs which include specific preparation in occupational or vocational teacher education.*

**16.1(7) a.** Health occupations. Four thousand hours of occupational experience within five years preceding application for certification in the occupation to be taught. Program completion leading to registration, certification, or licensure in Iowa in the health specialty to be taught. Coursework in foundations of vocational and career education, planning and implementing courses and curriculum, methods and techniques of instruction, and evaluation of programs and pupils.

**16.1(8) b.** Trade and industrial subjects. Demonstrated occupational competence in an industrial, trade, or technical field by ~~performance and completion of a minimum of 4,000 hours of practical, hands-on experience in the area in which the endorsement is sought~~ or written examination. Coursework in foundations of vocational and career education, planning and implementing courses and curriculum, methods and techniques of instruction, and evaluation of programs and pupils.

ITEM 5. Amend 16.2(1)"b" as follows:

b. Competency development in four basic areas:

(1) Methods and techniques of teaching.

(2) Course and curriculum development.

(3) Measurement and evaluation of programs and students.

(4) History and philosophy (foundations) of vocational and career education.

*The four areas of competency development required in 16.2(1)"b," 16.5(1)"a"(2), and 16.6(1)"a"(1)"3" cannot be accepted as credit to meet the minimum endorsement requirement of 16.6(2) for an education teaching endorsement at the postsecondary level.*

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NOTE: Individuals who feel that their previous professional experiences or formal education and preparation indicate mastery of competencies in the required study areas may have such requirements waived. Transcripts or other supporting data should be provided to a teacher educator at one of the institutions which has approved teacher education programs. The results of the competency determination will be forwarded with recommendations to the board of educational examiners. Department personnel will make final determination as to the competencies mastered and cite studies which yet need to be completed, if any.

Instructors are expected to make annual progress at a minimum rate of one course per year to complete the studies following initial completion of the new teacher workshop.

ITEM 6. Amend rule 282—16.3(272) as follows:

**282—16.3(272) Renewal requirements—eight six renewal units are required.**

~~16.3(1) One renewal unit may be earned for each 160 days of teaching experience during the term of the license. A maximum of two renewal units may be earned in this manner.~~

**16.3(2) 16.3(1)** One renewal unit may be earned for each semester hour of credit which advanced advances one toward the completion of a degree program.

**16.3(3) 16.3(2)** One renewal unit may be earned for each semester hour of credit completed which may not lead to a degree but which adds greater technical depth/competence to the endorsement(s) held.

**16.3(4) 16.3(3)** Renewal units may be earned upon the completion of staff development programs approved through guidelines established by the board of educational examiners or approved technical update program approved by the board of educational examiners. A maximum of five units may be earned from this subrule.

**16.3(5) 16.3(4)** Completion of an approved human relations component, if not already met.

ITEM 7. Amend 16.5(1)“a” as follows:

a. Initial requirements.

(1) A new teacher’s workshop of a minimum of 30 clock hours and specified competencies. To be completed during the first year of license validity.

(2) Competency development in four basic areas:

1. Methods and techniques of teaching.

2. Course and curriculum development.

3. Measurement and evaluation of programs and students.

4. History and philosophy (foundations) of vocational and career education.

*The four areas of competency development required in 16.2(1)“b,” 16.5(1)“a”(2), and 16.6(1)“a”(1)“3” cannot be accepted as credit to meet the minimum endorsement requirement of 16.6(2) for an education teaching endorsement at the postsecondary level.*

NOTE: Individuals who feel that their previous professional experiences or formal education and preparation indicate mastery of competencies in the required study areas may have such requirements waived. Transcripts or other supporting data should be provided to a teacher educator at one of the institutions which has approved teacher education programs. The results of the competency determination will be forwarded with recommendations to the board of educational examiners. Department personnel will make final determination as to the competencies mastered and cite studies which yet need to be completed, if any.

Instructors are expected to make annual progress at a minimum rate of one course per year to complete the studies, following initial completion of the new teacher workshop.

(3) Six thousand hours of recent and relevant occupational experience in the teaching endorsement area sought.

In those subjects, occupational areas or endorsement areas which require state registration, certification or licensure, each applicant must hold the appropriate license, registration or certificate before the issuance of the provisional or the occupational license.

ITEM 8. Amend subrule 16.5(1), paragraph “b,” as follows:

b. Renewal requirements—eight six renewal units are required.

~~(1) One renewal unit may be earned for each 160 days of teaching experience during the term of the certificate. A maximum of two renewal units may be earned in this manner.~~

(2) One renewal unit may be earned for each semester hour of credit which advances one toward the completion of a degree program.

(3) (2) One renewal unit may be earned for each semester hour of credit completed which may not lead to a degree but which adds greater technical depth/competence to the endorsement(s) held.

(4) (3) Renewal units may be earned upon the completion of staff development programs approved through guidelines established by the department of education board of educational examiners or approved technical update program approved by the board of educational examiners. A maximum of five units may be earned from this subparagraph.

(5) (4) Completion of an approved human relations component, if not already met.

ITEM 9. Amend 16.6(1)“a” as follows:

a. Provisional postsecondary license—valid for five years.

NOTE: This license is provided primarily for noneducators who possess knowledge, competence, and experience in a subject matter field to instruct in a community college.

Applicant must commit to complete initial requirements.

(1) Initial requirements.

1. Have a master’s degree in a field of instruction from a regionally accredited graduate school or in special fields or areas including, but not limited to, *In special fields or areas in which postbaccalaureate recognition or professional licensure is necessary for practice in the profession, including accounting, business, developmental and remedial skills, engineering, law, law enforcement, and medicine, an individual may be certified on the basis of two or more years of successful experience in the fields or areas they the individual will instruct and the possession of the academic preparation ordinarily required for such special fields or areas, and.*

2. A new teacher’s workshop of approximately 30 clock hours in specified competencies, and.

3. Competency attainment in the four basic study areas of methods and techniques of teaching; course and curriculum development; measurement and evaluation of programs and students; and history and philosophy of the development of the community college, and.

*The four areas of competency development required in 16.2(1)“b,” 16.5(1)“a”(2), and 16.6(1)“a”(1)“3” cannot be accepted as credit to meet the minimum endorsement requirement of 16.6(2) for an education teaching endorsement at the postsecondary level.*

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4. Completion of an approved human relations component.

(2) Renewal requirements—nonrenewable.

ITEM 10. Amend 282—16.6(272) by adding **new** subrule 16.6(3) as follows:

**16.6(3)** Postsecondary developmental and remedial skills endorsement. For authorization to teach developmental and remedial courses at the postsecondary level, an applicant shall hold a currently valid Iowa teacher's license with either the general elementary endorsement or one of the subject matter secondary level endorsements set out in 282—subrule 14.18(1) or subrules 16.1(1) to 16.1(5). The applicant must complete six hours of coursework specifically appropriate for teaching at the postsecondary level. This work is to include coursework in the foundations of the community college and coursework in teaching adult learners. The applicant must also complete an Iowa-approved human relations course.

NOTE: Although this endorsement does not require a master's degree, a master's degree is required before any other postsecondary endorsement may be added to an individual's license.

Experience gained under this postsecondary endorsement may be used to move from the provisional license to the educational license.

ITEM 11. Amend subrule 16.8(1) as follows:

**16.8(1)** For authorization to serve as an administrator of an instructional division or in an area of instructional responsibility, an applicant shall submit evidence of preparation and experience as follows:

*Option 1.*

a. Meet requirements for the occupational postsecondary or postsecondary license.

b. Completion of a master's degree granted by an institution recognized by the state board of education, with specialization in one of the following:

- (1) Administration,
- (2) Subject matter field taught in the area institution,
- (3) Vocational-technical education,
- (4) Adult education,
- (5) Student services.

c. Four years of successful educational work experience of which a minimum of two years must have been at the postsecondary level. Experience must include a minimum of two years of teaching or experience appropriate to the area to be administered.

d. Evaluator approval component.

*Option 2.*

a. *The applicant must have a master's degree, and five years of administrative experience, or the equivalent thereof, in the area of responsibility at an accredited postsecondary institution.*

b. *In addition, the applicant must have completed an approved human relations component.*

ITEM 12. Amend 282—Chapter 20 by adding the following **new** rules:

**282—20.6(272) Requirements for renewal of evaluator approval.** Coursework for renewal of the evaluator approval license or the license with the evaluator approval endorsement must complement the initial requirements set out in 20.5(3). This coursework must be at least one semester hour of college or university credit or one renewal unit from an approved Iowa staff development program.

**282—20.7(272) Evaluator approval endorsement.** This endorsement authorizes services as required by Iowa Code section 272.33.

**20.7(1)** Initial evaluator approval endorsement. To obtain this authorization as an initial endorsement on an administrative or teaching license, an applicant must complete the requirements as specified in 20.5(3).

**20.7(2)** An individual holding the evaluator approval license may convert this license to an endorsement at the time of renewal. The fee for this conversion process will equal the fee for license renewal. The endorsement will be placed on the administrative or teaching license.

**20.7(3)** If the evaluator approval license is converted to an endorsement, then the holder of this endorsement must complete evaluation coursework as a part of the renewal requirements for the license. The coursework must be at least one semester hour of college or university credit or one renewal unit from an approved Iowa staff development program, and the coursework must complement the initial requirements set out in 20.5(3).

**282—20.8(272) Holder of permanent professional certificate.** The holder of the permanent professional certificate with an administrative endorsement or endorsements cannot use this option. See Iowa Code section 272.33, subsection 2.

These rules are intended to implement Iowa Code chapter 272.

[Filed 6/27/97, effective 8/31/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

## ARC 7380A

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby adopts amendments to Chapter 22, "Controlling Pollution," and Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

Notice of Intended Action was published March 12, 1997, in the Iowa Administrative Bulletin as **ARC 7108A**. A public hearing was held on April 11, 1997. Three written comments were received. Two changes were made to the Notice of Intended Action as a result of comments received and previous rule making.

Item 1 added the requirement that sources subject to emission guidelines must obtain a Title V permit (as required in subrule 22.101(1)) unless specifically exempted in the emission guideline. Language was added to Item 1 that includes revisions made to this subrule through a previous rule making, which was Adopted and Filed as **ARC 7178A** in the Iowa Administrative Bulletin on April 9, 1997.

Item 2 added the emission guidelines and compliance schedule for existing municipal solid waste landfills to 567—23.1(455B). In subparagraph 23.1(5)"a"(1), "conditionally exempt small quantity generator waste" was removed from the definition of "municipal solid waste landfill." In Iowa, landfills cannot accept this type of waste. The catchwords of subparagraph 23.1(5)"a"(5), "Reporting and

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record-keeping guidelines," have been changed to "Reporting and record-keeping requirements." Also, additional language has been added to subparagraphs 23.1(5)"a"(3) and (5) to specify that less stringent emission standards or compliance schedules need EPA's approval.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective August 20, 1997.

The following amendments are adopted.

ITEM 1. Amend subrule 22.101(1), paragraph "c," as follows:

c. Any source subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources), 567—subrule 23.1(5) (emission guidelines), unless the source is specifically exempted, or Section 111 of the Act; or 567—subrule 23.1(3) (emission standards for hazardous air pollutants), 567—subrule 23.1(4) (emission standards for hazardous air pollutants for source categories) or Section 112 of the Act, ~~except that a~~ A source is not required to obtain a permit solely because it is subject to the provisions of Section 112(r) of the Act. Any source required to obtain a Title V operating permit solely because of the requirement imposed by this paragraph, and which is not a major source, is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program;

ITEM 2. Amend rule 23.1(455B) by inserting the following new subrule 23.1(5) and renumbering subrule 23.1(5) as 23.1(6).

**23.1(5) Emission guidelines.**

a. Emission guidelines for municipal solid waste landfills. Emission guidelines and compliance times for the control of certain designated pollutants from certain designated municipal solid waste landfills in accordance with federal standards established in Section 111(d) of the Act and 40 CFR Part 60, Subparts B (Adoption and Submittal of State Plans for Designated Facilities), Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills), and WWW (Standards of Performance for Municipal Solid Waste Landfills).

(1) Definitions. For the purpose of 23.1(5) "a," the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

"Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters, which must be provided to the administrator in a design capacity report by November 18, 1997. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill's design capacity exceeds the established thresholds in 23.1(5)"a"(3)"1," the NMOC emission rate calculations must be provided with the design capacity report.

2. The installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2)(ii) at each MSW landfill meeting the conditions in 23.1(5)"a"(3)"1."

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency.

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5)"a"(3)"3";

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and record-keeping requirements. The record-keeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5)"a"(6)"2," planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5)"a"(3) shall be accomplished by February 20, 2000.

2. For each existing MSW landfill meeting the conditions in 23.1(5)"a"(3)"1" whose NMOC emission rate is less

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5)"a"(3) shall be accomplished within 30 months of the date when the condition in 23.1(5)"a"(3)"1" is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

b. Reserved.

[Filed 6/27/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7382A****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.5, 461A.4 and 462A.3, the Natural Resource Commission hereby adopts amendments to Chapter 16, "Public, Commercial, Private Docks and Dock Management Areas," Iowa Administrative Code.

These rules regulate placement of docks on lands and waters under the jurisdiction of the Natural Resource Commission.

The proposed amendment clarifies allowable public uses of docks located in a dock management area.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 9, 1997, as **ARC 7176A**. No public comments were received during the public comment period or at the public hearing. The adopted amendment is unchanged from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 461A.4, 461A.25, 462A.2 and 462A.27.

This amendment will become effective August 20, 1997. The following amendment is adopted.

Amend rule 571—16.9(461A), introductory paragraph, as follows:

**571—16.9(461A) Establishment of dock management areas.** Where lands under the jurisdiction of the commission or other public body are on or adjacent to the ordinary high water line of waters under the jurisdiction of the commission, the director may designate the areas or a portion of them as dock management areas. Docks in a dock management area which are constructed off from public property are public docks. However, the permittees have priority use of the docks. The docks may be used by the public when the activity does not interfere with the permittee's use. The permittee shall have exclusive mooring privileges except in an emergency for fishing and emergency mooring when such use does not interfere with the permittee's use. Other uses allowed by the permittee shall be the responsibility of the permittee.

[Filed 6/27/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7379A****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.5, 461A.4 and 462A.3, the Natural Resource Commission hereby adopts amendments to Chapter 17, "Barge Fleeting Regulations," and Chapter 18, "Rental Fee Schedule for State-Owned Property, Riverbed, Lakebed and Waterfront Lands," Iowa Administrative Code.

These rules regulate barges and other permanent and non-permanent structures on land and water under the jurisdiction of the Natural Resource Commission.

The amendments increase fees for barge fleeting areas and for lease of lands and waters under the jurisdiction of the Natural Resource Commission.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 9, 1997, as **ARC 7174A**. No public comments were received during the public comment period or at the public hearing. The adopted amendments are unchanged from the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 461A.4 and 461A.25.

These amendments will become effective August 20, 1997.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [17.10, 18.2, 18.3] is being omitted. These rules are identical to those published under Notice as **ARC 7174A**, IAB 4/9/97.

[Filed 6/27/97, effective 8/20/97]

[Published 7/16/97]

[For replacement pages for IAC, see IAC Supplement 7/16/97.]

**ARC 7378A****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 92, "Migratory Game Birds," Iowa Administrative Code.

This rule gives the regulations for taking migratory game birds. This amendment changes the type of shot allowed in the taking of migratory game birds.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 9, 1997, as **ARC 7175A**. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 481A.48.

This amendment will become effective September 1, 1997.

The following amendment is adopted.

Amend subrule 92.3(3) as follows:

## NATURAL RESOURCE COMMISSION[571](cont'd)

**92.3(3)** On all lands and waters of the state of Iowa while having in one's possession any shot other than ~~steel nontoxic shot, copper-coated or nickel-coated steel shot, or bismuth shot approved by the U.S. Fish and Wildlife Service.~~ This subrule shall not apply to the taking of woodcock.

[Filed 6/27/97, effective 9/1/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7369A**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455G.4(3) and 455G.11, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) amends Chapter 10, "Eligibility for Insurance," Iowa Administrative Code.

Subrule 10.1(2) establishes standards which apply to all owners/operators in order to be eligible for insurance. Paragraph 10.1(2)"i" requires that any application for financial responsibility coverage after December 1, 1996, results in coverage which begins on the date the policy is issued. Backdating of coverage is not allowed. This amendment will allow potential insureds to backdate their premiums if they recently became eligible for innocent landowner benefits, and if they apply for coverage by December 1, 1997. The backdated coverage will only be available for time frames extending until such time the owner was required by state and federal law to have financial responsibility coverage. This will allow owners who become eligible under the innocent landowner fund to obtain the necessary financial responsibility coverage to be eligible to receive the benefits which are created through that fund. However, it will not allow owners who operated without financial responsibility coverage beyond the date at which such coverage was required by state and federal law.

These amendments will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies and entities which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

Notice of Intended Action was published in the April 23, 1997, Iowa Administrative Bulletin as **ARC 7196A**. The adopted amendments are identical to those published under Notice.

These amendments were approved June 25, 1997.

These amendments will become effective on August 20, 1997.

These amendments are intended to implement Iowa Code section 455G.11.

The following amendments are adopted.

ITEM 1. Amend paragraph 10.1(2)"i" to read as follows:

i. If there has been a failure to demonstrate financial responsibility coverage or if there has been a lapse of financial responsibility coverage since October 26, 1990, any application for financial responsibility coverage after December 1, 1996, acceptable to the UST Board or its representative, will

result in financial responsibility coverage which begins on the date the policy is issued *unless backdated coverage is allowed under paragraph "j."* There should be no backdating of financial responsibility coverage for such applications.

ITEM 2. Amend subrule 10.1(2) by adding the following **new** paragraph "j":

j. For sites which qualified for innocent landowner benefits pursuant to 591 IAC 11.1(5), if there has been a lapse in financial responsibility coverage since October 26, 1990, for tanks which were active, coverage may be provided for dates beginning October 26, 1990, through the date the owner was required by state or federal law to maintain financial responsibility coverage on the tanks. There shall be no backdated coverage provided for time frames during which the owner was required by state and federal law to maintain financial responsibility coverage on the tanks.

[Filed 6/26/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7359A**

**PHARMACY EXAMINERS  
BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Iowa Board of Pharmacy Examiners hereby amends Chapter 2, "Licensure," Iowa Administrative Code.

The amendments change the designation "examination material fee" to "examination registration fee" and remove the provision for refund of the examination material or registration fee to applicants who wish to cancel their registration for examination. This fee is paid to NABP for registration for the computerized national examination, and refund policies are determined by that association.

Notice of Intended Action was published in the April 9, 1997, Iowa Administrative Bulletin as **ARC 7167A**. The adopted amendments are identical to those published under Notice.

The amendments were approved during the June 10, 1997, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on August 20, 1997.

These amendments are intended to implement Iowa Code section 147.94.

The following amendments are adopted.

ITEM 1. Amend rule 657—2.2(147) as follows:

**657—2.2(147) Examination fee.** The fee for examination shall consist of an administration fee and an examination ~~material registration~~ fee. The administration fee shall be \$140, which includes \$100 for a biennial license, and shall be payable to the Iowa Board of Pharmacy Examiners. No refunds of the \$40 administration fee shall be made for cancellations. The examination ~~material registration~~ fee shall be an amount determined by the National Association of Boards of Pharmacy (NABP). The examination ~~material registration~~ fee shall be payable to NABP in the form of a certified check, bank draft or money order. ~~Refund of the examination mate-~~

## PHARMACY EXAMINERS BOARD[657](cont'd)

~~rial fee will be made for cancellations.~~ The administration fee and the examination ~~material registration~~ fee must accompany the ~~application~~ applications.

This rule is intended to implement Iowa Code section 147.94.

ITEM 2. Amend rule 657—2.4(147) as follows:

**657—2.4(147) Reexamination applications and fees.** Each applicant for reexamination shall make a request on proper forms provided by the board. Administration fees of \$40 and \$20 will be charged to take the North American Pharmacist Licensure Examination (NAPLEX) and the Federal Drug Law Exam (FDLE), respectively. In addition, candidates will be required to pay an examination ~~material registration~~ fee. Payment of administration fees and examination ~~material registration~~ fees shall be as described in rule 657—2.2(147).

This rule is intended to implement Iowa Code section 147.94.

[Filed 6/23/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7360A**

## PHARMACY EXAMINERS BOARD[657]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76, 155A.10, and 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Examination Scores," and Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendments rescind subrule 3.4(7) which, organizationally, is better addressed in Chapter 8, and include the subject of the rescinded subrule in new rule 657—8.4(155A). The new rule also addresses identification of pharmacists employed in a pharmacy, a nonpermanent employee pharmacist log, and pharmacist identification codes, and includes the subjects of rescinded rules 657—8.16(155A) and 657—8.17(155A). Rule 657—8.19(155A) is amended by adding an item to be included in the pharmacist's prospective drug review, and the term "pharmaceutical care" is deleted from the catchwords for rules 657—8.18(155A) through 657—8.20(155A).

Notice of Intended Action was published in the March 26, 1997, Iowa Administrative Bulletin as **ARC 7124A**. The adopted amendments differ from those published under Notice. New numbered item "8" in rule 657—8.19(155A) has been changed to more clearly identify the intent of that additional item of the prospective drug review and to relieve concerns that the Board had any intention of usurping prescriber authorities or prerogatives in patient drug therapies. The Board has also decided not to adopt previously noticed new rule 657—8.17(155A) which would have defined the term "pharmaceutical care." This term is not being used in the Board's rules and therefore the definition is not necessary.

The amendments were approved during the June 10, 1997, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on August 20, 1997.

These amendments are intended to implement Iowa Code sections 155A.10, 155A.13, 155A.15, and 155A.35.

The following amendments are adopted.

ITEM 1. Rescind subrule **3.4(7)**.

ITEM 2. Adopt **new** rule 657—8.4(155A) as follows:

**657—8.4(155A) Pharmacist identification and notification.**

**8.4(1)** Display of pharmacist license. Each pharmacist, during any period the pharmacist is working in a pharmacy, shall display an original license to practice pharmacy in a position visible to the public. A current license renewal certificate, which certificate may be a photocopy of an original renewal certificate, shall be displayed with the original license.

**8.4(2)** Pharmacist temporary absence. In the case of the temporary absence of the pharmacist, hospital pharmacies excepted, the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns.

**8.4(3)** Identification codes. A permanent log of the initials or identification codes which will identify each dispensing pharmacist by name shall be maintained and available for inspection and copying by the board or its representative. The initials or identification code shall be unique to ensure that each pharmacist can be identified. Identical initials or identification codes shall not be used.

**8.4(4)** Nonpermanent employee pharmacists. The pharmacy shall maintain a log of all licensed pharmacists who have worked at that pharmacy and who are not regularly employed at that pharmacy. Such log shall be available for inspection and copying by the board or its representative.

This rule is intended to implement Iowa Code section 155A.13.

ITEM 3. Rescind and reserve rules **657—8.16(155A)** and **657—8.17(155A)**.

ITEM 4. Amend the catchwords for rule 657—8.18(155A) as follows:

**657—8.18(155A) Pharmaceutical care—patient Patient records.**

ITEM 5. Amend rule 657—8.19(155A) as follows:

**657—8.19(155A) Pharmaceutical care—prospective Prospective drug review.** A pharmacist shall review the patient record and each prescription drug order presented for initial dispensing or refilling for purposes of promoting therapeutic appropriateness by identifying:

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse; ;
8. *Drug-prescriber contraindications.*

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber. The review and assessment of patient records shall not be delegated to staff assistants other than pharmacist-interns.

## PHARMACY EXAMINERS BOARD[657](cont'd)

ITEM 6. Amend the catchwords for rule 657—8.20(155A) as follows:

**657—8.20(155A) Pharmaceutical care—patient Patient counseling.**

[Filed 6/23/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.

**ARC 7388A****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 6, "Regional Advisory Boards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7231A** on May 21, 1997. No comments concerning the new chapter were received from the public. The new chapter contains only minor word changes in 6.4(2) and 6.4(5) for clarity of purpose and is otherwise identical to that published under Notice of Intended Action.

The new chapter defines the Regional Advisory Boards' membership and duties.

The Workforce Development Board adopted the new chapter on June 27, 1997.

These rules will become effective on August 20, 1997.

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

The following chapter is adopted.

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 attend 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) Recommend to the state workforce development board and the department of workforce development awards of 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) Recommend to the state workforce development board and department of workforce development the services to be delivered in the region.**

**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.

[Filed 6/27/97, effective 8/20/97]

[Published 7/16/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/16/97.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

### EXECUTIVE ORDER NUMBER 60

- WHEREAS,** it is the responsibility of each state agency to perform its assigned functions as efficiently and effectively as possible, including the procurement of services as necessary; and
- WHEREAS,** specialized services contracting has become a major category of expenditures as the operations of state government have become more complex; and
- WHEREAS,** to maintain public confidence every reasonable effort must be made to insure that commitments of public funds for services be done so as to obtain the most value for the money spent.
- NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by the power vested in me by the Laws and Constitution of the State of Iowa, do hereby proclaim that state agencies shall have the following responsibilities in order to insure that the procurement of services is done in an orderly manner so as to maintain the public confidence and so that state government will obtain the highest value for the funds spent on contracted services, and do hereby order that:
1. Executive Order Number 50 is rescinded.
  2. All state agencies that procure contracted services shall make available training on procurement, contract negotiation, contract monitoring, and internal control measures to employees who are responsible for services contracting. The Department of Personnel shall provide formal courses to aid in meeting this requirement.

3. The Department of General Services shall, when requested, assist state agencies in procuring contracted services by providing technical advice and participating on selection committees.
4. The Auditor of State is requested to review, during agency financial audits, the internal control procedures of each state agency procuring contracted services.
5. For the purposes of this Executive Order, contracted services shall be defined as those services provided by persons or organizations that are generally considered to have knowledge and special abilities that are needed within the Iowa State Government. They do not include services provided through a grant or subgrant by a not-for-profit service provider organization such as a city, county, or Community Action Agency.



**IN TESTIMONY WHEREOF**, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 19th day of May in the year of our Lord one thousand nine hundred and ninety-seven.

*Terry E. Branstad*  
\_\_\_\_\_  
GOVERNOR

ATTEST:

*Paul D. Pate*  
\_\_\_\_\_  
SECRETARY OF STATE



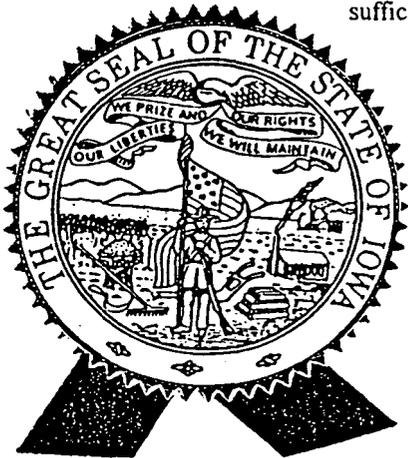
# State of Iowa

## Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

### PROCLAMATION OF DISASTER EMERGENCY

- WHEREAS, On Friday, June 20, and into Saturday, June 21, 1997, severe storm systems moved across Iowa generating tornadoes, straight winds, hail, and flooding; and
- WHEREAS, these storm systems caused destruction and damage to residences, crops, outbuildings, infrastructure, business, private property, and injury to livestock in Marion County; and
- WHEREAS, based upon initial reports forwarded by local and state officials; and
- WHEREAS, the results of this information and survey indicate that local governments have requested and are in need of State assistance to include damage assessment, electrical power restoration, debris removal and burning activities in accordance with Iowa Administrative Code 567-23.2 (a) and Iowa Code Chapter 29C,
- NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim a state of disaster emergency for Marion County for the aforementioned reasons. This proclamation of disaster emergency authorizes local and State government to render good and sufficient aid to assist stricken areas in this time of need.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 21st day of June in the year of our Lord, one thousand nine hundred and ninety-seven.

*Terry E. Branstad*  
GOVERNOR

ATTEST:

*Paul J. Tate*  
SECRETARY OF STATE



# State of Iowa

## Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

### PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, On Friday, June 20, and into Saturday, June 21, 1997, severe storm systems moved across Iowa generating tornadoes, straight winds, hail, and flooding; and

WHEREAS, these storm systems caused destruction and damage to residences, crops, outbuildings, infrastructure, business, private property, and injury to livestock in Warren County; and

WHEREAS, based upon initial reports forwarded by local and state officials; and

WHEREAS, the results of this information and survey indicate that local governments have requested and are in need of State assistance to include damage assessment, electrical power restoration, debris removal and burning activities in accordance with Iowa Administrative Code 567-23.2 (a) and Iowa Code Chapter 29C,

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim a state of disaster emergency for Warren County for the aforementioned reasons. This proclamation of disaster emergency authorizes local and State government to render good and sufficient aid to assist stricken areas in this time of need.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 22nd day of June in the year of our Lord, one thousand nine hundred and ninety-seven.



*Terry E. Branstad*  
GOVERNOR

ATTEST:

*Paul D. Pate*  
SECRETARY OF STATE

\* SUMMARY OF DECISIONS  
THE SUPREME COURT OF IOWA  
FILED JUNE 18, 1997

*Note:* Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

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**No. 96-104. STATE v. ALLEN.**

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by McGiverin, C.J. (12 pages \$4.80)

Tex Allen challenges his conviction for sexual exploitation by a counselor in violation of Iowa Code section 709.15(2) (1993), claiming both ineffective assistance of trial counsel and error by the trial court. The charges arose out of Allen's treatment of Sherry Frederick in his practice as a hypnotherapist. Frederick had experienced mental problems stemming from sexual and mental abuse during her childhood. She decided to seek help from Allen, and during the hypnotherapy sessions Allen allegedly engaged in inappropriate physical contact with her. Following jury trial, Allen was found guilty as charged. **OPINION HOLDS:** I. Allen contends his trial counsel's failure to timely challenge the constitutionality of section 709.15 constituted ineffective assistance of counsel. He contends the statute is void for vagueness and encroaches upon the constitutional right to privacy because it could apply to married persons. We find section 709.15 does not chill ordinary conversations between friends or acquaintances, and it would infrequently, if ever, apply to a marriage relationship. We conclude that section 709.15(1)(f) does not reach a substantial amount of conduct protected under the First Amendment; therefore, we need not decide whether the statute is void for vagueness on its face. Allen's ineffective assistance of counsel claim has no merit. II. At trial, two psychologists testified about Frederick's mental condition. Allen argues that his trial counsel was ineffective for failing to timely challenge their testimony as impermissible commentary on Frederick's credibility. The psychologists, however, did not directly evaluate Frederick's credibility, but gave their opinions concerning the effects of her mental condition on her ability to tell the truth. Such testimony was permissible to help the jury understand the evidence it heard about Frederick's mental illness. III. We reject Allen's claim that the testimony of Janice Westphal and Deborah Simpson concerning his sexual conduct toward them should have been excluded under Iowa Rule of Evidence 404(b). We believe Westphal's testimony was relevant to show a pattern or scheme of conduct in connection with Allen's behavior, and was not unduly prejudicial. Simpson's testimony was proper rebuttal testimony. IV. We also reject Allen's contention that a transcript of a relaxation tape given Frederick which was admitted into evidence did not qualify as the best evidence and was unfairly prejudicial. There was no objection to the admission of the audiotape itself or the manner in which the transcript was made. Allen had ample opportunity at trial to offer his explanation as to the contents of the tape and the jury had the opportunity to assess the significance of the tone and inaudible portions of the tape. We affirm the district court judgment.

**No. 96-679. TUCKER v. CATERPILLAR, INC.**

Appeal from the Iowa District Court for Buena Vista County, James D. Scott, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by McGiverin, C.J. (8 pages \$3.20)

This dispute stems from an accident involving a Caterpillar 416 Backhoe Loader (CAT 416). The CAT 416 was manufactured by defendant Caterpillar, Inc. (Caterpillar), in 1986 and sold to a construction company, C.E. Contracting, Ltd., in June 1986. In November 1986, Caterpillar developed a warning decal that specifically instructed operators to engage the transmission neutral lock (TNL) during backhoe operation. It did not send copies of the decal to C.E. Contracting or other owners of previously-sold machines. A revised instruction manual issued by Caterpillar in 1990 also advised operators to engage the TNL during backhoe operation to prevent undesired movement. On September 4, 1990, plaintiff Jeffrey Tucker, an employee of C.E. Contracting, was severely injured when the CAT 416 ran over him. Tucker filed a product liability action against Caterpillar claiming both negligence and strict liability. Before the trial began, Caterpillar filed a motion in limine seeking to exclude exhibits containing the warning decal, the 1990 manual, and other material. Caterpillar contended these exhibits were inadmissible because they constituted both subsequent remedial measures under Iowa Rule of Evidence 407 and prejudicial material under Iowa Rule of Evidence 403. The trial court sustained Caterpillar's motion and later rejected Tucker's offers of proof with regard to the exhibits. The jury returned a verdict for Caterpillar. On appeal Tucker contends, among other things, the trial court erred in sustaining Caterpillar's motion in limine and rejecting his offers of proof regarding the warning decal and 1990 manual because measures taken by Caterpillar after the sale of the CAT 416 but before the accident are not subsequent remedial measures under Iowa Rule of Evidence 407 and the trial court's exclusion of these exhibits affected his substantial rights. **OPINION HOLDS:** I. We conclude that the "event" controlling whether rule 407 applies was the September 1990 accident in which Tucker was injured. Thus, the trial court erred in applying rule 407 to exclude evidence concerning the warning decal and 1990 manual which were brought into use by Caterpillar before that accident. II. In view of the other record evidence, exclusion of the exhibits at issue did not affect Tucker's substantial rights as contemplated by rule 103(a). Thus, no reversible error occurred. We affirm the district court judgment.

**No. 96-610. STATE v. COOK.**

Appeal from the Iowa District Court for Osceola County, Cameron B. Arnold, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Per curiam. (7 pages \$2.80)

Cook appeals from judgment and sentence entered for driving while barred as an habitual offender ("driving while barred"). He contends the State should have been required to file a supplemental trial information, as prescribed in Iowa Rule of Criminal Procedure 6(5) (allows for supplemental information to avoid references to prior convictions), so as not to prejudice the jury with any evidence of his habitual offender status. He thus argues his counsel was ineffective for failing to object to the reading of the trial information, to the redacted copy of the

**No. 96-610. STATE v. COOK. (continued)**

driving record and barment order reflecting his habitual offender status, and to the jury instruction regarding the elements of the offense. **OPINION HOLDS:** Rule 6(5) is not applicable to the offense of driving while barred because (1) it does not involve an increased penalty, and (2) the habitual offender status is an essential element of the offense. The State was required to offer proof of the habitual offender status in its case-in-chief. Therefore, defense counsel had no duty to raise the objections contended by Cook and did not render ineffective assistance.

**No. 96-849. KREBS v. IOWA DEP'T OF TRANSP.**

Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Per curiam. (4 pages \$1.60)

A law enforcement officer arrested Kim Krebs for operating while intoxicated after Krebs unsatisfactorily performed field sobriety tests. Krebs subsequently consented to an intoxilyzer test which revealed an alcohol concentration of .117. As a result of the test failure, his driver's license was revoked. Krebs appealed the revocation, claiming he requested to telephone his wife after receiving her page. He argued his requests occurred after his arrest, and the officer failed to honor those requests in violation of Iowa Code section 804.20 (1995). The agency concluded Krebs made only one request to call his wife, and that request was made during field sobriety testing and prior to his arrest. It upheld the revocation, implying a violation of section 804.20 had not occurred. On judicial review, the court upheld the revocation. Krebs appeals. **OPINION HOLDS:** There was substantial evidence to support the agency determination that Krebs made the request to call his wife during field sobriety testing, prior to his arrest. Under this determination Krebs' request to call his wife was premature, and did not invoke the rights provided in section 804.20. We therefore affirm the district court judgment upholding the revocation.

**No. 96-674. PUTENSEN v. HAWKEYE BANK.**

Appeal from the Iowa District Court for Dickinson County, Charles H. Barlow, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Neuman, Snell, and Andreasen, JJ. Opinion by Harris, J. (11 pages \$4.40)

Carolyn Putensen borrowed \$38,500 from Hawkeye Bank of Clay County (Hawkeye Bank) to purchase a home in Spirit Lake in July 1993. When Carolyn failed to make a mortgage payment on the loan in April 1994, Hawkeye Bank unsuccessfully attempted to reach her several times. On May 11 a loan officer visited with Charles Putensen, Carolyn's former husband, who reported that she was in a mental institution in Nevada. On May 16 Carolyn appeared at Hawkeye Bank and made a mortgage payment. A bank loan officer described her as appearing normal and mentally stable. On June 2 Carolyn gave Hawkeye Bank a handwritten note stating she was selling the house and would not make any

**No. 96-674. PUTENSEN v. HAWKEYE BANK. (continued)**

further payments. Hawkeye Bank responded to her in writing that she was required to continue to make the mortgage payments. When she failed to do so the bank served her with notice of a nonjudicial foreclosure pursuant to Iowa Code chapter 655A and notice of a small claims petition concerning a credit card debt. Carolyn reacted only to the small claims petition, and retained an attorney to represent her on it, but not on the foreclosure matter. She also failed to file a rejection of the foreclosure notice within the thirty days specified in the Code. On September 7 the bank completed the foreclosure and brought a forcible entry and detainer action to evict Carolyn and her son. Carolyn and her son were represented by an attorney in the forcible-entry-and-detainer action which resulted in an order of removal. After Carolyn's eviction she began living in her car. On November 29 she was committed to a mental hospital. In March 1995 Hawkeye Bank sold the property for \$46,300. Charles was appointed as Carolyn's conservator in a voluntary proceeding and he filed the present action as a petition to vacate the nonjudicial foreclosure. The petition was later amended to withdraw the petition to vacate and substitute a claim for money damages. The district court sustained the bank's motion for summary judgment. Charles appeals. He contends a court can and should vacate the foreclosure, either under Iowa rule of civil procedure 252(c) or on the basis of a court's inherent power. Charles also raises due process challenges under both the federal and state Constitutions. **OPINION HOLDS:** I. Without suggesting that we have the inherent power to vacate the foreclosure, we decline to exercise it because we conclude it would be imprudent to do so. II. We think the enhanced protection incident to requiring a guardian ad litem should arise only after there has been an adjudication of incompetence. III. We conclude that the necessary state action required to implement the due process clause of the Iowa Constitution is lacking. Because state action is absent, we reject Charles' state due process challenge. IV. We also reject Charles' federal due process challenge because no state action was implicated. The trial court judgment is affirmed.

**No. 96-1929. DECATUR COUNTY v. PUBLIC EMPLOYMENT RELATIONS BD.**

Appeal from the Iowa District Court for Decatur County, David L. Christensen, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Harris, J. (7 pages \$2.80)

Decatur County, a public employer, had adopted a resolution governing the accrual of employee benefits while county employees received workers' compensation benefits. During subsequent negotiations for a new contract, the employee's union proposed adding language to the contract which would provide that all employee benefits would continue to accrue while an employee was drawing workers' compensation benefits. The county refused to bargain over the proposal, claiming it was not a mandatory bargaining subject and that the county's resolution prohibited negotiation on this issue. Impasse resolution procedures were invoked and the matter was submitted to a fact finder. The county filed a petition before the Public Employment Relations Board (PERB) requesting a determination of the bargaining status of the union's proposal.

**No. 96-1929. DECATUR COUNTY v. PUBLIC EMPLOYMENT  
RELATIONS BD. (continued)**

PERB found the union's proposal was a legal subject of mandatory bargaining and was not rendered illegal by the county's home rule adoption of the resolution. PERB rejected the county's claim that the proposal violated the workers' compensation law's exclusivity provisions. The district court affirmed on judicial review. The county appeals. **OPINION HOLDS:** I. The union's proposal is a mandatory bargaining subject under Iowa Code section 20.9 (1995) because it directly relates to the subject of employee benefits. II. A county's home-rule authority to enact resolutions is subject to laws enacted by the General Assembly. If a state statute and county ordinance cannot be reconciled, then the state statute prevails. Here, the county's resolution constitutes a direct assault on section 20.9, and the union's proposal was not "illegal" because the county's resolution was inconsistent with state law and therefore invalid. III. The exclusivity provisions of Iowa Code chapter 85 do not prohibit employers and employees from agreeing by contract to augment the benefits conferred by that chapter. The union's proposal did not abrogate any workers' compensation rights; it only sought to have them supplemented and augmented and was not illegal under section 20.9.

**No. 96-29. CLOCK v. LARSON.**

Appeal from the Iowa District Court for Hardin County, Carl E. Peterson, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Harris, J.

(5 pages \$2.00)

Betty Naber was injured on property she was renting from Merlin Clock. Naber was rendered a paraplegic. Clock had \$100,000 of liability insurance coverage with the defendant, IMT Insurance Company, which had been procured by Clock's insurance agent, L.M. Larson, and his agency. Clock claims he had requested Larson to obtain a \$1 million umbrella liability policy with IMT but no such policy had been procured. Naber brought a tort and contract action against Clock seeking damages for the injuries she suffered in her fall. IMT provided Clock with defense counsel. Clock subsequently filed the present declaratory judgment action against Larson, his agency, and IMT, alleging breach of contract and negligence for the failure to procure the umbrella liability policy. Clock and Naber thereafter entered into a settlement agreement in her tort and contract action. Naber agreed to accept \$110,000 from Clock (with \$100,000 paid by IMT and \$10,000 paid personally by Clock) in exchange for releasing her tort claim against Clock. As part of the agreement, Clock assigned his interest in his declaratory judgment action (the present suit) to Naber. Naber thereafter dismissed her tort suit against Clock with prejudice. Naber filed an application to adjudicate law points to determine whether the declaratory judgment action could still be maintained. The trial court determined: (1) the settlement agreement released any further underlying tort liability of Clock to Naber; (2) the dismissal with prejudice constituted an adjudication of the merits of the tort liability of Clock to Naber; (3) the defendants did not refuse to defend Clock; (4) the defendants were not bound by the \$10,000 amount paid by Clock to Naber as damages; and (5) the settlement agreement fixed the maximum amount that

**No. 96-29. CLOCK v. LARSON. (continued)**

Naber, as Clock's assignee, could recover in this case at \$10,000. We granted Clock permission to bring an interlocutory appeal and also granted defendants' application to bring an interlocutory cross-appeal. **OPINION HOLDS:** I. This case differs from *Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524 (Iowa 1995), a case in which we determined that the settlement of a tort claim was not dispositive of the insured's suit against the insurer for failure to provide adequate coverage, because IMT did not refuse to defend Clock in Naber's tort suit and the settlement provided Clock with far more than a covenant not to execute. By dismissing her claim with prejudice and agreeing not to bring any other legal action against him, Naber completely released Clock from any liability other than the \$10,000 he personally paid her. II. The defendants cannot assert error in the trial court's refusal to grant them summary judgment and limit their liability to \$10,000 because it did precisely that in adjudicating law points. We find no error and affirm on both appeals.

**No. 96-163. LUMBERMENS MUT. CAS. CO. v. STATE.**

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge. **AFFIRMED.** Considered by Harris, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (8 pages \$3.20)

Lumbermens Mutual Casualty Company appeals summary judgment for the Iowa Department of Revenue and Finance, claiming insurance proceeds paid out on an embezzlement claim should be reimbursed from taxes collected on the stolen funds. The district court reasoned the insurer's subrogation rights under the parties' contract extended only to insured risks, not tax assessments. Lumbermens has appealed, seeking reversal on three alternative grounds: (1) the court erroneously rejected its claim to an equitable lien; (2) its liability under the fidelity bond should be computed by subtracting the recovered money from the amount embezzled to arrive at the "direct loss"; and (3) the department's collection efforts breached the insurance contract and constituted an unlawful confiscation of property without due process in violation of the Fourteenth Amendment. **OPINION HOLDS:** I. Lumbermens furnished coverage for the embezzlement loss, not the tax loss. The parties' contract limits Lumbermens to reimbursement for any loss the department sustained *and* for which it paid or settled. Because neither loss sustained by the department has been fully compensated, there has been no unjust enrichment. II. The department has received only partial payment on the delinquent tax debts, and no restitution on the direct loss. Therefore Lumbermens' liability on the covered direct loss cannot be reduced by amounts collected on the noncovered tax debt. III. We reject Lumbermens' unconstitutional taking claim. IV. Lumbermens misperceives its rights under the policy as well as the department's statutory obligations. Under the policy, Lumbermens has the right to *seek* recovery, not a right to recover. By statute, the department has a duty to pursue tax debtors with vigor. Lumbermens remains free to seek civil judgments against the embezzlers, or to pursue its subrogation rights if restitution or recovery is made on the direct loss. We therefore affirm the district court's judgment.

**No. 96-1742. IN RE S.D.L.**

Appeal from the Iowa District Court for Linn County, Jane F. Spande, District Associate Judge. **REVERSED**. Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Neuman, J.

(7 pages \$2.80)

A seventeen year old assaulted the teen-aged girl with whom he cohabited in violation of a no-contact order issued in accordance with Iowa Code section 236.14 (1995). Thereafter the juvenile court found the juvenile clearly violated the no-contact order, but rejected the State's application to cite or punish the juvenile for contempt, insisting it was without authority to do so. The State appealed. **OPINION HOLDS:** Although it is in the juvenile court's discretion to rehabilitate rather than punish the juvenile, the court misinterpreted chapters 232 and 236 when it rejected out of hand the State's request for sanction. We do not believe imposing a contempt sanction and promoting rehabilitation are mutually exclusive alternatives under our juvenile code. Given the expansion of chapters 232 and 236 the State's request for a "detention sentence" was not outside the juvenile court's authority. Although the punishment alternatives available to the juvenile court upon a finding of contempt are limited, the legislature did not intend to prevent a juvenile court from holding a juvenile accountable for conduct casting disrespect on the court's orders. Accordingly we reverse the juvenile court's contrary opinion. We do not remand because jeopardy has attached.

**No. 95-1833. THOMPSON v. CITY OF DES MOINES.**

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED**. Considered by McGiverin, C.J., and Carter, Lavorato, Neuman, and Ternus, JJ. Opinion by Neuman, J.

(14 pages \$5.60)

The City of Des Moines reorganized its management structure in 1993. Jerry Thompson lost the job of employment relations director that he had held for eighteen years. Claiming the reorganization was a mere sham to circumvent his contractual rights, Thompson sued the city and its mayor, manager, and council members on theories of breach of contract, tortious interference with contractual relationship, conspiracy, and violation of due process. The district court granted the city's summary judgment motion on all issues except for "bumping rights" upon layoff, which was submitted to the jury. The jury found nothing in Thompson's contract allowing him to "bump" another employee with less seniority and receive the same pay as his previous position. Thompson's new trial motion was denied. Thompson has appealed. **OPINION HOLDS:** I. We conclude there is no evidence of an oral contract for long-term employment. Any comments made by the then city manager regarding employment were not meant to alter Thompson's at-will status but to "sell" employment with the city. II. We conclude that neither the employee handbook nor the supervisory and professional manual (SPM) is couched in language sufficiently definite to constitute an offer of continuous employment. We find no terms providing the certainty of dismissal only for cause that Thompson urges. III. The district court did not abuse its discretion in refusing to admit all forms purporting to show the city's "bumping" policies. The tendered evidence was arguably cumulative, and

**No. 95-1833. THOMPSON v. CITY OF DES MOINES.** (continued)

substantial documentation was allowed to show the city's transfer policies. IV. We do not believe the trial court erred by refusing to instruct the jury on whether the employee handbook was still in effect or was rescinded by the SPM manual. The record contains no evidence on the essential elements of rescission underlying Thompson's requested instruction. The court's refusal to grant a new trial was not in error. The district court judgment is therefore affirmed.

**No. 96-137. MULDER v. STATE.**

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Temus, JJ. Per curiam. (6 pages \$2.40)

In April 1995 William Mulder purchased a damaged 1994 motor vehicle at a public auction. Prior to the auction the vehicle had been owned by an insurer which had received the vehicle as a result of a settlement with its owner arising out of damage to the vehicle, and it was deemed to be a "wrecked or salvage" vehicle for title purposes under Iowa Code section 321.52(4)(a) (Supp. 1995). Mulder received the vehicle with a salvage title. He obtained a repair estimate of \$4963.77. Mulder claims its fair market value prior to the damage was \$22,135. Upon completion of the repairs, Mulder will be able to obtain a regular certificate of title, but it will show a prior salvage designation. Mulder contends, among other things, the salvage designation on the title will reduce the fair market value of the vehicle. Mulder filed a petition for declaratory judgment against the defendants, the Iowa Department of Transportation (department) and the Polk County Treasurer. He requested a determination that his vehicle was not a wrecked or salvage vehicle as defined in section 321.52(4)(d) (cost of repair exceeds fifty percent of market value) and an order directing the treasurer to issue him a regular certificate of title with a damage disclosure statement. Mulder and the department filed cross-motions for summary judgment, and the district court granted the department's motion. Mulder appeals. **OPINION HOLDS:** I. Mulder erroneously relies on section 321.52(4)(d) which does not apply to his situation. The vehicle was automatically deemed to be a wrecked or salvage vehicle under section 321.52(4)(a). II. Mulder's equal protection challenge to section 321.52(4)(a) as a irrebuttable presumption against insurers is without merit. Where an insurer acquires a "totaled" vehicle from an insured there is a rational basis for classifying such vehicles as wrecked or salvage vehicles without requiring a comparison of their repair costs and fair market value. III. Mulder's claim of an unconstitutional taking is also without merit. There is no "taking" where a party acquires property but cannot use it as intended because it is subject to preexisting statutory restrictions. We affirm the district court's grant of summary judgment.

**No. 96-480. HOLDING v. FRANKLIN COUNTY ZONING BD.**

Appeal from the Iowa District Court for Franklin County, Bryan H. McKinley, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Harris, J. Special concurrence by Neuman, J. Dissent by Ternus, J. (12 pages \$4.80)

The Franklin County board of adjustment held a hearing on an application for a conditional use permit on March 21, 1995. The application was tabled until a June 6, 1995, hearing because of protests of area residents. At that hearing, the board passed a resolution granting the application but, unknown to the applicants and protestors, it was not "signed" and officially "filed" until July 21, 1995. Even then the papers continued to be stored in the "office" of the zoning administrator at his personal residence. The plaintiffs filed a petition for writ of certiorari with the district court after the board's announcement of its decision at the June 6 public hearing, but before the resolution was officially signed and filed. The district court granted a motion to dismiss the petition based on its conclusion that it lacked subject matter jurisdiction because the petition was filed prematurely. The court noted there was no statutory requirement that the board designate an office, and no impediment to its office being located outside a public building. The plaintiffs appeal. **OPINION HOLDS:** I. Subject matter jurisdiction is not lacking in the present case. The term subject matter jurisdiction refers to the power of a court to hear and determine the class of cases to which the proceedings in question belong, and not to its authority to act in a particular case. II. We find nothing in Iowa Code chapter 335 (1995) that requires zoning board records to be kept in a public building, although public records stored in a private location must still be available for public examination. III. We think the unusual circumstances of private storage of public records and violation of the statutory immediate filing requirement mandate a liberal interpretation of the statutory requirements for filing a petition for writ of certiorari. We therefore determine section 335.18 allows the petition to be filed anytime until thirty days after filing of the board's decision. Accordingly, the district court's judgment is reversed and the case is remanded for consideration of the merits of plaintiffs' challenge. **SPECIAL CONCURRENCE ASSERTS:** We should interpret and apply statutes and procedural rules to sanction those who are *late* in their filings, not early. Conversely, we should not reward parties who withhold challenges to the procedural posture of a case until it is too late to correct the mistake. Here, if the board had filed a pretrial motion to dismiss for failure to state a proper claim under Iowa Rule of Civil Procedure 104(b), the plaintiffs would not have lost the opportunity to timely refile their petition. **DISSENT ASSERTS:** Section 335.18 clearly requires the petition must be filed *after*, not *before*, the filing of the board's decision. The majority attempts to limit its "interpretation" of that section based on the "two peculiar circumstances" in this case. However, the location of the records does not excuse plaintiffs from their obligation to determine when the petition was filed. Likewise, the board's tardy filing of its decision should not save plaintiffs from their own lack of diligence. I would affirm the dismissal of plaintiffs' petition.

**No. 95-2003. STATE v. ANDERSON.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED IN PART, VACATED IN PART, AND REMANDED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J.  
(10 pages \$4.00)

Jeffrey Scott Anderson was found guilty of first-degree burglary, third-degree sexual abuse, and assault with intent to commit sexual abuse causing bodily injury for raping an acquaintance after entering her apartment without permission. At trial, the fighting issue was consent. The State, over objection, presented testimony from three witnesses as to similar criminal acts committed against them by Anderson. At sentencing, Anderson's counsel urged that the conviction of assault with intent merged with the first-degree burglary conviction under the provisions of Iowa Code section 701.9 (1993). The court rejected the argument. Anderson appealed, and we transferred the appeal to the Iowa Court of Appeals. Because the appellate judges were equally divided, the district court judgments were affirmed by operation of law. We granted Anderson's application for further review. **OPINION HOLDS:** I. We find the "other crimes" evidence was relevant to the issues of consent and intent, and no undue prejudice was shown. The trial court did not abuse its discretion in admitting this evidence. II. Considering the elements of the burglary charge as submitted, we find the elements of the assault charge have necessarily been established. Applying the impossibility test, we conclude the assault charge was a lesser-included offense of the burglary charge and merged with the burglary conviction. We vacate the decision of the court of appeals. We affirm the first-degree burglary and third-degree sexual abuse convictions. Because the assault charge merged with the burglary charge, this conviction, judgment, and sentence is vacated. We remand to the district court for entry of an order in accordance with this opinion.

**No. 96-602. GORMAN v. CITY DEV. BD.**

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge. **REVERSED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J.  
(10 pages \$4.00)

This case involves landowners who filed an application for voluntary annexation of their property to the City of Cedar Rapids. The application contained a legal description that misdescribed the property. Enclosed with the application was a map that correctly showed and described the landowners' property. The application description error was not corrected until after the City Development Board approved the annexation, which occurred after notice of the application was published in the newspaper and after the Cedar Rapids City Council passed a resolution approving the annexation. Charles Gorman, who was not a landowner involved in the proceedings, challenged the annexation, claiming the incorrect legal description failed to satisfy the statutory requirements of Iowa Code section 368.7 (1995). The district court affirmed the Board's decision approving the annexation. **OPINION HOLDS:** I. We reject Gorman's claim that the Board did not have authority to approve the annexation without a correct

**No. 96-602. GORMAN v. CITY DEV. BD. (continued)**

legal description and without the consent of all landowners included in the description. The Board can only determine whether there is substantial compliance with the statute by exercising its jurisdiction and examining the application. II. The Board specifically concluded that the City Council's resolution conformed with section 368.7 and that the annexation was in substantial compliance with administrative rules. Based on the Board's findings and conclusions of law, the district court had jurisdiction to review the Board's actions. III. As a result of the incorrect legal description in the application, two-thirds of the property intended to be annexed was not included in the legal description, and forty acres were included that were not owned by the applicants nor intended to be annexed. A description with these significant errors does not substantially comply with section 368.7. The Board's claim that the application is in substantial compliance with section 368.7 because the enclosed map contains a correct description of the property is without merit. It is of central importance to the entire annexation proceedings that the legal description of the area to be annexed be sufficient to identify the affected property. We reverse.

**No. 96-835. IN THE MATTER OF THE ESTATE OF VAZQUEZ.**

Appeal from the Iowa District Court for Scott County, James F. Kelley, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (8 pages \$3.20)

Daniel Vazquez died as a result of injuries sustained in a fire in the duplex where he was living. The fire started as a result of faulty wiring located in the ceiling space between the first and second floors. Vazquez's estate filed a wrongful death petition against the Hepners, alleging common law negligence claims and a violation of the implied warranty of habitability. The court entered judgment for the Hepners on Vazquez's common law negligence claims. Vazquez was permitted to amend the petition to include claims based on both the implied warranty of habitability and negligent breach of duties imposed by statute and ordinance. The district court entered judgment for the Hepners. On appeal, Vazquez claims the duties of a landlord to maintain electrical wiring, based on the implied warranty of habitability and Iowa Code section 562A.15 (1993), require a landlord to make inspections on a reasonable basis. **OPINION HOLDS:** I. We reject the Hepners' argument that all of Vazquez's claims in the amended petition must be dismissed because of the doctrine of res judicata. Even though the first three counts of Vazquez's amended petition do not cite Iowa Code section 562A.15, they clearly recite its statutory language. Further, the judgment entered on the negligence claims does not affect Vazquez's claim involving the implied warranty of habitability. II. We agree with the district court's conclusion that the Hepners were not obligated, pursuant to the implied warranty of habitability, to make an electrical inspection because they had no reason to know of the wiring defect. Without any foreseeable potential of danger, there was no duty to inspect. III. The key factor to determine a landlord's liability under section 562A.15 is whether the landlord knew or should have known of the defect. Section 562A.15 was satisfied because the premises appeared in good and safe working order, the Hepners had no knowledge of the defect, and the defect was not foreseeable. We affirm the district court decision.

**No. 95-1133. STATE v. ATLEY.**

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers, John H. Nahra, and James R. Haverkamp, Judges. **AFFIRMED.** Considered en banc. Opinion by Snell, J. Dissent by Lavorato, J. (40 pages \$16.00)

Lewis Atley was convicted of several offenses involving controlled substances after a search warrant executed on his residence revealed evidence of a large mushroom growing operation. Atley appealed, and we affirmed. We then granted Atley's petition for rehearing. **OPINION HOLDS:** I. The trial court did not err in submitting a jury instruction regarding Atley's failure to testify, although the record regarding his request for the instruction was made after the jury began its deliberations. II. The trial court did not abuse its discretion in denying Atley's new trial motions based upon the destruction of evidence: (1) the evidence was neither exculpatory nor destroyed in bad faith although the State did not obtain a court order, (2) Atley had access to the State's random sampling of the evidence to challenge the testing procedures, (3) the fact that untested mushrooms may not have contained psilocybin does not alter the illegality of possessing those mushrooms containing psilocybin, and (4) Atley was not entitled to a jury instruction on spoliation. III. The trial court's refusal to allow trial counsel, Robert Weinberg, to withdraw and a continuance of trial was not error. Atley's Sixth Amendment right to counsel was not violated due to Weinberg's future employment as a prosecutor because that employment did not create an actual or serious potential for conflict. The trial court was well aware of the possible conflicts and conducted an appropriate inquiry. IV. We do not find that Iowa Code section 124.401(1) (1993) is vague as applied to Atley. The legislature's use of the phrase "any material . . . which contains . . . psilocybin" in section 124.401(1)(4) leads us to the conclusion that psilocybe mushrooms fall within the proscribed category of hallucinogens, regardless of whether Atley was actually engaged in extracting the psilocybin from them. The record also shows Atley knew of the illegality of his conduct and was not innocently violating the statute. V. Atley does not have standing to make a facial vagueness challenge. VI. Atley's remaining ineffective-assistance-of-counsel claims are preserved for postconviction proceedings. His convictions are affirmed. **DISSENT ASSERTS:** The record is clear that Weinberg had an actual conflict of interest, and the trial judge was required to appoint Atley new counsel. Atley's objections to Weinberg also should have triggered a possibility of a conflict of interest in the trial court's mind. The court failed to inquire as to the conflict, and required Weinberg to represent Atley notwithstanding Weinberg's repeatedly voiced concerns about conflicts of interests and possible ethical violations and his reliance on a local rule for withdrawal of counsel. These failures independently violated Atley's Sixth Amendment right to counsel and mandate reversal without a showing of prejudice. I would reverse and remand for a new trial on these two grounds.

**No. 96-583. IN RE MARRIAGE OF CLARK.**

Appeal from the Iowa District Court for Black Hawk County, Alan L. Pearson, Judge. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Per curiam. (5 pages \$2.00)

The marriage of John and Lanette was dissolved on April 10, 1992. Lanette was awarded primary physical care of the parties' four children. On February 3, 1995, the paternal grandparents, Juel and William Clark, filed an

**No. 96-583. IN RE MARRIAGE OF CLARK.** (continued)

application for modification of the dissolution decree alleging Lanette had not allowed them contact with their grandchildren and requesting the decree be modified to provide them visitation rights. The district court denied Lanette's motion to dismiss the application which asserted that the Clarks did not have standing to seek modification of the decree. Following a hearing, the court awarded the Clarks monthly visitation. Lanette appeals. **OPINION HOLDS:** I. In *In re Marriage of Mitchell*, 531 N.W.2d 132, 133 (Iowa 1995), we decided that grandparents do not have standing to initiate a modification proceeding. The district court's finding that Iowa Code section 598.35(1) (1995) grants grandparents standing to seek visitation via an application for modification of a divorce decree was erroneous. The application is dismissed and the district court's decision granting visitation to the grandparents is reversed and remanded. II. Lanette's application for appellate attorney fees is granted. On remand, judgment shall be entered for Lanette against Juel and William Clark for \$900 toward Lanette's appellate attorney fees.

**No. 96-573. STATE OF IOWA ex rel. PALMER v. LINN COUNTY.**

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Snell, J. (9 pages \$3.60)

K.R. is autistic and mentally disabled. Her condition likely requires specialized care for the remainder of her life. Pursuant to her mother's request in 1978, K.R. was placed in a residential care facility in Linn County where her mother had legal settlement. In October 1981, Linn County initiated child in need of assistance proceedings, resulting in a transfer of K.R.'s custody to the Iowa Department of Human Services (DHS) in December 1981 for foster care placement. In November 1986, K.R. was placed in Systems Unlimited, a community-based provider of services and treatment in Johnson County. In May 1989, a special education teacher, with legal settlement in Johnson County, was appointed K.R.'s guardian. The State paid for K.R.'s care until she reached the age of eighteen on November 15, 1993. Since that date, the cost of K.R.'s care has been paid by Linn County. The State commenced a declaratory judgment action to determine K.R.'s county of legal settlement and consequently which county was liable for the costs of her care. The district court determined that Johnson County was K.R.'s county of legal settlement because her guardian had legal settlement there. The court further determined that Iowa Code section 252.16(8) (1995), which protects counties having community-based treatment providers from becoming the legal settlement of those in its care, was not applicable to minors. Johnson County appeals. **OPINION HOLDS:** K.R. initially had legal settlement in Linn County pursuant to section 252.16(3) as the legal settlement of her mother. This designation did not change with the transfer to DHS in 1981 under section 252.16(4) or her 1986 transfer to Systems Unlimited in Johnson County. K.R.'s settlement did change to Johnson County under section 252.16(4) when a resident of that county became her legal guardian in 1989. The district court correctly determined that, as a matter of law, Johnson County was K.R.'s county of legal settlement by operation of sections 252.16(3) and 252.16(4) and that section 252.16(8) does not apply to minors.

**No. 95-1544. WOOLDRIDGE v. CENTRAL UNITED LIFE INS. CO.**

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul and Robert C. Clem, Judges. (No. 107264C) **AFFIRMED AS MODIFIED;** (No. 110449C) **REVERSED AND REMANDED.** Considered en banc. Opinion by Carter, J. (12 pages \$ 4.80)

Jerry E. Wooldridge was, at all relevant times, president of Central United Life Insurance Company (Central United). Central United Corporation, a holding company, owned all of the stock of Central United. Eighty-five percent of Central United Corporation's stock is owned by Central Mutual Insurance Company. Central Mutual decided to dispose of Central United. Wooldridge was encouraged to remain as Central United's president during the transactions leading to the disposition of that company and was offered certain incentives contained in a letter from the chairman of Central United's board. Among other benefits, provisions for a service bonus and for the continuance of the company's health care coverage until Wooldridge became eligible for Medicare were included in the exhibit attached to the letter agreement. In the late spring of 1992, Life of America Insurance Company entered into negotiations with Central Mutual to acquire Central United. The negotiations matured into a formal agreement and plan of reorganization. Wooldridge's employment was terminated. Wooldridge contended that his severance check was not in accordance with the letter agreement. He commenced the present action, seeking recovery for breach of the letter agreement and for wages recoverable under Iowa Code chapter 91A (No. 107264C). The court denied as untimely Central United's request to amend its answer to state a counterclaim alleging that Wooldridge caused it damage by leaking sensitive policyholder data to a person or persons outside the company and by neglecting his normal duties as president of the company. The court also denied Central United's request to amend its answer to allege the substance of the proposed counterclaim as an affirmative defense. Central United commenced a separate action against Wooldridge to obtain substantially the same relief as was sought in the counterclaim (No. 110449C). The court dismissed the claim, reasoning it was barred by the compulsory counterclaim rule contained in Iowa Rule of Civil Procedure 29(a). Central United's appeals in both cases were consolidated. **OPINION HOLDS:** I. We are unable to conclude that the court abused its discretion in denying Central United's application to file a counterclaim. We also find the district court did not abuse its discretion in denying Central United's proposed affirmative defenses. II. The district court did not err in granting Wooldridge's motion in limine seeking to preclude testimony regarding his alleged deficient performance as president after learning of its proposed sale. III. The trial court did not err in permitting the jury to award damages for Central United's failure to provide the medical benefits under the severance agreement. IV. We are convinced it was the intention of the severance agreement that Wooldridge receive the sums provided without regard to any other posttermination remuneration. V. Based on Central United's challenges, the attorney-fee award should be reduced to the sum of \$22,190.45. After issuance of the procedendo from this court, Wooldridge may apply to the district court for an allowance of attorney fees and expenses for services performed on this appeal. VI. We find no merit in Central United's suggestion that the parent corporation, Central United Corporation, should bear the obligation to honor the agreement. Wooldridge's action was based on a contract, and had to be pursued against the entity that agreed to pay the contractual severance benefits, Central United.

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(continued).

Wooldridge's chapter 91A claims were also properly brought against Central United. VII. We believe the district court erred in applying the rule 29 bar to Central United's counterclaim against Wooldridge to recover monetary losses attributable to his failure to properly perform his ordinary duties as president of the company. VIII. The judgment in No. 110449C is reversed, and the case is remanded to the district court for further proceedings. The judgment in No. 107264C is affirmed as modified. Costs on appeal are assessed three-fourths to Central United and one-fourth to Wooldridge.

No. 95-1508. **REGENT INS. CO. v. ESTES CO.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Carter, J. (6 pages \$ 2.40)

Estes, the general contractor, subcontracted with Crawford for work on a housing project. Under the subcontract provisions, Crawford obtained an insurance policy from Regent Insurance Company naming Estes as an additional insured. The subcontract itself also contained an indemnification clause. A Crawford employee, Martin, sustained serious injuries on the job and, in a subsequent action against Estes recovered a large award. Regent brought a declaratory judgment action contending its insurance policy did not cover Estes' liability for Martin's claims. The district court sustained Regent's motion for summary judgment. On Estes' appeal, the court of appeals affirmed the district court's analysis of liability under the indemnification clause but remanded the case for further consideration of other questions raised on the motion. We granted Regent further review. **OPINION HOLDS:** Regent asserts the court of appeals should have affirmed the district court's ruling without remanding the case. Although we disagree with the theory upon which the district court granted summary judgment, the result was correct and the motion was properly sustained based on an alternative ground that had been presented to the district court. Thus, we agree that the court of appeals incorrectly remanded the case. Estes is afforded no protection under Regent's policy for the claims against it by Martin. If the extent of the coverage provided Estes under Regent's policy is less than that to which it was entitled under its contract with Crawford, it must look to Crawford for recourse and not the insurance company. The court of appeals decision is vacated, and the district court judgment is affirmed.

No. 96-2134. IOWA SUP. CT. BD. OF PROF'L ETHICS & CONDUCT v. ISAACSON.

On review of the report of the Grievance Commission. LICENSE SUSPENDED. Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Larson, J. (7 pages \$ 2.80)

The board of professional ethics and conduct appeals from a grievance commission recommendation that the respondent, David J. Isaacson, receive a private reprimand. This is the second appeal in this case. In *Iowa Supreme Court Board of Professional Ethics & Conduct v. D.J.I.*, 545 N.W.2d 866 (Iowa 1996), we held that Supreme Court Rule 118.7, which provides for issue preclusion in attorney disciplinary proceedings, was effective retroactively and applied in the disciplinary case against Isaacson. Although the commission stated that it was bound by issue preclusion to find that the ethics violations were established, it concluded that most of the alleged violations had not actually been proven by the board. The board complains on this appeal that, under issue preclusion, the ethical violations were established by the prior civil judgment. Further, it complains that, if it had known that the commission was not in fact going to give preclusive effect to the prior judgment, the board would have produced additional evidence to support its case. **OPINION HOLDS:** I. In Isaacson's first appeal, we rejected his specific claim that application of issue preclusion retroactively to his case deprived him of due process. We also rejected his related argument that it would be unfair to apply issue preclusion in his case, and we reject it now as well. II. We hold that the evidence before the commission established by a convincing preponderance of the evidence that Isaacson violated DR 1-102(A)(4), DR 5-104(A), DR 5-105(B), and DR 5-105(C). Despite Isaacson's positive attributes, we view his violations of our code of professional responsibility, including fraud and failure to divulge potential conflicts of interest, as serious enough to justify a harsher response than a private reprimand. Accordingly, we order that Isaacson's license be suspended indefinitely with no possibility of reinstatement for six months. Costs are assessed to Isaacson.

No. 96-764. STATE v. HAWKEYE BAIL BONDS.

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Larson, J. (7 pages \$ 2.80)

Hawkeye Bail Bonds (Hawkeye) is the surety on two appeal bonds posted by Juan Jose Rojas-Cardona (the defendant) in two separate appeals from criminal convictions. After the convictions were affirmed on appeal, the defendant requested and obtained delays in the issuance of the mittimus in each case. When the extended time expired and the defendant did not appear, the court forfeited his appeal bonds. Hawkeye has appealed. **OPINION HOLDS:** I. Nothing in our statutes prohibits the extension of the time for issuance of the mittimus. We reject Hawkeye's argument that the delays in the issuance of mittimus were illegal and relieved it of its obligations. II. The appeal bonds required the surety to surrender the defendant in execution of the supreme court's judgment; they did not require the surrender by a certain date. The court's extension of the time for

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the issuance of mittimus did not modify the bail bonds so as to relieve Hawkeye of its liability. III. The appeal bond required that the defendant surrender himself in execution of the judgment. Although he appeared for a probation revocation hearing on August 5, 1994, the actual execution of his judgment was not set until November 15, 1994. The defendant did not appear at that time, and the terms of the bond were not fulfilled. We affirm the district court's ruling that Hawkeye remains liable under the appeal bonds.

**No. 96-468. RILEY v. CITY OF HARTLEY.**

Appeal from the Iowa District Court for O'Brien County, Gary E. Wenell, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Larson, J. (7 pages \$ 2.80)

A 1987 written lease between the City of Hartley and Peter J. Riley contained a right of first refusal to allow Riley to buy a vacant lot owned by the city. When Riley attempted to exercise this right in 1994, the city refused. Riley sued for specific performance and damages. The district court granted summary judgment for the city, holding any right of first refusal in the Riley lease was void because of the city's failure to comply with Iowa Code sections 364.3 and 364.7 (1993). Riley appeals. He concedes that, although the 1987 lease was signed by the mayor and city clerk, the city council did not contemporaneously approve it by motion, resolution, or ordinance as required by section 364.3. Riley also concedes that the city did not, contemporaneously with the execution of the lease in 1987, comply with section 364.7 by publishing a resolution concerning the city's granting of the right of first refusal. Riley instead claims error on two grounds: the council substantially complied with the statutory requirements, and in effect, the city is estopped from denying the effectiveness of the lease. **OPINION HOLDS:** Published notice of a proposed 1994 sale of property to another party cannot be substantial compliance with the statute's requirements concerning a purported conveyance of a real estate interest to Riley in 1987. It might appear to be unfair to allow the city to escape its liability under the lease on the basis of its own failure to follow the statutes. However, the public's interest in the disposition of the city's property cannot be waived by the council's improper exercise of city powers. We therefore reject Riley's estoppel argument. We affirm.

**No. 95-1906. MERLE HAY MALL v. CITY OF DES MOINES BOARD OF REVIEW.**

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Neuman, Snell, and Andreasen, JJ. Opinion by Larson, J. (14 pages \$5.60)

Four tracts of Merle Hay Mall, a shopping center in Polk County, were assessed for the 1993 and 1994 valuation years. The mall owner (mall) filed protests of the assessments. The boards of review denied relief, and the mall

**No. 95-1906. MERLE HAY MALL v. CITY OF DES MOINES BOARD OF REVIEW. (continued)**

appealed to the district court. The mall sought reductions of valuations on its property on the bases of a below-market lease of the Younkens Department Store, an anchor tenant, a business valuation theory and the exclusion of tenant improvements. The district court affirmed the valuations, and the mall appealed. **OPINION HOLDS:** I. While the terms of the Younkens lease are unfavorable to the mall owner, they are very favorable to Younkens, and the combined value of the parties' interests remains the same. Under our rule that property taxed subject to lease is taxed as a whole, the assessor properly used the objective rental income value of the Younkens store, rather than the actual lease amount, to establish a valuation. II. The business enterprise value theory, which excludes from valuation certain intangibles that have been assembled to make a business a viable entity, is an improper valuation method. Only certain intangibles are prohibited from the valuation process under the Code. Furthermore, the business enterprise value theory is not a generally recognized appraisal method as required by the statute. The boards of review and the district court correctly refused to apply this theory. III. The district court correctly concluded that the tenant improvements were properly included in the valuation because: (1) the improvements presumably added value to the property, (2) the lessor and lessee had an obligation to fix the liability for the property taxes, and they failed to do so in this case, and (3) the tenant improvements might well have value both to the present mall owner and to future tenants. IV. The objective income approach in this case is sufficiently reliable to be used, and the district court properly followed the statutory mandate in using it. The district court appropriately limited the use of the mall's primary cost-approach witness to evaluating the cost approach used by other witnesses because the witness failed to include many elements in his valuation, and he had a substantial ongoing business relationship with the mall.

**No. 96-546. STATE v. EAMES.**

Appeal from the Iowa District Court for Marshall County, M.D. Seiser, Senior Judge and Carl D. Baker and Carl E. Peterson, Judges. **AFFIRMED.** Considered en banc. Opinion by Ternus, J. Dissent by Carter, J.

(13 pages \$5.20)

Eames made three controlled sales of marijuana to Marshalltown police. He eventually pled guilty to possession of forty grams of marijuana and was placed on probation. A drug enforcement officer in Marshall County contacted John Wetlaufer of the Iowa Department of Revenue and Finance (Department) and informed Wetlaufer of the drug purchases made from Eames. Wetlaufer calculated that the drug tax due from Eames was \$2,307.96, and he obtained an administrative search warrant for Eames' home. During the execution of the administrative search warrant, officers saw marijuana. The search was stopped and a search warrant for drugs was obtained. During the execution of the second search warrant authorities confiscated contraband, resulting in the filing of firearm and drug charges against Eames. Eames filed a motion to suppress the evidence obtained in the execution of the second search warrant, claiming it was based on

**No. 96-546. STATE v. EAMES. (continued)**

information discovered during an illegal search under the administrative search warrant. The district court overruled the motion and the evidence was admitted at Eames' trial. Eames was found guilty of dominion and control of a firearm by a convicted felon and possession of a controlled substance. Eames appeals. **OPINION HOLDS:** I. The only issues preserved for our review in this case are the three questions passed upon by the district court. II. The burden is upon the taxpayer to prove he was not a "dealer" (a person in possession of 42½ grams of marijuana). Eames has not shown he successfully appealed the tax assessment and may not contest the correctness of the assessment here. In any case, we find the tax was properly assessed because, notwithstanding Eames' guilty plea to possession of a lesser amount, the tax assessment rested on information provided to the Department by local law enforcement authorities and that information had indicated Eames had possessed in excess of 42½ grams of marijuana. Basing the assessment on this information was entirely proper under Iowa Code chapter 453B (1993). III. We will not read into section 453B.9 an additional requirement that in order to qualify as a jeopardy assessment the assessment must not be collectible using other measures, such as a real estate lien. IV. Because a drug tax assessment is a jeopardy assessment, a preseizure notice and hearing are not required. **DISSENT ASSERTS:** It may not be fairly contended that the district court did not consider the Fourth Amendment claim so as to defeat error preservation; the court was aware Eames was lodging a Fourth Amendment challenge to the entry of his residence. Even if Eames' due process challenge may fail on the issue of the State's right to a jeopardy assessment and a seizure of assets to satisfy his tax liabilities, this does not provide a constitutional basis for the entry of his residence under circumstances that offend against basic Fourth Amendment protections. The blanket issuance of an administrative search warrant authorizing entry of a personal residence without any articulation of facts rendering the entry reasonable for Fourth Amendment purposes cannot be sustained. All evidence recovered as the fruits of the improper entry should have been suppressed, and Eames' conviction should be reversed.

**No. 96-261. IN RE MARRIAGE OF O'BRIEN.**

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Lavorato, Neuman, and Ternus, JJ. Opinion by Ternus, J. (9 pages \$3.60)

Tracy Ann Nees and Bret Arthur O'Brien were divorced in 1982. Tracy was granted custody of their daughter, Brooke, and Bret was ordered to pay child support. Tracy later married Michael Nees and they had two daughters. In June 1994, Michael became disabled and applied for social security disability benefits. In his application, he listed Brooke as his stepdaughter and stated she resided in his home. In March 1995, Brooke began living with Bret and in April 1995 Brooke's custody was transferred to Bret. Tracy was ordered to pay \$200 per month in child support. Within days of this modification, the Social Security Administration granted Michael's application for disability benefits and notified Bret that he had been chosen as Brooke's representative payee because he was her custodial parent. In early May 1995, Bret received a check in the amount of

**No. 96-261. IN RE MARRIAGE OF O'BRIEN.** (continued)

\$1,029.50 representing the benefits Brooke was due from May 1994, when Michael's disability began, through April 1995, when payment of benefits was approved. Thereafter, Bret received \$113 each month on Brooke's behalf. Tracy sought to use these payments as a credit against her monthly support obligation. The Child Support Recovery Unit disagreed and ordered mandatory withholding of Tracy's wages. Tracy filed a motion to quash. The court determined Tracy was entitled to a credit, and granted her motion to quash. Bret appeals. **OPINION HOLDS:** I. We decline to adopt a rigid rule that a credit is appropriate *only* when the government benefits are paid from the account of the obligor parent. We think the *equities* of each case determine whether a credit should be allowed. II. The benefits paid to Bret on Brooke's behalf are due to Michael's disability and are a replacement for his lost income. Brooke receives these benefits only because Tracy is married to Michael, for Michael has no legal obligation for Brooke's support. Accordingly, we think it would be inequitable not to grant Tracy a credit for these benefits. III. Under the general rule, Tracy should be credited with Brooke's social security benefits to the extent of Tracy's child support obligation during the period such benefits are paid. Therefore, commencing May 1995, Tracy's monthly support obligation should be offset by \$113. We think Tracy is also entitled to a credit for the amount by which the initial payment of \$1,029.50 exceeded her \$200 support obligation for the month in which the lump-sum payment was made. This is an "exceptional case" calling for a deviation from the general rule, which would ordinarily preclude a credit, because Tracy was the custodial parent and responsible for Brooke's needs during the time period represented by the lump-sum payment. Fairness requires that these benefits be credited against Tracy's subsequent child support obligation. The trial court correctly quashed the withholding order. IV. We conclude Bret should contribute \$1500 toward Tracy's appellate attorney fees.

**No. 96-1535. BURTON v. UNIVERSITY OF IOWA HOSPITALS & CLINICS.**

Appeal from the Iowa District Court for Johnson County, August F. Honsell and Larry J. Conmey, Judges. **REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Lavorato, J. (15 pages \$6.00)

Karen Burton requested the University of Iowa Hospitals and Clinics (UIHC) provide her with statistical summaries regarding nosocomial infections. Nosocomial infections are those that a person contracts while a patient at the hospital, and the UIHC regularly collects data on such infections. The UIHC refused to provide the data, and Burton filed suit requesting an injunction ordering the UIHC to comply with Iowa's Open Records Act (Iowa Code chapter 22). She later amended her petition to include requests for costs, damages, and attorney fees. Both parties filed summary judgment motions. The district court granted Burton's motion and ordered the UIHC to comply with chapter 22. It denied her damages but allowed her attorney fees. On appeal, the UIHC challenges the ruling that the summaries are public records which must be disclosed pursuant to chapter 22. Burton cross-appeals, challenging the denial of

No. 96-1535. **BURTON v. UNIVERSITY OF IOWA HOSPITALS & CLINICS.** (continued)

damages and expert witness costs. **OPINION HOLDS:** I. Under Iowa Code section 135.41, the UIHC has discretion as to whether to disclose the summaries. Chapter 22 does not supersede specific statutes like sections 135.40-.42 regarding the confidentiality of records, despite the deletion of prior language from chapter 22 deferring to other statutory provisions of confidentiality. Our holding renders the cross-appeal issues moot. We reverse and remand for entry of summary judgment for the UIHC.

No. 96-296. **JOHNSON v. JOHNSON.**

Appeal from the Iowa District Court for Hancock County, John S. Mackey, Judge. **REVERSED AND REMANDED FOR A NEW TRIAL.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Lavorato, J. (9 pages \$3.60)

The plaintiffs appeal from an adverse verdict in a negligence action. They contend the district court erred in limiting the liability of an all-terrain vehicle (ATV) owner by applying the consent provisions of Iowa Code section 321.493 (1993). **OPINION HOLDS:** We do not think the inclusion of the grammatical error "is liable" in Iowa Code section 321G.18 makes that provision ambiguous. The statute unambiguously makes both the owner and the operator liable for any injury or damage occasioned by the negligent operation of the ATV without any limitation, and section 321.493 does not apply to limit that liability. The trial court erroneously instructed the jury the ATV owner could escape liability if he had conditioned or restricted the consent he gave to his son to operate the ATV. It is clear from the answers the jury gave on the jury forms that the erroneous instructions were prejudicial. Therefore, we reverse and remand for a new trial.

No. 96-756. **HENNING v. SECURITY BANK.**

Appeal from the Iowa District Court for Jasper County, James W. Brown, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Lavorato, J. (11 pages \$4.40)

In June 1994, the Hennings and Douglas C. Morris entered into a written contract whereby Morris agreed to build the Hennings a new home. The contract required the Hennings to make progress payments to Morris. After the Hennings and Morris executed their contract, Security Bank agreed to loan the Hennings \$79,000. The bank would pay the Hennings each progress payment, and the Hennings in turn would pay Morris. The Hennings paid Morris; however, Morris was not paying the subcontractors. Morris did no substantial work after the third progress payment. He left the job for good in March but the contract work was not finished. The Hennings' attorney advised them to settle with the subcontractors and "finish the contract." The Hennings did so after borrowing additional money from the bank. None of the subcontractors gave the Hennings an Iowa Code section 572.14(3) notice. The Hennings brought this action

**No. 96-756. HENNING v. SECURITY BANK. (continued)**

against the bank alleging the bank negligently misrepresented it would obtain lien waivers as loan funds were disbursed and that the bank was required to take care of the lien waivers as part of the loan agreement and good customer service. The district court found for the bank. The court addressed the Hennings' claim as one for indemnification and concluded the bank was not liable to the Hennings. The Hennings appealed. **OPINION HOLDS:** The subcontractors had no statutory or common-law right to recover from the Hennings for their work and materials. Any payments the Hennings made to the subcontractors were voluntary as they had no legal responsibility to pay the subcontractors based upon the subcontractors failure to give the section 572.14(3) notice, and they failed to prove express or implied contracts existed. Because indemnity does not cover voluntary payments, the Hennings' indemnity claim must fail against the bank. We affirm.

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